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# CONSOLIDATED TRUST DEED OF BRIGHTER SUPER

## COMPRISING

### DEED OF VARIATION DATED 2 JULY 2024

#### *AS AMENDED BY:*

- Deed of Variation dated 24 September 2024, incorporating:
  - amendments effective on execution; and
  - amendments effective on 1 October 2024

#### HISTORY:

- (1) This Consolidation comprises the terms of the trust deed of Brighter Super that were adopted on 2 July 2024 (**2024 Replacement Trust Deed**), as amended by Deed of Variation dated 24 September 2024 incorporating:
  - (i) amendments taking effect on execution 24 September 2024, some of which have an implementation date of 1 January 2025;
  - (ii) amendments taking effect on 1 October 2024, on the successor fund transfer of Zurich Insurance Only Members to Brighter Super.
- (2) The 2024 Replacement Trust Deed replaced the trust deed of Brighter Super (then named "LGIAsuper") adopted on the merger with Energy Super, dated 30 June 2021 which took effect on 1 July 2021 (**ES Merger Variation**), as subsequently amended by Deed of Variation dated 6 December 2022 which took effect 31 December 2022, Deed of Variation dated 31 May 2023 which took effect on 1 June 2023 on the merger with SPSL Master Trust, and Deed of Variation dated 4 July 2023.
- (3) The ES Merger Variation replaced the terms of the trust deed of the Queensland Local Government Superannuation Scheme that were adopted on the merger with City Super which took effect on 1 July 2011 (**CS Merger Variation**), as subsequently amended by Deed of Variation (No. 1) dated 1 February 2012, Deed of Variation (No. 2) dated 5 June 2012, Deed of Variation (No. 3) dated 5 December 2012, Deed of Variation (No. 4) dated 2 October 2013, Deed of Variation (No. 5) dated 3 June 2015, Deed of Variation (No. 6) dated 2 March 2016, Deed of Variation (No. 7) dated 7 December 2016, Deed of Variation (No. 8) dated 6 September 2017 and Deed of Variation (No. 9) taking effect 5 March 2018.
- (4) The CS Merger Variation was an amendment and consolidation of the original QLGS trust deed, first made in 1995, consolidated in 1998, and amended by 32 further deeds of variation between 1998 and 2010.



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- (5) On 1 July 2017, the Queensland Local Government Superannuation Scheme was renamed LGIASuper, and the Queensland Local Government Superannuation Board was renamed LGIASuper Trustee.
- (6) On 1 July 2024, LGIASuper was renamed Brighter Super, and LGIASuper Trustee was renamed Brighter Super Trustee.



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# TRUST DEED OF BRIGHTER SUPER

## ADOPTED BY DEED OF VARIATION DATED 2 JULY 2024

### *RECITALS:*

- A. This document is an amendment and consolidation of the trust deed of Brighter Super effective on 2 July 2024.
- B. The background to this document includes:
  - (1) This document replaces the trust deed of LGIASuper adopted on the merger with Energy Super, dated 30 June 2021 which took effect on 1 July 2021, as subsequently amended by Deed of Variation dated 6 December 2022 which took effect 31 December 2022, Deed of Variation dated 31 May 2023 which took effect on 1 June 2023 on the merger with SPST Master Trust, and Deed of Variation dated 4 July 2023.
  - (2) The trust deed adopted on the ES Merger Date was an amendment and consolidation of the trust deed of the Queensland Local Government Superannuation Scheme adopted on the merger with City Super which took effect on 1 July 2011, as subsequently amended by Deed of Variation (No. 1) dated 1 February 2012, Deed of Variation (No. 2) dated 5 June 2012, Deed of Variation (No. 3) dated 5 December 2012, Deed of Variation (No. 4) dated 2 October 2013, Deed of Variation (No. 5) dated 3 June 2015, Deed of Variation (No. 6) dated 2 March 2016, Deed of Variation (No. 7) dated 7 December 2016, Deed of Variation (No. 8) dated 6 September 2017 and Deed of Variation (No. 9) taking effect 5 March 2018.
  - (3) The trust deed adopted on the CS Merger Date was an amendment and consolidation of the original QLGSS trust deed, first made in 1995, consolidated in 1998, and amended by 32 further deeds of variation between 1998 and 2010.
  - (4) On 1 July 2017, the Queensland Local Government Superannuation Scheme was renamed LGIASuper, and the Queensland Local Government Superannuation Board was renamed LGIASuper Trustee.
  - (5) On 1 July 2024, LGIASuper was renamed Brighter Super, and LGIASuper Trustee was renamed Brighter Super Trustee.

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*Consolidated Trust Deed of Brighter Super as at 24 September 2024, incorporating:*

- *amendments effective 1 October 2024; and*
- *amendments effective 24 September 2024, including amendments with implementation date 1 January 2025*

## **CHAPTER 1 -ADMINISTRATIVE PROVISIONS FOR THE SCHEME GENERALLY**

### **1. PRELIMINARY**

#### **1.1 General direction for interpretation**

- (a) The structure of this Deed involves:-
  - (i) prescribing provisions governing the operation and administration of the Scheme which apply generally to all Members (Chapters 1 and 2);
  - (ii) prescribing separate provisions about contributions and benefits for Members who are Employees of Local Governments (other than Brisbane City Council), Local Government Entities, or the Trustee (Chapter 3);
  - (iii) prescribing separate provisions about contributions and benefits for Members who are Employees of Brisbane City Council and of Associated Employers of Brisbane City Council (Chapter 4);
  - (iv) prescribing separate provisions about contributions and benefits for Members who are Employees of Participating Employers that are ES Employers (Chapter 5).
- (b) Pre ES Merger Provisions continue in full force, in respect of the period prior to the ES Merger Date that each such provision was in effect (despite their deletion from this Deed).
- (c) If a provision in Chapter 1 or Chapter 2 has, or could be interpreted as having, the effect that a Member does not have benefit entitlements after the ES Merger which are at least equivalent to those held before the ES Merger:-
  - (i) that outcome is unintended;
  - (ii) the relevant provision must be read down, if possible, to avoid that outcome;
  - (iii) if the relevant provision cannot be so read down, it does not operate to the extent that it produces that outcome; and
  - (iv) a provision contained in the Pre ES Merger Provisions or in the Former ES Deed may be taken to be incorporated by reference into this Deed, and applied accordingly, to the extent necessary to avoid that outcome.
- (d) Schedule 1 preserves entitlements accrued under the Pre ES Merger Provisions and the Former ES Deed.

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## **2. CONSTITUTION**

### **2.1 Continuation of trust**

The Trustee hereby declares and covenants that the Trustee continues to hold the monies and assets of the Scheme including contributions received, investment earnings and other moneys or assets acquired upon the trusts expressed or implied in the LGAct and stated in this Deed.

### **2.2 Funds**

- (a) Without otherwise limiting clause 2.1, the Trustee declares that the Trustee holds:-
- (i) the Accumulation Benefits Fund on trust to provide for the payment of benefits to persons who are or may become entitled to the payment of Accumulation Benefits;
  - (ii) the LG Defined Benefits Fund on trust to provide for the payment of benefits to persons who are or may become entitled to the payment of Defined Benefits under Chapter 3;
  - (iii) the CS Defined Benefits Fund on trust to provide for the payment of benefits to persons who are or may become entitled to the payment of Defined Benefits under Chapter 4;
  - (iv) the ES Defined Benefits Fund on trust to provide for the payment of benefits to persons who are or may become entitled to the payment of Defined Benefits under Chapter 5.
- (b) To avoid doubt, the Funds are notional, and nothing in this Deed creates separate trusts or requires the Trustee to maintain separate pools of assets.

### **2.3 Dealings between Funds**

- (a) This clause 2.3:-
- (i) operates despite clause 3;
  - (ii) authorises transfers between the Accumulation Benefits Fund and LG Defined Benefits Fund;
  - (iii) authorises transfers between the Accumulation Benefits Fund and CS Defined Benefits Fund<sup>1</sup>; and
  - (iv) authorises transfers between the Accumulation Benefits Fund and ES Defined Benefits Fund;
  - (v) but does not authorise any transfer between Defined Benefits Funds.

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<sup>1</sup> See also clause 23.12 which authorises payments from the CS Defined Benefits Fund to Brisbane City Council or another CS Employer.

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- (b) Subject to clause 2.3(d) and clause 2.3(e), the Trustee may transfer monies between the Accumulation Benefits Fund and either of the LG Defined Benefits Fund or the CS Defined Benefits if, after considering advice from the Actuary, the Trustee is satisfied that:-
- (i) the transfer of monies to a Fund is necessary to ensure that the amount in that Fund is adequate to meet the value of the liabilities of that Fund in respect of accrued benefits for Members whose benefits are to be paid from that Fund; and
- (ii) after the transfer of those monies, the amount remaining in the Fund from which the monies are transferred will be adequate to meet the value of the liabilities of that Fund in respect of accrued benefits for Members whose benefits are to be paid from that Fund.
- (c) A transfer referred to in clause 2.3(b) may be made on such terms and conditions, including terms as to repayment and the payment of interest, as the Trustee determines.
- (d) The Trustee may also transfer monies from either of the LG Defined Benefits Fund or the CS Defined Benefits Fund to the Accumulation Benefits Fund (without provision for repayment) if, after considering advice from the Actuary, the Trustee is satisfied that:-
- (i) the transfer of monies is appropriate having regard to:
- (A) a reduction in the number of Members whose benefits are to be paid from that Fund; or
- (B) (for the CS Defined Benefits Fund) the extent to which the value of the CS Defined Benefits Fund exceeds the accrued benefits of the Members entitled to benefits from that Fund; and
- (ii) after the transfer the amount remaining in the Defined Benefits Fund will be adequate to meet the value of the liabilities of that Fund in respect of accrued benefits for the remaining Members whose benefits are to be paid from that Fund.
- (e) The Trustee may transfer monies:
- (i) from the ES Defined Benefits Fund to the Accumulation Benefits Fund:
- (A) with the consent of any ES Employer affected by the transfer; and
- (B) if the Trustee, after considering the advice of the Actuary, is satisfied that after the transfer the amount remaining in the ES Defined Benefits Fund attributed to any ES Employer affected by the transfer will be adequate to meet the value of the liabilities of that Fund in respect of accrued benefits for the remaining Members whose benefits are to be paid from that Fund in respect of any ES Employer affected by the transfer;
- (ii) from the Accumulation Benefits Fund to the ES Defined Benefits Fund, where the Trustee reasonably believes that the transfer is appropriate having regard to any factors the Trustee considers relevant, including:



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(A) the source of the monies; and

(B) the purpose for which the monies are to be applied.

## **2.4 Reserves**

The Trustee may, in respect of any Fund or in respect of the Scheme or any part of the Scheme, create and maintain a reserve or reserves, and apply the amount in any reserve or reserves, in any manner in which the Trustee sees fit so long as:-

- (a) the purpose of the creation or use of the reserve is:
  - (i) to provide protection against funding shortfalls or investment return fluctuations for the Members whose benefits are to be paid from the fund for which the reserve is created; or
  - (ii) a purpose otherwise permitted under Superannuation Law;
- (b) the creation or use of the reserve is equitable to all Members, having regard to the source of funds in the reserve; and
- (c) the creation or use of the reserve otherwise complies with Superannuation Law.

## **2.5 Name of Scheme**

The Scheme governed by this Deed is known as Brighter Super.

## **2.6 Commencement of provisions**

The provisions of this Deed take effect on 2 July 2024, and the Scheme continues under the provisions of this Deed on and from 2 July 2024.

## **2.7 Trustee**

- (a) The Trustee is the trustee as at commencement of this Deed.
- (b) The trustee must be a constitutional corporation.

## **3. APPOINTMENT AND REMOVAL OF DIRECTORS**

### **3.1 Application of appointment rules**

This clause 3.1 applies to the appointment and removal of directors on and from the ES Merger Date.

### **3.2 Transitional board**

- (a) On the ES Merger Date and for the period to the Transition End Date, the board of directors of the Trustee ("**Transitional Board**") must consist of:-

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(i) 6 Employer representatives, comprising:-

- (A) 3 directors nominated by LGAQ who hold office immediately before the ES Merger Date;
- (B) 1 director who had been nominated to the board of the Energy Super Trustee by MEA;
- (C) 1 director who had been nominated to the board of the Energy Super Trustee by Energy Queensland, as notified to the Trustee by the Energy Super Trustee prior to the ES Merger Date; and
- (D) 1 director nominated by ES Employers other than Energy Queensland, as notified to the Trustee by the Energy Super Trustee prior to the ES Merger Date; and

(ii) 6 Member representatives, comprising:

- (A) 3 directors elected by the Members, who hold office immediately before the ES Merger Date;
- (B) 2 directors who had been nominated to the board of the Energy Super Trustee by ETU; and
- (C) 1 director who had been nominated to the board of the Energy Super Trustee by QSU; and

(iii) 3 independent directors, comprising the 3 independent directors who hold office immediately before the ES Merger Date.

(b) The term of appointment for each director who holds office under clause 3.2(a) is the period commencing on the ES Merger Date and ending immediately before the Transition End Date.

### **3.3 Trustee board on Transition End Date**

(a) On the Transition End Date and up to 31 May 2023, the board of directors of the Trustee must consist of:-

(i) 2 independent directors, determined by the Transitional Board from the directors who were in office immediately before the Transition End Date and who qualify as an independent director as defined under Superannuation Law;

(ii) 3 Employer representative directors, comprising:-

- (A) 2 directors nominated by LGAQ, determined by the Transitional Board from the directors nominated by LGAQ who were in office immediately before the Transition End Date; and
- (B) 1 director nominated by Energy Queensland; and

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- (iii) 3 Member representative directors, comprising:-
  - (A) 1 director nominated by QSU; and
  - (B) 2 Member elected directors appointed under clause 3.4.
- (b) The term of appointment of the directors who hold office under clause 3.3(a) is as follows:-
  - (i) the term of appointment of an Employer representative director:-
    - (A) nominated by LGAQ, is 2 years from the Transition End Date;
    - (B) nominated by Energy Queensland, is 4 years from the Transition End Date;
  - (ii) the term of appointment of a Member representative director:-
    - (A) nominated by QSU, is 2 years from the Transition End Date;
    - (B) who is a Member elected director under clause 3.3(a)(iii)(B), is 2 years from the Transition End Date.

### **3.4 Member elected directors for Transition End Date**

- (a) The ES Members and the LG Members will each be entitled to separately nominate and elect 1 Member representative director whose term of office commences on the Transition End Date.
- (b) The Trustee must call for nominations for those positions not less than 4 months and not more than 6 months before the Transition End Date.
- (c) The elections will be conducted in accordance with clause 3.9, on the basis that separate elections are conducted among the ES Members and the LG Members.

### **3.5 Trustee board from SMT Merger Date**

- (a) From the SMT Merger Date to 31 December 2024, the board of directors of the Trustee must consist of:-
  - (i) 2 independent directors;
  - (ii) 4 Employer representative directors, comprising:-
    - (A) 2 directors nominated by LGAQ;
    - (B) 1 director nominated by Energy Queensland; and
    - (C) 1 Director notified by the SMT Trustee who was a director of the SMT Trustee and qualifies as an Employer representative; and

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- (iii) 4 Member representative directors, comprising:-
    - (A) 1 director nominated by QSU;
    - (B) 1 Director notified by the SMT Trustee who was a director of the SMT Trustee and qualifies as a Member representative; and
    - (C) 2 Member elected directors appointed under clause 3.4.
- (b) From 1 January 2025 to 31 May 2026, the board of directors of the Trustee must consist of:-
  - (i) 2 independent directors;
  - (ii) 4 Employer representative directors, comprising:-
    - (A) 2 directors nominated by LGAQ;
    - (B) 1 director nominated by Energy Queensland; and
    - (C) 1 Director notified by the SMT Trustee who was a director of the SMT Trustee and qualifies as an employer representative; and
  - (iii) 4 Member representative directors, comprising:-
    - (A) 1 director nominated by QSU;
    - (B) 1 Director notified by the SMT Trustee who was a director of the SMT Trustee and qualifies as a member representative; and
    - (C) 2 Member nominated directors appointed under clause 3.16.
- (c) From 1 June 2026, the board of directors of the Trustee must consist of:-
  - (i) 2 independent directors;
  - (ii) 4 Employer representative directors, comprising:-
    - (A) 2 directors nominated by LGAQ;
    - (B) 1 director nominated by Energy Queensland; and
    - (C) 1 Director nominated by Suncorp; and
  - (iii) 4 Member representative directors, comprising:-
    - (A) 1 director nominated by QSU; and
    - (B) 3 Member nominated directors appointed under clause 3.16.

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### **3.6 Eligibility for appointment as director**

- (a) All directors must be persons who:-
- (i) are qualified under Superannuation Law to act as a director of a trustee of a regulated superannuation fund;
  - (ii) meet all criteria for fitness and propriety under the Fit and Proper Policy;
  - (iii) make a declaration in a form acceptable to the Trustee that they are qualified under Superannuation Law;
  - (iv) provide such evidence as the Trustee requires demonstrating that they meet the Fit and Proper Policy; and
  - (v) have not, within the period of 5 years before their appointment, been an employee of:-
    - (A) the Trustee, or a controlled entity of the Trustee; or
    - (B) the trustee of a Superannuation Entity that has transferred to Brighter Super by a successor fund transfer, or a controlled entity of such a trustee.
- (b) A person who:-
- (i) is not qualified under Superannuation Law to act as a director of a trustee of a regulated superannuation fund; or
  - (ii) does not meet all criteria for fitness and propriety under the Fit and Proper Policy,
- ,is not eligible for appointment as a director.
- (c) The board of directors of the Trustee must assess all persons proposed or nominated for appointment as a director, and determine whether the person is eligible under clause 3.6(a).
- (d) If a person nominated by an organisation is not eligible for appointment, the board of directors of the Trustee must not appoint them as a director and the Trustee must request the organisation to provide an alternative nomination.
- (e) If a person nominated for election as a Member elected director is not eligible for appointment, the board of directors the Trustee must not propose the person as a candidate for the election.

### **3.7 Term of office for Employer representatives**

- (a) The term of appointment for a director nominated by LGAQ is 4 years ending on 31 October in the year of a quadrennial Local Government election:-

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- (i) except for directors holding office on the ES Merger Date, who will continue to hold office for the period to the Transition End Date;
  - (ii) except for directors that clause 3.3(b)(i)(A) applies to;
  - (iii) except for directors nominated under clause 3.5(b)(ii)(A), who will continue in office under clause 3.5(c)(ii)(A) and will hold office for a period of 3 years and 10 months (from 1 January 2025 to 31 October 2028); and
  - (iv) except where clause 3.7(f) applies.
- (b) The term of appointment for a director nominated by:-
  - (i) Energy Queensland;
  - (ii) Suncorp,is 4 years from the date of appointment.
- (c) The term of appointment for an Employer representative director nominated under clause 3.5(a)(ii)(C) is 3 years from the date of appointment (expiring 31 May 2026).
- (d) Subject to clause 3.7(e), an Employer representative whose term has ended may be reappointed.
- (e) The maximum period of service for a person who is an Employer representative director is 12 years in aggregate (whether continuous or broken, and including service where appointed or nominated in any capacity). For a director who was:-
  - (i) a director of the Energy Super Trustee immediately before the ES Merger Date, the director's terms of previous service as a director of the Energy Super Trustee are counted;
  - (ii) a director of the SMT Trustee immediately before the SMT Merger Date, the director's terms of previous service as a director of the SMT Trustee are counted.
- (f) A director who is an Employer representative director becomes ineligible and ceases to hold office on the date their aggregate period of service reaches 12 years, and if this occurs during their term of appointment their position becomes vacant on that date (and clause 3.15 applies).

### **3.8 Term of office for Member representatives nominated by organisations**

- (a) The term of appointment for a director nominated by QSU is 4 years from the date of appointment, except for a director that clause 3.3(a)(iii)(A) applies to.
- (b) Subject to clause 3.8(c), a Member representative nominated by QSU whose term has ended may be reappointed.

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- (c) The maximum period of service for a person who is a Member representative nominated by QSU is 12 years in aggregate (whether continuous or broken, and including service where appointed or nominated in any capacity). For a director who was:-
  - (i) a director of the Energy Super Trustee immediately before the ES Merger Date, the director's terms of previous service as a director of the Energy Super Trustee are counted;
  - (ii) a director of the SMT Trustee immediately before the SMT Merger Date, the director's terms of previous service as a director of the SMT Trustee are counted.
- (d) A director who is a Member representative nominated by QSU becomes ineligible and ceases to hold office on the date their aggregate period of service reaches 12 years, and if this occurs during their term of appointment their position becomes vacant on that date (and clause 3.15 applies).
- (e) The term of appointment for a Member representative director nominated under clause 3.5(a)(iii)(B) (notified by the SMT Trustee) is 3 years from the date of appointment (expiring 31 May 2026).

### **3.9 Member elected representatives**

- (a) The Member elected representatives must be persons nominated by Members of the Scheme.
- (b) A person is not eligible for nomination as a Member elected representative:-
  - (i) if he or she is not a Member of the Scheme; or
  - (ii) if the sum of the term of appointment (if the person were appointed) and the terms of all previous service by that person as a director (appointed or nominated in any capacity), whether continuous or broken, exceeds 12 years. For a director who was a director of the Energy Super Trustee immediately before the ES Merger Date, the director's terms of previous service as a director of the Energy Super Trustee are counted.
- (c) For the purpose of carrying out and overseeing the appointment of Member elected representatives, the Trustee must appoint an independent person as returning officer.
- (d) The procedures for appointment of the Member elected representatives will be as determined by the Trustee and notified to Members from time to time, and may provide mechanisms for voting by paper ballot and / or electronic mechanisms.
- (e) The persons with the highest number of votes cast in their favour, up to the number of representatives required, are the persons elected as Member elected representatives. In the event of equality of votes for 2 or more nominees such that one or more of them must be eliminated in order to have the required number of Member elected representatives, the returning officer must decide on the elimination by lot.
- (f) An election is valid despite the fact that:-

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- (i) one or more Members are omitted from the list of Members at the cut off date for voting and are for that reason unable to vote electronically or receive a paper ballot;
- (ii) a Member is otherwise unable to vote electronically because of a failure of access to or function of the electronic voting system for reasons external to the voting system itself<sup>2</sup>;
- (iii) a Member entitled to a paper ballot otherwise fails to receive it; or
- (iv) for a paper ballot, a completed ballot is not received by the Trustee by the time specified in the election notice,

regardless of the reason (unless due to dishonesty or wilful default on the part of the Trustee or the returning officer).

- (g) The Member elected director positions cease on 31 December 2024 and are replaced by Member nominated director positions in accordance with clause 3.16.

### **3.10 Appointment of independent directors**

- (a) Independent directors must be appointed in accordance with procedures determined by the Trustee which conform to this clause 3.10 and Superannuation Law.
- (b) The term of appointment:-
  - (i) is the term, not exceeding 4 years, decided by the Trustee when the appointment is made; and
  - (ii) need not be the same for each director.
- (c) Subject to clause 3.10(d), an independent director whose term has ended may be reappointed.
- (d) A person is not eligible to be appointed or reappointed as an independent director if the sum of the term of appointment and the terms of all previous service by that person as a director (appointed or nominated in any capacity), whether continuous or broken, exceeds 12 years.
- (e) An independent director appointed under this clause does not have, and must not purport to exercise, a casting vote in any proceedings of the Trustee.

### **3.11 Vacancy in office of director**

- (a) A director's office is vacated, by force of this clause and without the need for any further notice or action, upon:-

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<sup>2</sup> For example, an inability to access the voting system because of loss of internet access due to an outage or similar event for which a carrier or service provider is responsible.



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- (i) the death of the director;
  - (ii) expiration of the term of appointment of the director (unless the director is reappointed);
  - (iii) resignation (by notice in writing) by the director;
  - (iv) the director suffering from mental or physical incapacity which prevents him or her from practicably or effectively carrying out his or her duties;
  - (v) the director becoming a disqualified person under Superannuation Law;
  - (vi) the director ceasing to hold office under any of clauses 3.6(a)(v), 3.7(f), 3.8(d), 3.10(d) or 3.16(p);
  - (vii) the director no longer meeting one or more of the criteria for fitness and propriety relevant to the director under Superannuation Law, or otherwise no longer meeting the Fit and Proper Policy; or
  - (viii) the suspension or removal of the director under Superannuation Law.
- (b) For clause 3.11(a)(viii), a director is conclusively taken to no longer meet one or more of the relevant criteria if:-
  - (i) an assessment carried out in accordance with the Fit and Proper Policy concludes that the director no longer meets one or more of the criteria under the Fit and Proper Policy;
  - (ii) a copy of the assessment is provided to the director;
  - (iii) the director is given not less than 14 days to make written submissions about the assessment or any other matter which the director considers relevant to his or her fitness or propriety; and
  - (iv) the Trustee, after giving proper and genuine consideration to both the assessment and any written submissions from the director, resolves that it is satisfied that the director no longer meets one or more of the criteria for fitness and propriety relevant to the director under Superannuation Law.
- (c) A decision under clause 3.11(b)(iv) must state the criterion or criteria on which the decision is based.
- (d) A director to whom a current or proposed process under clause 3.11(b) relates must not be present at or otherwise participate at a meeting of the Trustee:-
  - (i) at which the Trustee considers whether to commence the process under clause 3.11(b) for the director; or
  - (ii) at which the Trustee makes a decision under clause 3.11(b)(iv).

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### **3.12 Removal of directors**

Apart from the circumstances under which a position as director becomes vacant under clause 3.11:-

- (a) an Employer representative director:
  - (i) nominated by LGAQ may be removed by LGAQ;
  - (ii) nominated by MEA may be removed by MEA;
  - (iii) nominated by Energy Queensland may be removed by Energy Queensland;
  - (iv) nominated by ES Employers other than Energy Queensland may be removed by a procedure determined by the Trustee;
  - (v) nominated by Suncorp may be removed by Suncorp;
- (b) a Member representative director:
  - (i) nominated by ETU may be removed by ETU;
  - (ii) nominated by QSU may be removed by QSU;
- (c) a Member elected representative director or a Member nominated director may be removed pursuant to a ballot of Members in which the majority of Members vote in favour of such removal;
- (d) an independent director may be removed in accordance with the procedure adopted by the Trustee (which procedure must comply with any requirements under Superannuation Law for removal of an independent director).

### **3.13 Publishing procedures for removal of directors**

The Trustee must publish the procedures for the removal of Member representative directors and independent directors in such a way that Members of the Scheme are aware of those procedures.

### **3.14 Filling of vacancies - Member elected representatives**

- (a) If there is a vacancy in a position of Member elected representative director (otherwise than by expiry of the term of appointment), that vacancy may be filled by the appointment of the unsuccessful candidate at the last election of Member elected representatives who received the highest number votes if he or she is eligible and willing to accept appointment.
- (b) Where the unsuccessful candidate who received the highest number of votes at the last election:-
  - (i) is not eligible for appointment or not willing to accept appointment; or

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- (ii) has previously been appointed as Member elected representative to fill a previous vacancy,

the vacancy may be filled by the appointment of the unsuccessful candidate at the last election of Member elected representatives who received the next highest number of votes if he or she is eligible for appointment and willing to accept appointment.

- (c) Clause 3.14(b) may continue to be applied to successive candidates in descending order of number of votes received at the last election until the vacancy is filled.
- (d) This clause does not prevent the Trustee from filling a vacancy in a position of Member elected representative by nomination and election in accordance with clause 3.9 (with any adaptations or modifications to those provisions considered necessary by the Trustee) in any case where the Trustee, in the Trustee's absolute discretion, decides not to apply this clause.
- (e) A vacancy in a position of Member elected representative must be filled within 90 days after the vacancy occurs.
- (f) The term of appointment of a person appointed to fill a vacancy is the balance of the term of the original appointee.

### **3.15 Filling of other vacancies**

- (a) Where there is a vacancy in a position of Employer representative:
  - (i) who is nominated by an organisation, that organisation must nominate a replacement;
  - (ii) who is nominated under clause 3.5(b)(ii)(C) (notified by the SMT Trustee) the Board must determine a procedure for appointing a replacement.
- (b) A vacancy in a position of Employer representative must be filled within 90 days after the vacancy occurs.
- (c) Where there is a vacancy in a position of a Member representative:
  - (i) who is nominated by an organisation, that organisation must nominate a replacement;
  - (ii) who is nominated under clause 3.5(a)(iii)(B) (notified by the SMT Trustee), the Board must determine a procedure for appointing a replacement.
- (d) A vacancy in the position of independent director must be filled in the manner set out in clause 3.10.
- (e) The term of appointment of a person appointed to fill a vacancy is the balance of the term of the original appointee.

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### **3.16 Member nominated representatives**

- (a) The Member nominated representatives must be persons nominated by Members of the Scheme.
- (b) A person is not eligible for nomination or appointment as a Member nominated representative if they are not a Member of the Scheme.
- (c) A person who is a Member elected representative as at 31 December 2024 is eligible for appointment as a Member nominated representative for a term of four years from 1 January 2025 (expiring 31 December 2028) and, if the person was in office on 1 July 2024, is not eligible for reappointment as a Member nominated representative after expiry of that term, however may be eligible for nomination for a further term subject to the requirements of clause 3.16(o) or may be eligible for appointment as an Employer representative or Independent Director, subject to the requirements of clauses 3.7(f) and 3.10(d) respectively.
- (d) The positions of Member elected representative as at 31 December 2024 may be filled by the Board determining to:-
  - (i) appoint the incumbent, where the incumbent is eligible and willing to accept appointment; or
  - (ii) follow the procedures in clauses 3.16(g) to (k).
- (e) A person who is a Member representative director under clause 3.5(a)(iii)(B) (notified by the SMT Trustee), or a replacement for that position, is eligible for appointment as a Member nominated representative for a term of 1 year and nine months from 1 June 2026 (expiring 29 February 2028) and, if the person was in office on 1 July 2024, is not eligible for reappointment after expiry of that term.
- (f) The position of Member representative director under clause 3.5(a)(iii)(B) (notified by the SMT Trustee), or replacement for that position, may be filled by the Board determining to:-
  - (i) appoint the incumbent, where the incumbent is eligible and willing to accept appointment; or
  - (ii) follow the procedures in clauses 3.16(g) to (k).
- (g) Where:-
  - (i) the position of a Member nominated director becomes vacant on expiry of their term of office; and
  - (ii) the director is not eligible for reappointment or does not nominate for reappointment,

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the Trustee must:-

- (iii) give a notice to Members, by a mechanism determined by the Trustee, calling for nominations from the Members for the position, and provide a mechanism for Members to nominate; and
- (iv) appoint an independent person to manage the nomination process,

**(Nominations Call).**

- (h) The procedures for appointment of the Member nominated representatives under a Nominations Call will be as determined by the Trustee and notified to Members from time to time, and may provide mechanisms for submitting nominations by electronic mechanisms.
- (i) A nomination process under a Nominations Call is valid despite the fact that:-
  - (i) one or more Members are omitted from the list of Members at the cut off date for nominations and are for that reason unable to submit a nomination;
  - (ii) a Member is otherwise unable to submit a nomination because of a failure of access to the system provided for submitting nominations, for reasons external to the system itself<sup>3</sup>;
  - (iii) a Member entitled to nominate otherwise fails to receive the call for nominations; or
  - (iv) a nomination not received by the Trustee by the time specified in the call for nominations is not accepted,regardless of the reason (unless due to dishonesty or wilful default on the part of the Trustee or the independent person appointed to manage the nomination process).
- (j) Following a Nominations Call, the Board may determine to fill all or any of the positions by:-
  - (i) appointing as a Member nominated director one of the nominees who is eligible for appointment under clause 3.6; or
  - (ii) conducting an election for the position of Member nominated director.
- (k) Where the Board determines to conduct an election for all or any of the positions:-
  - (i) The candidates for the election are the persons who submitted nominations in response to the Nominations Call and are eligible for appointment under clause 3.6 (and have not been appointed to another position under clause 3.16(j)(i)).

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<sup>3</sup> For example, an inability to access the nominations system because of loss of internet access due to an outage or similar event for which a carrier or service provider is responsible.

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- (ii) For the purpose of carrying out and overseeing the election, the Trustee must appoint an independent person as returning officer.
- (iii) The procedures for appointment of the Member nominated representatives by election will be as determined by the Trustee and notified to Members from time to time, and may provide mechanisms for voting by paper ballot and / or electronic mechanisms.
- (iv) The persons with the highest number of votes cast in their favour, up to the number of representatives required for positions for which the election was conducted, are the persons elected as Member nominated representatives. In the event of equality of votes for 2 or more nominees such that one or more of them must be eliminated in order to have the required number of Member nominated representatives, the returning officer must decide on the elimination by lot.
- (v) An election is valid despite the fact that:-
  - (A) one or more Members are omitted from the list of Members at the cut off date for voting and are for that reason unable to vote electronically or receive a paper ballot;
  - (B) a Member is otherwise unable to vote electronically because of a failure of access to or function of the electronic voting system for reasons external to the voting system itself<sup>4</sup>;
  - (C) a Member entitled to a paper ballot otherwise fails to receive it; or
  - (D) for a paper ballot, a completed ballot is not received by the Trustee by the time specified in the election notice,

regardless of the reason (unless due to dishonesty or wilful default on the part of the Trustee or the returning officer).

- (l) Where:-
  - (i) the position of a Member nominated director becomes vacant on expiry of their term of office; and
  - (ii) the director is eligible for reappointment and nominates for reappointment,the Board will determine whether the director is reappointed, taking into account such factors as the Board considers appropriate.
- (m) If the Board determines not to reappoint a Member nominated director for a further term, a Nominations Call will be made and the procedures in clauses 3.16(g) to (k) followed for that position.

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<sup>4</sup> For example, an inability to access the voting system because of loss of internet access due to an outage or similar event for which a carrier or service provider is responsible.

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- (n) The term of appointment for a Member nominated director is 4 years, except a director that clause 3.16(e) applies to.
- (o) The maximum period of service for person who is a Member nominated representative is 12 years in aggregate (whether continuous or broken, and including service where appointed or nominated in any capacity). For a director who was:-
- (i) a director of the Energy Super Trustee immediately before the ES Merger Date, the director's terms of previous service as a director of the Energy Super Trustee are counted;
  - (ii) a director of the SMT Trustee immediately before the SMT Merger Date, the director's terms of previous service as a director of the SMT Trustee are counted.
- (p) A director who is a Member nominated representative becomes ineligible and ceases to hold office:
- (i) if they cease to be a Member of the Scheme;
  - (ii) on the date their aggregate period of service reaches 12 years, calculated in accordance with clause 3.16(o),
- and if either of these events occurs during the director's term of appointment their position becomes vacant on that date (and clause 3.17 applies).
- (q) Subject to clauses 3.16(b), 3.16(c), 3.16(e) and 3.16(p), a director who has been appointed as a Member representative director (under any mechanism provided for in this Deed) is eligible for reappointment as a Member nominated director for one four-year term. Following the reappointment term, the person may be eligible for nomination for a further term subject to the requirements of clause 3.16(o) or may be eligible for appointment as an Employer representative or Independent Director, subject to the requirements of clauses 3.7(f) and 3.10(d) respectively.

### **3.17 Filling of vacancies – Member nominated representatives**

- (a) If there is a vacancy in a position of Member nominated representative director (otherwise than by expiry of the term of appointment), that vacancy may be filled by the appointment of a candidate who nominated for the position at the last Nominations Call, in accordance with clause 3.17(b) or clause 3.17(c) as applicable.
- (b) If the Member nominated director's appointment was pursuant to an election:-
- (i) The vacancy may be filled by the appointment of the unsuccessful candidate at that election, who received the highest number votes if the candidate is eligible and willing to accept appointment.
  - (ii) Where the unsuccessful candidate who received the highest number of votes at the last election:-

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(A) is not eligible for appointment or not willing to accept appointment; or

(B) has previously been appointed as Member nominated representative to fill a previous vacancy,

the vacancy may be filled by the appointment of the unsuccessful candidate at that election who received the next highest number of votes if the candidate is eligible for appointment and willing to accept appointment.

(iii) Clause 3.17(b)(ii) may continue to be applied to successive candidates in descending order of number of votes received at the last election until the vacancy is filled.

(c) If the Member nominated director's appointment was not pursuant to an election, the Board may determine which of the candidates who nominated for the position at the last Nominations Call, and who is eligible and willing to accept appointment, is appointed to fill the vacancy.

(d) This clause does not prevent the Trustee from filling a vacancy in a position of Member nominated representative by a Nominations Call in accordance with clause 3.16 (with any adaptations or modifications to those provisions considered necessary by the Trustee) in any case where the Trustee, in the Trustee's absolute discretion, decides not to apply the procedure in clause 3.17(b) or clause 3.17(c) as applicable.

(e) A vacancy in a position of Member nominated representative must be filled within 90 days after the vacancy occurs.

(f) The term of appointment of a person appointed to fill a vacancy is the balance of the term of the original appointee.

## **4. MANAGEMENT AND ADMINISTRATION**

### **4.1 Control by Trustee**

- (a) The general control management and administration of the Scheme is vested in the Trustee which must administer the Scheme in accordance with this Deed, the LGAct and Superannuation Law.
- (b) The Trustee acts by resolution of the directors.
- (c) A resolution is taken not to be made by the directors, and has no effect, if fewer than two-thirds of the total number of directors vote for the resolution.
- (d) No director of the Trustee who is a councillor, or a member or officer of an Employer, or a Member of the Scheme, is for that reason disqualified from voting on any matter or from taking part in the exercise of any power authority or discretion vested in the Trustee.

### **4.2 Resolution of Trustee board without meeting**

- (a) The directors of the Trustee may pass a resolution without a meeting being held if:-



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- (i) all directors who are able to be contacted are given notice of the terms of the proposed resolution;
  - (ii) sufficient directors entitled to vote on the resolution communicate their assent to the proposed resolution; and
  - (iii) no director states that he or she requires the proposed resolution to be dealt with at a meeting.
- (b) The resolution is passed:-
  - (i) when at least two thirds of the total number of directors have communicated their assent to the proposed resolution; and
  - (ii) if no director has, within a reasonable time after being given notice under clause 4.2(a), stated that he or she requires the proposed resolution to be dealt with at a meeting.
- (c) Notice of the terms of a proposed resolution may be given to a director by:
  - (i) email, to an email address notified by the director to the Chief Executive Officer or Company Secretary for the purpose of this clause; or
  - (ii) use of an electronic document distribution and collaboration system approved by the Trustee for the purposes of this clause.
- (d) A director may communicate assent to a proposed resolution by email from a director stating the director has read and agrees with the proposed resolution if the email:
  - (i) is sent to an email address advised to the director by the Chief Executive Officer or Company Secretary for the purpose of this clause; and
  - (ii) when received by the Chief Executive Officer or Company Secretary, indicates that the email was sent from an email address advised to the Chief Executive Officer or Company Secretary by the director as an email address used by the director; or
- (e) use of an electronic document distribution and collaboration system approved by the Trustee for the purposes of this clause.

#### **4.3 General powers of the Trustee**

In addition to the powers and discretions conferred on the Trustee by law, the LGAct and the provisions of this Deed, the Trustee has the power to act as the Trustee considers necessary in managing the Scheme. In particular, the Trustee has the following powers exercisable in the Trustee's discretion:-

- (a) to settle, compromise or submit to a court of law, any doubts, disputes, claims, controversies or difficulties whatsoever arising out of or relating to this Deed or construction of this Deed, the Scheme, or the rights of Members, former Members and Beneficiaries;

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- (b) to commence, carry on or defend proceedings relating to the Scheme or to the rights of Members, former Members and Beneficiaries;
- (c) to insure or re-insure any risks, contingencies or liabilities of the Scheme;
- (d) to retain the services of professional advisers whether persons, firms or companies, in relation to the management, administration or investment of the Scheme and to determine the fees payable to those professional advisers;
- (e) to indemnify, or undertake to indemnify, any person, company, government or institution in respect of any claims, matters or things relating to the Scheme or the rights of Members, former Members and beneficiaries;
- (f) to adopt procedures and requirements for notification of information to the Trustee by Employers and Members;
- (g) to prepare and issue forms for the purposes of the Scheme and to require those forms to be completed and submitted as determined by the Trustee;
- (h) to make determinations or to adopt procedures not inconsistent with this Deed in relation to the calculation and rounding-off of contributions or benefits or interest, or to the determination of periods of time and other matters as appropriate to facilitate the management, operation, control and administration of the Scheme;
- (i) to make any determination about a person relating to that person's membership of the Scheme, or events or circumstances occurring during the period of that person's membership, despite the fact that the person is no longer a Member at the time the decision is made;
- (j) generally to do all acts and things (including incidental or consequential acts and things) as the Trustee may consider necessary or expedient for the management, operation, control and administration of the Scheme and for the exercise and performance of the Trustee's powers, functions and duties in respect of the Scheme.

#### **4.4 Officers of Trustee**

- (a) The Trustee must appoint a Chief Executive Officer who will be responsible to the Trustee to:-
  - (i) implement the decisions of the Trustee;
  - (ii) manage and administer the Scheme day-to-day.
- (b) The Trustee must from time to time determine the remuneration and other terms and conditions of employment of the Chief Executive Officer.
- (c) The Trustee may appoint such other employees as the Trustee from time to time considers necessary for the Scheme's proper administration and determine the remuneration and other terms and conditions of employment of such employees.

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#### **4.5 Delegation**

- (a) The Trustee may delegate the Trustee's powers to:-
- (i) a committee of its directors; or
  - (ii) an employee of the Trustee.
- (b) To avoid doubt, and without limiting clause 4.5(a), the Trustee may delegate under clause 4.5(a) any of the powers of the Trustee referred to in clause 4.4.

#### **4.6 Seal**

The Chief Executive Officer has the custody of the Trustee's seal and has power to affix the seal to any document:-

- (a) pursuant to a direction of the Trustee;
- (b) for the purpose of giving effect to a decision of the Trustee; or
- (c) in order to comply with a law that requires the Trustee to issue or authenticate a document under seal.

#### **4.7 Auditor of Scheme**

The Trustee must appoint an Auditor of the Scheme under and in accordance with the requirements of Superannuation Law.

#### **4.8 Trustee may act on advice**

The Trustee may act and rely on the advice or opinion of any Actuary, consultant, barrister, solicitor, broker, accountant, medical practitioner or other professional person, whether or not the advice or opinion is or has been obtained by the Trustee.

#### **4.9 Election under Superannuation Law**

- (a) The Trustee must elect, in such form and within such period as may be required by Superannuation Law, to become a regulated superannuation fund within the meaning of Superannuation Law.
- (b) An election made pursuant to this clause may be irrevocable if so required or provided by Superannuation Law.

#### **4.10 Superannuation Law deemed included in Deed**

Notwithstanding any provision of this Deed, any provision of Superannuation Law that is required to be included in this Deed for the Scheme to remain or to be a complying superannuation fund or a regulated superannuation fund, or for the Scheme to comply with or satisfy other requirements of Superannuation Law, is deemed to be included in this Deed as if every such provision was set out in this Deed on and from the date that the provision is required to be so included.

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#### **4.11 Superannuation Law covenants deemed included in Deed**

Notwithstanding any provision of this Deed (including any provision which purports to apply notwithstanding other provisions of this Deed):-

- (a) the Trustee covenants to comply with the covenants of a trustee that are required from time to time by Superannuation Law to be contained in this Deed; and
- (b) those covenants are deemed to be contained in this Deed,

subject to any exemption granted, or modification made, by a Regulator (to the extent such exemption or modification, as the case may be, is available in respect of this Deed, the Scheme, the Trustee, or all or any of them).

#### **4.12 Covenant by directors**

This Deed is deemed to contain the covenants of the directors of a trustee that are required from time to time by Superannuation Law to be contained in this Deed, subject to any exemption granted, or modification made, by a Regulator (to the extent such exemption or modification, as the case may be, is available in respect of this Deed, the Scheme, the Trustee, the directors, or all or any of them.)

#### **4.13 Inconsistency of provisions**

In the event of any inconsistency between any of the provisions deemed by clause 4.10, clause 4.11 or clause 4.12 to be included in this Deed and the other terms of this Deed, the provisions deemed to be included prevail.

#### **4.14 Compliance with Superannuation Law**

- (a) The Trustee must comply with all relevant operating standards prescribed by or under Superannuation Law in order that the Scheme is and remains a complying superannuation fund.
- (b) The Trustee has power to comply with any other requirement or provision of Superannuation Law.
- (c) However, clause 4.14(b) does not confer a power on the Trustee to comply with or give effect to a provision of Superannuation Law if:-
  - (i) under Superannuation Law the Trustee may comply with the relevant provision, but is not obliged to do so; and
  - (ii) compliance with the provision would require the Trustee to act in a way which is directly inconsistent with an express provision of this Deed.

#### **4.15 Power to comply with administrative guidelines and government announcements**

The Trustee has power to comply with:-

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- (a) any administrative guidelines, rulings or determinations made or laid down by a Regulator; and
- (b) directions or recommendations contained in statements by the government of the Commonwealth or, if applicable to the Scheme, any State or Territory (as the case may be) advising changes or proposed changes to Superannuation Law.

#### **4.16 Trustee not to be subject to direction**

Notwithstanding any provision of this Deed (including any provision of this Deed which purports to apply notwithstanding other provisions of this Deed), a provision of this Deed must not be construed as permitting the Trustee to be subject, in the exercise of any of the Trustee's powers under this Deed, to direction by any other person to the extent that, in the opinion of the Trustee, such provision will or may contravene Superannuation Law.

#### **4.17 Exercise of discretion by person other than the Trustee**

Notwithstanding any provision of this Deed (including any provision of this Deed which purports to apply notwithstanding other provisions of this Deed), a provision of this Deed must not be construed as permitting a discretion under this Deed that is exercisable by a person other than the Trustee to be exercised without the consent of the Trustee to the extent that, in the opinion of the Trustee, such provision will or may contravene Superannuation Law.

#### **4.18 Trustee power to consent to exercise of discretion**

To the extent that any provision of this Deed provides for the exercise of a discretion by a person other than the Trustee, the exercise of which discretion without the consent of the Trustee would or might contravene Superannuation Law:-

- (a) that discretion may be exercised by that person with the consent of the Trustee, but not otherwise; and
- (b) the Trustee has power to give the Trustee's consent to the exercise of such discretion.

#### **4.19 Compliance with directions made under Superannuation Law**

The Trustee must comply with any direction in relation to the Scheme made under Superannuation Law by a tribunal or statutory body that has authority under the tribunal's or statutory body's enabling legislation to make decisions that are binding on the Trustee.

#### **4.20 Trustee not in contravention in certain circumstances**

The Trustee is not in contravention of this Deed or in breach of trust if the Trustee does anything, or fails to do anything, in contravention of Superannuation Law if:-

- (a) the contravention is approved by a Regulator or the person or persons (if any) specified for that purpose, in accordance with Superannuation Law; or

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- (b) the contravention is rectified within 30 days, or (where applicable) such other period allowed by Superannuation Law from the date the Trustee became aware of the contravention.

#### **4.21 Modification or exemption**

- (a) Subject to Superannuation Law, the Trustee may seek modification of, or exemption from, the requirements of Superannuation Law.
- (b) If any modification or exemption in respect of this Deed, the Scheme and/or the Trustee:-
  - (i) is granted by a Regulator; or
  - (ii) otherwise becomes available pursuant to Superannuation Law,whether in consequence of an application by the Trustee under clause 4.21(a) or otherwise, the Trustee is relieved from compliance with any relevant provisions of this Deed and/or Superannuation Law in accordance with the modification or exemption, but subject to any conditions in the modification or exemption.

#### **4.22 Determination of disputes**

- (a) If any question arises in relation to the existence, meaning, application or effect of:-
  - (i) Superannuation Law; or
  - (ii) a provision deemed by this Part to be included in this Deed; or
  - (iii) a fact relevant to a determination to be made by the Trustee,the Trustee must determine that question.
- (b) Any determination made by the Trustee pursuant to this clause 4.22 is, to the extent permitted by Superannuation Law, final and binding on all interested persons.

#### **4.23 Expenses, costs, fees and directors' remuneration**

- (a) The Trustee must pay out of the Scheme:-
  - (i) the remuneration and other expenses properly attributable to the employment of the Chief Executive Officer and other employees;
  - (ii) fees payable to the Auditor and other professional consultants; and
  - (iii) generally, all expenses and costs which may be incurred by the Trustee in relation to the administration of the Scheme.
- (b) Directors of the Trustee are entitled to be paid from the Scheme such:-
  - (i) remuneration (if any); and/or

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- (ii) reimbursement of losses suffered or expenses incurred in attending meetings of directors and carrying out their duties,

as may from time to time be determined by resolution of the Trustee.

- (c) Amounts paid pursuant to this clause must be debited:-

- (i) where the amount is specifically attributable to a particular Fund, to that Fund; and

- (ii) in other cases to the Accumulation Benefits Fund, CS Defined Benefits Fund, ES Defined Benefits Fund and LG Defined Benefits Fund:-

- (A) on a pro rata basis in the same proportion as the amount of each of those Funds bears to the total amount of those Funds; or

- (B) on such other basis as is determined by the Trustee to be equitable in all of the circumstances.

#### **4.24 Trustee and director indemnity and insurance**

- (a) The Trustee and each director of the Trustee are entitled to be indemnified to the extent of the assets of the Scheme against all liabilities incurred by the Trustee or a director or any of them in the execution or attempted execution, or arising from the non-execution, of the trusts, authorities, powers and discretions conferred upon the Trustee by this Deed.

- (b) Without affecting the generality of this clause 4.24, the indemnity provided by this clause 4.24 applies to any payment made to any person whom the Trustee bona fide believed to be entitled to the payment even if such person was not entitled to the payment or all of the payment.

- (c) Despite clauses 4.24(a) and 4.24(b), any exemption from, or indemnification against, liability provided in this clause (or any other provision of this Deed) does not apply to the extent prohibited by Superannuation Law.

- (d) The Trustee has power to effect or take out at the expense of the Scheme from time to time one or more policies or contracts with one or more insurance companies or reinsurance companies to protect:-

- (i) the Scheme; and

- (ii) each of the directors and employees of the Trustee,

in respect of liabilities incurred by them or any of them in the execution or attempted execution, or arising from the non-execution, of the trusts, authorities, powers and discretions conferred upon the Trustee by or under this Deed, and to continue or renew or arrange for the continuance or renewal of all or any of such policies or contracts for such period or periods as the Trustee may think fit.

- (e) The Trustee may also agree from time to time with any such insurance company or reinsurance company for any policy or contract to be varied or modified.

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#### **4.25 Minutes of board meetings**

The Trustee must cause proper minutes of all resolutions and proceedings of all meetings of directors of the Trustee to be kept and entered in a book or books to be provided for those purposes.

#### **4.26 Records and statistics**

The Trustee must keep a complete record of all Members and all other matters information and data necessary or expedient for the proper and efficient working of the Scheme and the carrying out of this Deed in the manner and for the period necessary to comply with any relevant requirement of Superannuation Law relating to the maintenance and retention of records.

#### **4.27 Books of account and reports**

- (a) The Trustee must keep such accounting records:-
  - (i) as are required by Superannuation Law; and
  - (ii) if necessary, as are otherwise required to correctly record and explain the transactions and financial position of the Scheme.
- (b) The Trustee must in respect of each financial year prepare from the accounting records of the Scheme:-
  - (i) such accounts and statements as are required by Superannuation Law; and
  - (ii) if necessary, such other accounts and statements as are necessary to show the results of operations during each financial year and the financial position of the Scheme and each Fund at the end of each financial year.
- (c) The accounts and statements must be audited by the Auditor in accordance with Superannuation Law.

#### **4.28 Actuarial reviews**

- (a) In respect of each Defined Benefits Fund, the Trustee:-
  - (i) must cause the Actuary to conduct an actuarial review at the times required by Superannuation Law; and
  - (ii) may cause to be conducted additional actuarial reviews at other times.
- (b) The Trustee may also from time to time cause the Actuary to conduct an actuarial or other review of the Accumulation Benefits Fund.
- (c) Without limiting the matters which may be included in an actuarial review, an actuarial review of a Defined Benefits Fund must:-



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- (i) examine the state and adequacy of the relevant Fund, with respect to the value and sufficiency of Fund assets, and contributions and other revenue paid or payable to that Fund, to fund the provision of benefits generally or any particular benefit or benefits to be provided from that Fund; and
- (ii) report as to surpluses or deficiencies and include recommendations as to:-
  - (A) if a surplus exists, the manner in which the surplus should be dealt with; and
  - (B) if a deficiency exists, any steps which can or should be taken to remedy the deficiency,

which recommendations may refer to actions which the Trustee may take under clause 2.3.

- (d) The Trustee may take such action (if any, and including action under clause 2.3) as the Trustee sees fit in consequence of an actuarial review, but must give due consideration to the report, advice and recommendations of the Actuary.

#### **4.29 Accounts and sub-accounts**

- (a) 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 Scheme or a Fund.
- (b) 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 Scheme or a Fund, having regard to the interests of Members.

#### **4.30 Information to Members**

The Trustee must comply with the requirements of Superannuation Law in relation to the provision of information and documents to Members and other persons entitled to receive information and documents.

### **5. ADMISSION OF MEMBERS AND PARTICIPATING EMPLOYERS**

#### **5.1 Eligibility for membership of Scheme**

The persons who are eligible to be Members of the Scheme are those who are stated to be eligible by the LGAct.

#### **5.2 Membership application and admission**

- (a) An Employee who is nominated by a Participating Employer for membership of the Scheme may apply to become a Member.
- (b) A Participating Employer may apply for an Employee to become a Member.

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- (c) An Eligible Person, who is not an Employee of a Participating Employer, may apply to become a Member, where that Eligible Person is in a category of persons that the Trustee has determined is eligible for membership of the Scheme.
- (d) Any application for membership must be in a form acceptable to the Trustee. However (if Superannuation 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.
- (e) The Trustee may:—
  - (i) accept or reject an application for membership without giving any reason, other than a person for whom their Participating Employer is obliged under the LGAct to contribute to the Scheme for them;
  - (ii) impose any conditions when accepting an application; and
  - (iii) at any time remove or vary any condition so imposed.
- (f) A person admitted as a Member becomes a Member:—
  - (i) on a date determined by the Trustee; or
  - (ii) if the Trustee makes no determination, on the earlier of:
    - (A) the date the Trustee accepts the application for membership; and
    - (B) the date the Trustee accepts the first contribution, transfer or rollover for the credit of the Member.

### **5.3 Categories of Members**

- (a) The Trustee may, if necessary or convenient for the administration of the Scheme, divide the Members into categories, in addition to the categories designated under Chapter 3, Chapter 4 and Chapter 5.
- (b) If categories of Members are established, the Trustee must:—
  - (i) determine the categories and the conditions for entry to and exit from each category; and
  - (ii) subject to clause 5.2, classify Members into the relevant categories.
- (c) 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.

### **5.4 Members bound by Deed**

Every Member and other Beneficiary (including a potential Beneficiary) under the Scheme is bound by this Deed.

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## **5.5 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.

## **5.6 Classes of membership interests**

- (a) The Trustee may establish or recognise such classes of beneficial interest in the Scheme as the Trustee determines, having regard to Superannuation Law.
- (b) The Trustee may allocate a Member's benefits in the Scheme to one or more classes of beneficial interest, subject to Superannuation Law. A Member may hold more than one class of beneficial interest in the Scheme at a time.
- (c) The Trustee must maintain a MySuper Product.
- (d) A Member's MySuper Product cannot be replaced with an interest in another class of membership in the Scheme unless:
  - (i) the replacement is with an interest in another MySuper Product within the Scheme;
  - (ii) the Member consents in writing to the replacement within the time period prescribed under Superannuation Law;
  - (iii) the Member has died and the MySuper Product is replaced with a beneficial interest of another class in the Scheme of a kind, and in the circumstances, prescribed or permitted under Superannuation Law; or
  - (iv) the MySuper Product is replaced with a beneficial interest of another class in the Scheme of a kind, and in the circumstances, permitted under Superannuation Law.
- (e) A Member's MySuper Product cannot be replaced with a beneficial interest in another Superannuation Entity ("**New Interest**") unless:
  - (i) the New Interest is a MySuper Product and the replacement with the New Interest is permitted under a law of the Commonwealth;
  - (ii) the replacement is otherwise permitted, or is required, under a law of the Commonwealth; or
  - (iii) the Member consents in writing to the replacement with the New Interest.
- (f) Notwithstanding any other provision of this Deed, a MySuper Product in the Scheme has the following characteristics:
  - (i) the Trustee must determine the Investment Portfolio applicable in respect of the MySuper Product as a single diversified investment strategy ("**MySuper Investment Portfolio**");

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- (ii) all Members who hold the MySuper Product must be entitled to access the same options, benefits and facilities, except that:
    - (A) different terms and conditions may apply in respect of benefits payable under a policy of insurance; and
    - (B) access to options, benefits and facilities may otherwise be different if permitted under Superannuation Law;
  - (iii) amounts are attributed to Members in relation to their interest in the MySuper Product in a way that does not stream gains or losses that relate to the MySuper Investment Portfolio to only some of those Members, except to the extent permitted by Superannuation Law;
  - (iv) the same process is to be adopted in attributing amounts to Members in respect of their MySuper Product, except to the extent that a different process is necessary to allow for fee subsidisation by Participating Employers or as otherwise permitted under Superannuation Law;
  - (v) the Trustee may permit a Participating 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;
  - (vi) 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 Superannuation Law;
  - (vii) the policies of insurance arranged by the Trustee in relation to the MySuper Product must comply with Superannuation Law; and
  - (viii) to the extent that assets of the Scheme are attributable to the MySuper Product, a pension is not payable out of those assets, unless permitted or required under Superannuation Law.
- (g) The only fees that can be charged by the Trustee in relation to the MySuper Product are as permitted under Superannuation Law.

## **5.7 Other information Participating Employer must provide**

A Participating Employer must:-

- (a) notify the Trustee promptly upon becoming aware of the resignation, retirement, dismissal, death, disability or change in employment status of a Member; and
- (b) otherwise provide all information in the Participating Employer's possession about a Member which the Trustee reasonably requires in order to administer the Scheme in relation to the Member.

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## **5.8 Insurance claim information**

An Insured Member who submits a claim for a Total and Permanent Disablement benefit, a Terminal Medical Condition benefit or a Disability Pension must also submit all information in support of or in relation to that claim, including details of the Member's medical and general health history, as the Trustee requires for the purpose of assessing the claim and for the purpose of claiming payment or indemnity from an external insurer in relation to that claim.

## **5.9 Admission of Participating Employers**

- (a) The Trustee may permit any Employer to participate in the Scheme 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.
- (b) The Trustee and a Participating Employer may change the basis on which that Participating Employer participates in the Scheme. Any such change must be in accordance with clause 9 as if the change were an amendment of this Deed.
- (c) The Trustee may:—
  - (i) accept or reject an application to become a Participating Employer without giving any reason, except that the Trustee must not reject an application from an Employer that is obliged under the LGAct to:
    - (A) contribute to the Scheme for any Employee; or
    - (B) specify the Scheme as the Employer's default fund for the purposes of SG Legislation;
  - (ii) impose any conditions when accepting an application; and
  - (iii) at any time, remove or vary any condition so imposed.
- (d) An applicant is admitted as a Participating Employer on the date determined by the Trustee.
- (e) If Superannuation Law permits, the Trustee may admit an Employer as a Participating 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:—
  - (i) nominated Employees for whom the Employer wishes to contribute to the Fund; and
  - (ii) delivered to the Trustee a contribution for the credit of those Employees or any of them.

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#### **5.10 Continuation of terms of participation for ES Employers**

- (a) An ES Employer is admitted as a Participating Employer on the ES Merger Date.
- (b) Any terms of participation agreed between the ES Employer and the Energy Super Trustee, and notified to the Trustee by the Energy Super Trustee, continue to apply as the ES Employer's terms of participation in the Scheme.

#### **5.10A Continuation of terms of participation for SMT Employers**

- (a) A SMT Employer is admitted as a Participating Employer on the SMT Merger Date.
- (b) Any terms of participation agreed between the SMT Employer and the SMT Trustee, and notified to the Trustee by the SMT Trustee, continue to apply as the SMT Employer's terms of participation in the Scheme.

#### **5.11 Cessation of participation by Employers**

- (a) A Participating Employer may at any time by at least 3 months' notice in writing to the Trustee terminate the Participating Employer's participation in the Scheme as from a date specified in the notice and accepted by the Trustee.
- (b) The Trustee may by notice in writing given to a Participating Employer terminate the Participating Employer's participation in the Scheme on a date determined by the Trustee and specified in the notice.
- (c) Where:—
  - (i) the whole or substantially the whole of the assets of a Participating Employer's business are acquired by another person; or
  - (ii) another person commences to employ all or any Members formerly employed by a Participating Employer,

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

- (d) On termination of a Participating Employer's participation (except where the Participating Employer's obligations are performed by another person under clause 5.11(c), 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 Participating Employer concerned ("**Affected Member**") under the Scheme for the period up to the date of cessation of participation.
- (e) If the Trustee has established a separate sub-fund for the Participating Employer under clause 29.20, the Trustee must calculate the value of the sub-fund as at the date of cessation of participation after deducting any accrued Scheme Expenses and tax which

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should properly be deducted from that sub-fund, and that value will be the amount set aside under clause 5.11(d).

- (f) If the Trustee has not established a separate sub-fund for the Participating Employer under clause 29.20, the Trustee may allocate any accrued Scheme 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 clause 5.11(d) will be adjusted accordingly for each Affected Member that the allocation applies to.
- (g) 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:–
- (i) Affected Members may be eligible to retain their membership of the Scheme, on terms determined by the Trustee;
- (ii) subject to clause 5.6(e), benefit entitlements of Affected Members may be transferred to another Superannuation Entity ("**Transferee Fund**"), on terms agreed between the Trustee and the trustee or administrator of the Transferee Fund;
- (iii) any amount by which the value of a sub-fund maintained for the Participating Employer under clause 29.20 exceeds the benefit entitlements of the Affected Members, or the amount of any reserve or other unallocated amount in the Scheme attributable to the former Participating Employer (whether or not maintained as part of a sub-fund for the Participating Employer under clause 29.20), may be:–
- (A) allocated to Affected Members, or otherwise allocated in a manner determined by the Trustee in accordance with Superannuation Law; or
- (B) transferred to another Superannuation Entity as an unallocated amount, to be applied for the benefit of Affected Members or Employees of the former Participating Employer or otherwise as permitted under Superannuation Law;
- (iv) The Trustee may adjust any amount allocated to an Affected Member or transferred to another Superannuation Entity, to account for any net investment returns determined under clause 7.3 allocated to 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.

## **6. INVESTMENT**

### **6.1 Investment powers**

Subject to the requirements of Superannuation Law including, without limitation, requirements relating to formulation and implementation of an investment strategy, the Trustee may invest moneys of the Scheme in any manner in which a trustee is authorised by an Act to invest trust moneys and also has power, by way of investment, to:-

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- (a) purchase, acquire, take on lease, hire, sell, improve, subdivide, amalgamate, dispose of, exchange, lease, let, mortgage, charge, encumber, grant licences and other rights in connection with, and otherwise deal in any way with, real or personal property of any kind whatsoever and wheresoever situated and any interest therein, on such terms as the Trustee thinks fit;
- (b) deposit money with any bank, authorised dealer in the short term money market with lines of credit with the Reserve Bank of Australia or a lender of last resort, or other financial institution or other person whatsoever;
- (c) carry on any business, enterprise or undertaking whatsoever;
- (d) invest moneys in investments of any kind whatsoever, whether secured or unsecured, including capital market investments, debentures, securities or other obligations of governments, government authorities and corporations, shares, stock, notes, certificates, provident funds, bonds, units or other interests in trusts, options, futures and other derivative securities, currency transactions, secondary mortgage securities, mortgages over real or personal property and bills of exchange;
- (e) trade in any commodities;
- (f) construct, demolish, improve, maintain, develop, restore, work, manage, carry out, control or otherwise deal with any buildings, fixtures, works, roads, bridges, ways, services, earthworks, infrastructure or any other structure or improvement whatsoever or to assist in any of the foregoing; and
- (g) enter into partnership or any arrangement for sharing of profits, union of interest, cooperation, joint venture, reciprocal concession or otherwise with any statutory body or other person in any undertaking, business, transaction or other investment, or act as a principal, agent, contractor, trustee or beneficiary in respect of any such undertaking, business, transaction or investment, with full power to vary, replace, encumber and otherwise deal with such investments as fully and effectively as a person absolutely and beneficially entitled dealing with his or her own property may do.

## **6.2 Fund may be invested as a whole**

- (a) To avoid doubt, monies of the Funds may be mixed and invested as though they constituted a single fund.
- (b) Where clause 6.2(a) is applied, the Trustee must determine:-
  - (i) an appropriate basis for allocating a proportion of net investment earnings, or net investment loss, to each Defined Benefits Fund;
  - (ii) where the actual net investment return, whether positive or negative, differs from the net investment returns attributed to an investment strategy or Investment Portfolio applicable to Accumulation Benefit Members, an appropriate basis for allocating the difference to a reserve, or drawing the difference from a reserve (as the case requires).
- (c) In making the determination under clause 6.2(b), the Trustee must have regard to:-



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- (i) the net investment returns for each investment strategy or Investment Portfolio of the Accumulation Benefits Fund, and the balance amount of the net investment earnings, or net investment loss, which remains to be allocated after debiting or crediting Members' accumulation accounts in accordance with clause 7;
  - (ii) the necessity to allocate the balance net investment earnings or net investment loss, so as to achieve, overall, an equitable result for all Members.
- (d) Net investment earnings, or net investment loss, must be allocated:-
- (i) to Members' accounts in the Accumulation Benefits Fund in accordance with the rates of net investment return determined from time to time for each applicable investment strategy and Investment Portfolio; and
  - (ii) otherwise in accordance with the Trustee's determination under clause 6.2(b).

### **6.3 Prohibited investments**

Despite clause 6.1, the Trustee must not invest in:-

- (a) loans to Members; or
- (b) loans to or investments in Participating Employers, or associates of Participating Employers, other than as permitted by Superannuation Law.

### **6.4 Title to investments**

Any investments may be held in such names including the name of a nominee (whether an individual or a corporation) as the Trustee determines from time to time.

### **6.5 Borrowing prohibited**

The Trustee must not borrow money except in the circumstances and subject to the restrictions specified in Superannuation Law.

### **6.6 Investment managers**

- (a) Without limiting the generality of the Trustee's powers, the Trustee may appoint investment managers to invest and manage, as agent of the Trustee, monies and assets of the Scheme.
- (b) Every appointment of an investment manager must be by way of written investment management agreement and all such agreements must comply with Superannuation Law.

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## **7. INVESTMENT RETURNS**

### **7.1 Trustee to determine investment strategies**

- (a) Subject to clause 7.1(b) and clause 7.1(c), the Trustee must set investment objectives for the Scheme, and formulate an investment strategy to achieve those objectives, in accordance with Superannuation Law.
- (b) The Trustee may set different investment objectives, and formulate different investment strategies to achieve those objectives, for different parts of the Scheme, or for a Fund or a sub-fund.
- (c) The Trustee may:-
  - (i) set different investment objectives for two or more Investment Portfolios;
  - (ii) formulate an investment strategy for each Investment Portfolio;
  - (iii) divide the assets of the Scheme, or a Fund, or a sub-fund, between the different Investment Portfolios;
  - (iv) invite Members to nominate the Investment Portfolio, or combination of Investment Portfolios, to apply to them in respect of their accumulation accounts or pension accounts;
  - (v) determine:-
    - (A) which categories or groups of Members may make a nomination;
    - (B) when, how and in what manner Members may change their nominations;
    - (C) the minimum amount which may be invested in an Investment Portfolio; and
    - (D) any other matters which the Trustee considers appropriate;
  - (vi) change the investment objectives, strategies, Investment Portfolios and the assets of the Scheme which comprise the Investment Portfolios; and
  - (vii) change the investment choices offered to Members, or to categories or groups of Members.
- (d) The Trustee may determine one or more of the investment strategies referred to in clause 7.1(b) to be default investment strategies for the investment of a Member's accumulation account or pension account where the Member does not make a choice, in respect of all Members, or any category or group of Members, or any class of beneficial interest.
- (e) The Trustee is not responsible or liable for:-

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- (i) 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
  - (ii) monitoring the performance or progress of the Investment Portfolio of any Member, other than as required by Superannuation Law.
- (f) The Trustee may determine different rules for different categories or groups of Members in relation to all or any of the matters referred to in clause 7.1(c)(v).
- (g) The Trustee must give effect to a Member's choice that is made in accordance with the rules determined by the Trustee. However, to avoid doubt, this does not prevent the Trustee from changing the available choices in respect of any Member under clause 7.1(c)(vii).

## **7.2 Determination of investment returns**

- (a) In respect of each investment strategy referred to in clause 7.1(b), and each Investment Portfolio, the Trustee must determine the rate of net investment return in respect of such periods during a financial year as the Trustee considers appropriate, which may be on a daily basis.
- (b) Net investment returns may be allocated in such manner as the Trustee determines, including (for example):-
  - (i) a net change in value of the assets of the investment strategy or Investment Portfolio (whether described as a unit price or otherwise); or
  - (ii) a net earning rate or a crediting rate of the investment strategy or Investment Portfolio.
- (c) The net investment returns applied to pension accounts may be adjusted to reflect the tax treatment of pension income in accordance with Superannuation Law.

## **7.3 Allocation of net investment returns**

A Member's accumulation account or pension account, and any other benefit or other amount determined by reference to net investment returns, must be credited or debited with net investment returns:

- (a) determined under clause 7.2 as applicable to the accumulation account, pension account, other benefit or other amount; and
- (b) adjusted on account of tax and Scheme Expenses, to the extent that the Trustee determines is appropriate and is permitted under Superannuation Law.

## **7.4 Separate physical portfolios not required**

To avoid doubt:-

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- (a) nomination of an Investment Portfolio by a Member does not oblige the Trustee to invest separate identifiable assets or monies;
- (b) however, the assets which represent the investment of the total amount held in the accumulation accounts of My Super Members must be capable of separate identification to the extent required by Superannuation Law;
- (c) the net investment returns referred to in clause 7.2:-
  - (i) will be determined on the basis of market returns, market indices, and other indicators of investment performance as applied to a notional portfolio comprising the total of the amounts nominated for investment under each investment strategy and Investment Portfolio allocated in accordance with the asset allocation relevant to the investment strategy or Investment Portfolio;
  - (ii) may therefore be either positive or negative depending upon investment performance.

## **8. ENQUIRIES OR COMPLAINTS**

### **8.1 Arrangements for dealing with enquiries or complaints**

- (a) The Trustee must determine arrangements for handling enquiries or complaints from Members in accordance with Superannuation Law.
- (b) Information relating to the arrangements determined under clause 8.1(a) must be provided to Members in accordance with Superannuation Law.

## **9. AMENDMENT POWERS AND PROCEDURES**

### **9.1 Amendments to comply with Superannuation Law**

The Trustee may amend this Deed as the Trustee considers necessary or desirable from time to time:-

- (a) in order to comply with any applicable requirement of Superannuation Law; or
- (b) for any other purpose not inconsistent with Superannuation Law or the LGAct.

### **9.2 Limitation on certain amendments**

Despite clause 9.1:-

- (a) an amendment made to this Deed which directly or indirectly affects the benefits which are or may be payable to a Member does not take effect in respect of that Member unless:-
  - (i) the Trustee is of the opinion, having taken such advice as the Trustee considers appropriate, that amendment will not reduce the amount of any benefit which has

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accrued to or in respect of the Member up to the date on which the amendment is made; or

- (ii) the amendment is approved in writing by a Regulator; or
  - (iii) the amendment is approved in writing by that Member;
- (b) an amendment must not be made which would:-
- (i) contravene mandatory requirements of Superannuation Law;
  - (ii) cause the Scheme to be maintained for purposes which do not comply with the sole purpose test under Superannuation Law; or
  - (iii) cause the trustee to not be a constitutional corporation.

### **9.3 Additional limitation on amendments that affect contributions**

Despite clause 9.1:-

- (a) an amendment must not be made which would impose an increase in liability to contribute to the Scheme upon:
  - (i) a CS Employer, unless that Employer consents in writing;
  - (ii) a Participating Employer, other than a CS Employer, a LG Employer or an ES Employer, unless that Employer consents in writing; or
  - (iii) a Member other than a Chapter 3 Member, unless that Member consents in writing;
- (b) an amendment will be subject to the consent of any ES Employer whose liability to contribute to the Scheme will or may increase because of the amendment, unless the amendment is required by Superannuation Law.

## **CHAPTER 2 - CONTRIBUTION AND BENEFIT PROVISIONS FOR MEMBERS GENERALLY**

### **10. PAYMENT OF CONTRIBUTIONS INTO SCHEME FUNDS**

#### **10.1 Contributions required to be made**

- (a) The contributions required to be made in respect of Members are specified in Chapters 3, 4 and 5.
- (b) However, in respect of contributions under Chapter 3 and Chapter 4, if:-
  - (i) the total of the following (the “**pre-agreement contributions**”) would be more than a Member’s concessional contributions cap for a financial year:-

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- (A) the yearly contribution to the Scheme required by the LGAct to be made by a Participating Employer for the Member; and
  - (B) the yearly contribution to the Scheme, if any, made by the Participating Employer under a salary sacrifice arrangement with the Member<sup>5</sup>;
- (ii) the Participating Employer and Member have agreed in writing:-
- (A) to reduce the pre-agreement contributions to the amount equal to the Member's concessional contributions cap for the financial year; and
  - (B) if the pre-agreement contributions include contributions made under a salary sacrifice arrangement, on the extent, if any, to which the required and salary sacrificed contributions will respectively be reduced; and
- (iii) the Participating Employer or the Member has given the Trustee a copy of the agreement within 2 months after the agreement is made,

then, despite anything in Chapters 3 and 4, the contributions required to be made under Chapters 3 and 4 (and any salary sacrificed contributions) referred to in the agreement will be reduced, as specified in the agreement, to an amount equal to the Member's concessional contributions cap<sup>6</sup>.

- (c) In this clause, "**concessional contributions cap**", for a Member, means the Member's concessional contributions cap within the meaning of the Income Tax Assessment Act 1997 (Cwlth), section 292-20(2), subject to the Income Tax (Transitional Provisions) Act 1997 (Cwlth) section 292-20(2).

## **10.2 Voluntary and other contributions**

- (a) Contributions other than those referred to in clause 10.1 may be made to the Scheme by or in respect of a Member:-
- (i) if permitted by Superannuation Law;
  - (ii) subject to and in accordance with any other provisions of this Deed which deal with contributions of any particular kind; and
  - (iii) otherwise in accordance with terms and conditions determined by the Trustee.

## **10.3 Payment of contributions into Funds**

The Trustee must:-

- (a) pay into the LG Defined Benefits Fund all contributions paid under Chapter 3 as Required DB Contributions;

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<sup>5</sup> See clause 19.2

<sup>6</sup> Section 220B of the LGAct deals with payment to the Member, as additional Salary (but not for superannuation purposes) of an amount equal to the reduction in required contributions.

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- (b) pay into the CS Defined Benefits Fund all contributions paid under Chapter 4 as Required DB Contributions;
- (c) pay into the ES Defined Benefits Fund all contributions paid under Chapter 5 as Required DB contributions;
- (d) pay into the Accumulation Benefits Fund all contributions and other monies, that are not paid to a Defined Benefits Fund.

#### **10.4 Repayment of contributions**

The Trustee may repay contributions to an Employer, or where the contributions have been made by the Member to the Member, or where contributions have been made on behalf of the Member to the person who has made the contribution, if:

- (a) the contributions have been received contrary to Superannuation Law;
- (b) the contributions were paid by mistake; or
- (c) the contributions are to be applied as premiums under a policy of insurance and the insurer refuses such premiums,

in which case:

- (d) an adjustment shall be made to the Member's accumulation account to the extent permitted under Superannuation Law for tax, net investment earnings or net investment loss, and Scheme Expenses; and
- (e) the person shall be deemed not to have become a Member in the case of contributions first made in respect of that person.

### **11. ACCUMULATION AND PENSION ACCOUNTS**

#### **11.1 Contributions to be credited to accumulation account**

- (a) The Trustee must establish and maintain an accumulation account for every Member of the Scheme.
- (b) For an Accumulation Benefit Member, all contributions paid to the Scheme by or in respect of the Member must be credited to the Member's accumulation account.
- (c) For a Defined Benefit Member, all contributions which are paid into the Scheme by or in respect of the Member, other than Required DB Contributions, must be credited to the Member's accumulation account in accordance with Chapter 3, Chapter 4 or Chapter 5 as applicable.
- (d) To avoid doubt:-
  - (i) Spouse Contributions must be credited to the accumulation account of the spouse of the person who made the contribution;

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- (ii) contributions transferred from a Member to a Member's spouse under a contribution split must be credited to the accumulation account of the spouse of the Member who directed the contribution split (provided the spouse is also a Member, otherwise must be transferred to another Superannuation Entity for the credit of the spouse as directed by the Member); and
- (iii) contributions transferred to a Member by a Member's spouse under a contribution split must be credited to the accumulation account of the Member as directed by the spouse.
- (e) On commencement of a pension in respect of a Member, the amount of the Member's benefit applied to the pension is allocated to a pension account for the Member. To avoid doubt, allocation of an accumulation account to a pension account does not create a new account.

## **11.2 Other receipts to be credited to accumulation accounts**

Preserved and non-preserved benefits accepted into the Scheme from other Superannuation Entities by or in respect of a Member must also be credited to the Member's accumulation account.

## **11.3 Debiting of taxation and other Scheme Expenses**

A Member's accumulation account or pension account:-

- (a) must, where applicable, be debited with taxation imposed on the Member or the account in accordance with Superannuation Law, and without regard to any taxation credits, rebates or other concessions that may reduce the tax actually paid by the Trustee below that assessed on contributions;
- (b) must, where applicable, at such times and in such manner as is determined by the Trustee, be debited with the Member's Insurance Premium with effect from the date of commencement of insurance cover;
- (c) may, where applicable, be debited with amounts on account of Scheme Expenses, to the extent that the Trustee determines is appropriate and is permitted under Superannuation Law.

## **12. INSURANCE ARRANGEMENTS**

### **12.1 External insurance**

The Trustee may, subject to Superannuation Law:-

- (a) enter into a policy or policies of insurance to provide for Insurance Benefits for Members, on such terms as the Trustee sees fit;
- (b) enter into different policies of insurance in respect of groups of Members;
- (c) terminate any such policy of insurance;



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- (d) in the Trustee's sole discretion, decline to renew any such policy of insurance upon their expiry.

## **12.2 Liability for externally insured benefits**

Where a Member becomes entitled to an Insurance Benefit for which the Trustee is indemnified in whole or in part by an external insurer, or which is payable by the insurer for a Member:-

- (a) the Trustee must make a claim against the policy of insurance;
- (b) despite anything else in this Deed:-
- (i) subject to clause 12.2(b)(ii)), the benefit payable to or in respect of the Member consists of or includes the Insurance Benefit only to the extent that the Trustee is entitled to indemnity from an external insurer for the benefit or to the extent that a benefit is payable under the policy for the Member; and
- (ii) the Trustee is not liable to make payment of the Insurance Benefit until (and unless) the Trustee has received that amount from the insurer.

## **12.3 Other provisions about insurance**

Without limiting clauses 12.1 and 12.4, and to avoid doubt:-

- (a) insurance may be taken out to indemnify the Trustee for a part or component of a Defined Benefit payable on death or disability, in which case clause 12.2 applies to the part or component insured;
- (b) the terms and conditions of Insurance Benefits, other than compulsory insurance for Defined Benefit Members, may vary from Member to Member, or among groups of Members;
- (c) to the extent that the terms and conditions upon which the Trustee is entitled to indemnity from an external insurer, or upon which a benefit is payable for a Member, under a policy of insurance are inconsistent with a provision of this Deed, including a definition provision<sup>7</sup>, the terms of the policy prevail for any matter relating to that cover, to the extent of the inconsistency, to the intent that the Trustee is not ever liable to make payment of any Insurance Benefit for which insurance has been taken out to the extent that the benefit exceeds the Trustee's right of indemnity from an external insurer for the benefit or the entitlement to payment of the benefit for the Member under the policy;
- (d) the effecting of external insurance does not constitute a contract of insurance between the Trustee and the Member;
- (e) so long as the Trustee has:-
- (i) acted in good faith and without negligence; and

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<sup>7</sup> For example, if there is a difference between the insurance policy definition of "total and permanent disablement" and the trust deed definition, the policy definition will prevail for any claim against the insurance cover.

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- (ii) in relation to any dispute with an external insurer, also acted reasonably in deciding whether to contest the dispute, having regard to legal and other professional advice received about the Trustee's prospects for success in any litigation or other dispute resolution process,

the Trustee incurs no other liability to a Member by through or in connection with a policy of insurance, including the failure at law of a policy of insurance or the refusal, whether lawful or otherwise, of an external insurer to indemnify the Trustee for, or make payment of, any claim under any policy of insurance.

#### **12.4 Compulsory, default and voluntary insurance**

- (a) Defined Benefit Members must be and remain Insured Members.
- (b) The Trustee may from time to time determine:-
  - (i) the type or types and level or levels of default insurance cover which apply for Insured Members unless they opt to reduce or cancel their cover;
  - (ii) the types and levels of:-
    - (A) voluntary insurance cover available to Members who do not have default insurance; and
    - (B) additional insurance cover available to other Members (including Defined Benefit Members); and
  - (iii) terms and conditions for:-
    - (A) obtaining cover other than default insurance cover; or
    - (B) exercising an option to reduce or cancel cover.
- (c) The Trustee is not required to provide insurance cover for the benefit of a Member other than compulsory cover for a Defined Benefit Member if, at any relevant time, the amount in the Member's accumulation account is not sufficient to meet the amount to be charged to the Member by the Trustee in relation to the insurance.
- (d) This clause 12.4 does not limit the circumstances in which the Trustee may provide an Insurance Benefit, or may not provide an Insurance Benefit, where required or permitted under Superannuation Law.

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## 12.5 [Deleted]<sup>8</sup>

## 12.6 SMT Wealthstar Policies

Where the Trustee holds a SMT Wealthstar Policy for a Member, the Member is entitled to the benefit on death, disability or terminal illness under the SMT Wealthstar Policy, that the Trustee receives from the relevant Life Insurer.

## 13. SPLITTING OF INTERESTS UNDER FAMILY LAW

### 13.1 Purpose of this clause 13

The purpose of this clause 13 is to:-

- (a) expressly recognise the relationship between this Deed and relevant provisions of Superannuation (Family) Law which provide for the creation of a new interest in the Scheme in order to satisfy a Non-Member Spouse's entitlement under a superannuation agreement, flag lifting agreement or splitting order in respect of an accumulation interest in the Scheme; and
- (b) make provision, as permitted by Superannuation (Family) Law, for the creation of a new interest in the Scheme in order to satisfy a Non-Member Spouse's entitlement under a

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<sup>8</sup> Clause 12.5 was inserted in the Trust Deed by Deed of Variation dated 5 June 2012 (as clause 154 and clause 259 of the Pre ES Merger Provisions), and subsequently amended to exclude operation in respect of ES Members and SMT Members. Clause 12.5 was deleted by Deed of Variation dated 4 July 2023. The definition of "SMT Members" was deleted by Deed of Variation dated 2 July 2024.

Prior to deletion clause 12.5 was in the following terms:

#### **12.5 Time limit for Total and Permanent Disablement claims**

- (a) *A benefit is not payable in respect of:*
  - (i) *Total and Permanent Disablement of a Member other than:*
    - (A) *an ES Member; or*
    - (B) *a SMT Member; or*
  - (ii) *Failure of Health of a Chapter 3 Member,*  
*unless a claim for payment of the benefit is received by the Trustee within 6 years of the date on which the Member permanently ceases employment with the Participating Employer by reason of the Total and Permanent Disablement or Failure of Health.*
- (b) *The Trustee must not consider or assess a claim received by the Trustee, in respect of a Member other than an ES Member or a SMT Member, outside the time stated in clause 12.5(a).*

The following saving provision was set out in the Deed of Variation which deleted clause 12.5:

#### **Saving operation of clause 12.5 prior to 1 July 2023**

Clause 12.5 of the Trust Deed ... continues to apply in respect of any Member who:

- (a) at any time during the period 5 June 2012 to 30 June 2023 became entitled to lodge a claim for payment of a Total and Permanent Disablement benefit or Failure of Health benefit (as applicable); or
- (b) became or becomes entitled to lodge a claim for payment of a Total and Permanent Disablement benefit, under a policy of insurance that was in place before 1 July 2023 (including, to avoid doubt, where the entitlement to lodge the claim under that policy of insurance arises on or after 1 July 2023).

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superannuation agreement, flag lifting agreement or splitting order in respect of a Defined Benefit interest in the Scheme.

### **13.2 Interpretation**

In this clause 13, and in any other provision of this Deed which applies to any aspect of a Payment Split:-

- (a) "Superannuation (Family) Law" means:-
- (i) Part VIIIB of the Family Law Act 1975;
  - (ii) Family Law (Superannuation) Regulations 2001;
  - (iii) any other subordinate legislation made for the purposes of Part VIIIB of the Family Law Act 1975;
  - (iv) Part 7A of the Superannuation Industry (Supervision) Regulations 1994.
- (b) The following terms have the same meaning as defined in Superannuation (Family Law):
- "Flag Lifting Agreement";**
- "Member Spouse";**
- "Original Interest";**
- "Non-Member Spouse";**
- "Payment Split";**
- "Splitting Order";**
- "Superannuation Agreement".**

### **13.3 Accumulation interests and pensions**

The Trustee may exercise any power conferred on the Trustee under Superannuation (Family) Law for the creation of a new interest in the Scheme in order to satisfy a Non-Member Spouse's entitlement under a Superannuation Agreement, Flag Lifting Agreement or Splitting Order in respect of:-

- (a) an accumulation interest in the Scheme of a Member Spouse; or
- (b) the interest of a Member Spouse who is being paid a pension under the Scheme.<sup>9</sup>

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<sup>9</sup> This clause is merely for information. The Board may exercise such powers in any event under Part 7A of the Superannuation Industry (Supervision) Regulations 1994.

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#### **13.4 Special Provision for calculation of Disability Pension**

If:-

- (a) the Trustee exercises a power referred to in clause 13.3(a); and
- (b) the Member Spouse who held the Original Interest later is a Chapter 3 Member and becomes entitled to a Disability Pension,

then, for the purpose of calculating the amount of the Disability Pension, the balance of the Member Spouse's accumulation account is taken to be the amount, determined as nearly as practicable, that would have been the balance of the Member Spouse's accumulation account if there had been no Payment Split.

#### **13.5 Trustee may create new interest for Payment Split of Defined Benefit**

If the interest of a Member Spouse who is a Defined Benefit Member (apart from the interest represented by the Member's accumulation account) is subject to a Payment Split:

- (a) The Trustee may create a new interest for the Non-Member Spouse in the Scheme;
- (b) Upon creation of that interest, the Non-Member Spouse becomes a Member of the Scheme;
- (c) The starting value of the new interest is the amount of Non-Member Spouse's entitlement in respect of the relevant Defined Benefit interest at the time the new interest is created;
- (d) The new interest is an accumulation interest and the new account is an accumulation account.

#### **13.6 Alternate action if Non-Member Spouse already a Member**

In applying clause 13.5 where the Non-Member Spouse is (independently of anything done under Superannuation (Family) Law) already a Member:-

- (a) clause 13.5(b) does not apply; and
- (b) the Trustee may credit the amount which would otherwise be the starting value of the new interest to the Non-Member Spouse's accumulation account.

#### **13.7 Rollover etc to other Superannuation Entity**

Alternately to applying clause 13.5, and if so requested by the Non-Member Spouse, the Trustee may transfer or roll over to another Superannuation Entity an amount, to be held for the benefit of the Non-Member Spouse, equal to the value of the Non-Member Spouse's entitlement in respect of the Member Spouse's Defined Benefit interest at the time the amount is transferred or rolled over.

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### **13.8 Adjustment of Defined Benefit interest**

- (a) If the Trustee:-
- (i) creates a new interest under clause 13.5 (including where the Trustee acts under clause 13.6); or
  - (ii) acts under clause 13.7; or
  - (iii) as permitted by Superannuation (Family) Law, pays to the Non-Member Spouse an amount equal to the value of the Non-Member Spouse's entitlement in respect of the Defined Benefit interest at the time of the payment,<sup>10</sup>

then, despite anything else in this Deed, any Defined Benefit payable to the Member Spouse (other than a Disability Pension) is the amount:-

- (iv) first calculated under all relevant provisions of this Deed as they would apply if the Member Spouse's Defined Benefit had not been subject to a Payment Split; and
  - (v) then reduced by the amount of the Member's family law set-off account.
- (b) For clause 13.8(a), the amount of a Member Spouse's family law set-off account is:-
- (i) the starting value of the new interest created under clause 13.5; or
  - (ii) the amount transferred, rolled over or paid under clause 13.6 or clause 13.8(a)(iii),

(as the case requires), together with Compound Interest from the date of that creation or payment, to the date of payment of the Defined Benefit, at the Accumulation Comparison Rate or such other rate as the Trustee determines.

### **13.9 Death of Non-Member Spouse**

- (a) On the death of a person:
- (i) who is a Non-Member Spouse of a Member;
  - (ii) who is not a Member; and
  - (iii) 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 Superannuation (Family) Law, in accordance with clause 14.11 as if the Non-Member Spouse were a Member or as otherwise prescribed under Superannuation (Family) Law.

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<sup>10</sup> This is permitted if the Non-Member Spouse has satisfied a relevant condition of release in relation to the interest.

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## **14. BENEFIT ADMINISTRATION PROVISIONS**

### **14.1 Provision of information by benefit claimant**

- (a) A person entitled to the payment of a benefit, or claiming a benefit, from the Scheme must give the Trustee such information and evidence or perform such action as required by the Trustee for the purpose of:-
- (i) verifying the identity of the Member; and
  - (ii) assessing the type and level of benefit entitlement.
- (b) The Trustee may withhold or suspend payment of a benefit until clause 14.1(a) has been complied with to its reasonable satisfaction.

### **14.2 Adjustments of benefits for taxes etc**

The Trustee may:-

- (a) deduct from any benefit and remit to the appropriate authority –
- (i) any tax, duty or other governmental impost payable in respect of any benefit payable from the Scheme; and
  - (ii) subject to written authority from the Member, any monies for which a Member is liable to a Participating Employer under the LGAct or this Deed which have not been paid to that Participating Employer;
- (b) add to any benefit, and pay to the person entitled to the benefit, the amount of any taxation rebate or reduction in tax payable received or enjoyed by the Trustee specifically in relation to that benefit.

### **14.3 Receipt of benefit**

Any person to whom a benefit is payable must, if so required by the Trustee, furnish to the Trustee a duly completed receipt or duly completed receipt and discharge.

### **14.4 Receipt a full discharge**

Whether or not a formal receipt and discharge is required under clause 14.3, the receipt of any person to whom the Trustee is authorised to make payment is a full and sufficient discharge to the Trustee and the Trustee is not bound or concerned to see to the application of such payment.

### **14.5 Payment of benefits**

Benefits are payable in Australian currency at the principal office for the time being of the Trustee or otherwise as determined by the Trustee. The Trustee may forward benefits to the postal address last notified under clause 14.6 or to any other place the Trustee at the written request of the Beneficiary approves, or by such other payment mechanism as the Trustee determines.

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#### **14.6 Address for benefits**

Every person to whom a benefit is or will become payable must notify the Trustee in writing:-

- (a) of the person's place of residence and full postal address at the time the benefit becomes payable; and
- (b) of any change of residence or postal address before full payment of the benefit.

#### **14.7 References to "interest"**

The term "**interest**", when used in relation, or by reference, to rate of investment returns or any other rate, includes a negative amount or percentage.

#### **14.8 Calculation of Compound Interest**

Where it is necessary for any purpose of this Deed to calculate Compound Interest in respect of a principal sum (at a rate made applicable by a provision of this Deed), that interest will be calculated as follows:-

- (a) for moneys which were paid to the Former LG Super on 1 January 1986 or which are to accrue interest on and from that date, interest will commence to accrue from 1 January 1986;
- (b) for all other monies, interest will commence to accrue from the date upon which the moneys are credited to the relevant account;
- (c) interest accrued must be added to or, in the case of a negative amount, subtracted from, the principal sum on 30 June in each financial year after the interest has commenced to accrue and the relevant sum or difference thereafter comprises the principal sum for the purpose of calculating future interest;
- (d) any amount payable to or in respect of a Member with Compound Interest before 30 June in any financial year includes the interest on the principal sum thereof, accrued under clause 14.8(b), not yet added to or subtracted from the principal sum, from the preceding 1 July (or date of commencement of membership) to the date on which the amount is payable.

#### **14.9 Death Benefits – nominations**

- (a) A Member may at any time nominate any one or more of their Dependants and legal personal representative to whom the Member wishes the Trustee to pay a benefit arising from his or her death, which nomination may, where more than one recipient is nominated, specify how the benefit is to be apportioned between them.
- (b) The notice must be in the form prescribed by the Trustee, and otherwise comply with form and content requirements prescribed by the Trustee.
- (c) The Trustee may prescribe:-



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- (i) form and content requirements for the notice;
- (ii) provisions limiting the classes of person who may be nominated;
- (iii) provisions requiring a notice to be given a minimum time before a Member's death,

differently for groups and/or categories of applicants and/or Members, and differently in respect of Binding Nominations, Death Benefit Instructions and (prior to 1 January 2025) nominations that are not in the form of a Binding Nomination or Death Benefit Instruction.

- (d) A nomination ceases to be of effect, on the Member giving the Trustee notice that the nomination is revoked.

#### **14.10 Death Benefits – eligible recipients**

- (a) A Death Benefit must be paid by the Trustee to one or more of:-
  - (i) a Dependant of the deceased Member;
  - (ii) the legal personal representative of the deceased Member.
- (b) However, if there is no person to whom payment can be made under clause 14.10(a), payment must be made to some other person to whom payment is authorised by Superannuation Law.

#### **14.11 Death benefits – Non-Binding Nominations or no nomination**

Where on a Member's death prior to 1 January 2025 there is no Binding Nomination, no Valid Death Benefit Instruction and no Reversionary Beneficiary:-

- (a) the Trustee must consider a nomination made by the deceased Member of the person or persons that the Member would prefer to receive the Death Benefit ("**Non-Binding Nomination**"), if any;
- (b) the benefit may be paid to any one or more of the Dependents and legal personal representative of the deceased Member, or if applicable persons identified under clause 14.10(b), in such proportions as the Trustee determines.

#### **14.11A Death benefits – No nomination (death on or after 1 January 2025)**

Where on a Member's death on or after 1 January 2025 there is no Binding Nomination, no Valid Death Benefit Instruction and no Reversionary Beneficiary:-

- (a) if at the date of death the Member:-
  - (i) has one Qualifying Spouse who is a Current Spouse, the Trustee must pay the Death Benefit to the Current Spouse;

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- (ii) has more than one Qualifying Spouse, the Trustee must pay the benefit to any one or more of the Qualifying Spouses, and if more than one in such proportions, as the Trustee determines.
- (b) if at the date of death the Member:-
  - (i) does not have a Qualifying Spouse; and
  - (ii) has one or more Qualifying Children,the Trustee must pay the Death Benefit to any one or more of the Qualifying Children, and if more than one in such proportions, as the Trustee determines;
- (c) if at the date of the death the Member does not have any Qualifying Spouse and does not have any Qualifying Children, the Trustee must pay the Death Benefit to the Member's legal personal representative, unless:-
  - (i) the Trustee has not identified the Member's legal personal representative, or a person who has filed an application in court for a grant of probate or letters of administration, within 6 months of the Trustee being notified of the Member's death; or
  - (ii) the Trustee is notified, by a person that the Trustee considers is reasonably qualified to form the view, that the Member's estate is insolvent because the estate's assets (excluding, for this purpose, the amount of the Death Benefit) will be exhausted in meeting the estate's liabilities.
- (d) If the Death Benefit is not payable to a Spouse under clause 14.11A(a), a Qualifying Child under clause 14.11A(b), or a legal personal representative under clause 14.11A(c), the Death Benefit may be paid to any one or more of the Dependants of the deceased Member, or if applicable persons identified under clause 14.10(b), in such proportions as the Trustee determines.

#### **14.12 Death Benefits – Binding Nominations**

- (a) 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. A Binding Nomination given to the Trustee revokes any previous Binding Nomination or Death Benefit Instruction in respect of that benefit.
- (b) Where on the death of a Member the Trustee has a Binding Nomination, the Trustee must pay the benefit:-
  - (i) to the person or persons nominated in the Binding Nomination; and
  - (ii) if more than one person is nominated, in the proportions nominated.
- (c) A Binding Nomination in respect of a benefit is revoked if the Member:-

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- (i) gives the Trustee notice in writing, in a form prescribed or accepted by the Trustee, that the Binding Nomination is revoked;
- (ii) gives the Trustee another Binding Nomination, or a Death Benefit Instruction or a Non-Binding Nomination, in respect of that benefit; or
- (iii) where the benefit has become payable or is being paid as a pension, nominates a Reversionary Beneficiary.

#### **14.13 Death Benefit Instructions**

- (a) The Trustee may offer Members and applicants, or any group or category 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.
- (b) A Death Benefit Instruction in respect of a benefit is revoked if the Member:-
  - (i) gives the Trustee notice in writing, in a form prescribed or accepted by the Trustee, that the Death Benefit Instruction is revoked;
  - (ii) gives the Trustee another Death Benefit Instruction, or a Binding Nomination or a Non-Binding Nomination, in respect of that benefit; or
  - (iii) where the benefit has become payable or is being paid as a pension, nominates a Reversionary Beneficiary.
- (c) On receipt of a notice in the form of a Death Benefit Instruction, the Trustee must:-
  - (i) consider whether to consent to the Death Benefit Instruction; and
  - (ii) notify the Member if the Trustee does not consent.
- (d) A Death Benefit Instruction becomes invalid if:-
  - (i) the Member's Spouse named in a Death Benefit Instruction ceases to be the Member's Spouse or becomes permanently separated from the Member;
  - (ii) the Member commences a relationship with a Spouse who is not named in the Death Benefit Instruction; or
  - (iii) any person nominated as a Dependant:-
    - (A) dies;
    - (B) ceases to be a Dependant of the Member; or
    - (C) ceases to be in a class of persons the Trustee has prescribed as eligible to be nominated in a Death Benefit Instruction.

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- (e) A Valid Death Benefit Instruction is a Death Benefit Instruction that at the time of the Member's death has not become invalid under clause 14.13(d).
- (f) 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 clause 14.13(g).
- (g) 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:
  - (i) 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
  - (ii) the circumstance has resulted in the Death Benefit Instruction becoming invalid,the Trustee must pay the benefit in accordance with clause 14.11.

#### **14.13A Exceptions to payment of Death Benefit to Spouse**

Despite clauses 14.11A(a) and 14.13, if before the Trustee has paid a Death Benefit to a deceased Member's Spouse under either of those clauses the Trustee receives evidence that:-

- (a) the Spouse's entitlement to payment of the benefit is forfeited by operation of law, or there are grounds to anticipate that the entitlement may be forfeited; or
- (b) the Spouse had committed spousal abuse towards the Member,

then:-

- (c) where the Member died before 1 January 2025, the benefit must be paid under clause 14.11;
- (d) where the Member died on or after 1 January 2025, the benefit may be paid to any one or more of the Dependants and legal personal representative of the deceased Member, or if applicable persons identified under clause 14.10(b), in such proportions as the Trustee determines.

#### **14.13B Payment of Death Benefit in advance of decision**

The Trustee may, before making the Trustee's final determination about payment of a Death Benefit, pay the whole or any part of the amount of the benefit to one or more of the persons that are or may be entitled to the benefit, as an advance against a benefit which may ultimately be payable, subject to:-

- (a) the recipient(s) of the payment entering into such agreements or other arrangements as the Trustee shall reasonably require to secure repayment of any amount by which the advance made to that recipient exceeds the final benefit actually payable to that recipient (as finally determined by the Trustee or as finally determined, where relevant, by a tribunal or statutory body that has authority under the tribunal's or statutory body's enabling legislation to make decisions that are binding on the Trustee, or by a court);

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- (b) if so required by the Trustee, provision by the recipient(s) or some other person of such security as the Trustee reasonably requires in respect of the obligations referred to in clause 14.13B(a); and/or
- (c) if so required by the Trustee, provision of an indemnity in favour of the Trustee from the recipient(s) or some other party acceptable to the Trustee indemnifying the Trustee against any loss suffered by the Scheme in the event that:-
  - (i) the Trustee's actual decision on payment of the benefit after investigation of all relevant circumstances; or
  - (ii) a decision of a tribunal or statutory body that has authority under the tribunal's or statutory body's enabling legislation to make decisions that are binding on the Trustee, or of a court,

requires all or part of the advance payment to the recipient(s) to be paid to some other person, and the Trustee is unable for any reason to recover the advance payment or part from the recipient(s).

#### **14.14 Discretionary powers of the Trustee about benefits**

- (a) Subject to Superannuation Law, the Trustee may in the Trustee's discretion permit a Member to exercise a right or grant a Member a privilege or benefit even though:-
  - (i) a relevant condition prescribed in this Deed has not been fulfilled;
  - (ii) a procedural requirement in this Deed has not been complied with; or
  - (iii) the time prescribed for taking any relevant action may have expired.
- (b) The Trustee may, in the exercise of the Trustee's powers under clause 14.14(a), impose such conditions and requirements as the Trustee may determine just.
- (c) Despite anything contained in this Deed but subject to Superannuation Law, where an application, election or notice under the Scheme (**Member Notice**) has been or is made or given to the Trustee before commencement, or after the expiration, of a period prescribed by or under this Deed and the Trustee is satisfied that:-
  - (i) hardship would accrue to a person or Dependents if the Member Notice were not recognised; and
  - (ii) in all the circumstances of the case it is desirable that the Member Notice should be recognised,

the Trustee may recognise the Member Notice as if the Member Notice had been made within the prescribed period.

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- (d) However, clause 14.14(c) does not apply to any matter relating to documents or information required to be given to the Trustee under clauses 5.8, 20.16, or 20.17.<sup>11 12</sup>
- (e) The Trustee is not under any obligation to exercise any power explicitly or implicitly given to the Trustee in any part of the LGAct or this Deed or to seek or act on any information relevant to any such power, whether or not the power is expressed to be absolute.

#### **14.15 False information provided by Member**

- (a) Where, after such inquiry as the Trustee thinks fit, the Trustee is satisfied that a Member or former Member has:-
- (i) in any notice or document given, sent to or lodged with, the Trustee by or on behalf of the Member for any of the purposes of the Scheme:-
- (A) failed to fully and honestly disclose any information that he or she was required to give; or
- (B) furnished false or misleading information; or
- (C) failed to comply with an obligation of disclosure under clause 5.8; or
- (ii) in respect of a medical examination for the purpose of the Scheme:-
- (A) failed to fully and honestly disclose any information that the Member was requested to give to the medical practitioner making the examination; or
- (B) furnished to such medical practitioner false or misleading information,
- the Trustee, in the Trustee's discretion, may make an order in respect of and/or make changes to:-
- (iii) for a Defined Benefit Member, the Member's Accrued Benefit Multiple;
- (iv) other benefits, rights, privileges and liabilities under the Scheme (other than rights relating to monies required by Superannuation Law to be vested in the Member),

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<sup>11</sup> These provisions relate to information relevant to a Member's medical condition required in connection with a determination about Insurance Benefits.

<sup>12</sup> Prior to 2 July 2024, clause 14.14(d)(ii) was in the following terms:

(d) *However, clause 14.14(c) does not apply to:- ... (ii) a claim made outside the time prescribed by clause 12.5.*

Clause 14.14(d)(ii) was deleted by Deed of Variation dated 2 July 2024. The following saving provision was set out in that Deed of Variation:

#### **Saving for clause 14.14(d)(ii)**

Clause 14.14(d)(ii) of the Trust Deed is deleted under clause 3 of this deed. Despite this, clause 14.14(d)(ii) continues to apply in respect of any Member that clause 12.5 continues to apply to.

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for the purpose of restoring matters to the situation which would have existed had the Member fully and/or honestly disclosed the relevant information.

- (b) Any such order takes effect from such day as is specified by the Trustee which day may precede the date of the determination by the Trustee.
- (c) If as a result of an order under this clause 14.15, benefits or other monies paid to a Member exceed the amount to which the Member is or was entitled, the excess:-
  - (i) may be deducted by the Trustee from any credit of the Member in the Scheme;
  - (ii) may be deducted by the Trustee from any benefit which subsequently becomes payable to or in respect of the Member;
  - (iii) may otherwise be recovered by the Trustee from the Member as a liquidated debt.

#### **14.16 Benefits not to be assigned or charged**

- (a) The rights of Members and Beneficiaries to benefits under this Deed are strictly personal and no such benefit is capable of assignment (and the Trustee must not recognise any such assignment), whether absolute or conditional.
- (b) The Trustee must not create, recognise or give effect to any lien over benefits except in the circumstances permitted by Superannuation Law.

#### **14.17 Minimum benefits**

The minimum benefit requirements of Superannuation Law apply to benefits payable from the Scheme and the provisions of this Deed must be construed accordingly.

#### **14.18 Recovery of surcharge tax**

- (a) In this clause, “**surcharge tax**” means tax imposed and payable in respect of a Member under the Superannuation Contributions Tax (Imposition) Act 1997 and the Superannuation Contributions Tax (Assessment and Collection) Act 1997.
- (b) The Trustee may determine the basis upon which the Scheme will be reimbursed in respect of the whole or part of surcharge tax paid by the Scheme in respect of a Member.
- (c) Without limiting clause 14.18(b), the terms and conditions may include or involve:-
  - (i) charging of interest on amounts paid before reimbursement occurs (from the time of payment until the time of reimbursement); and
  - (ii) making a reduction in, or a deduction from, a benefit otherwise payable equal to the amount to be reimbursed to the Scheme, at the time of payment of the benefit.

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#### **14.19 Preserved and non-preserved benefits**

- (a) Benefits must be preserved to the extent required by Superannuation Law or this Deed and the provisions of this Deed about payment of benefits must be construed accordingly.
- (b) Benefits so preserved must not be cashed out of the Scheme until the release provisions of Superannuation Law and/or this Deed are satisfied, but may be transferred or rolled over in accordance with clause 16.2.
- (c) The amounts of a Member's restricted and unrestricted non-preserved benefits in the Scheme must be determined in accordance with Superannuation Law.

### **15. BENEFIT PAYMENT PROVISIONS OF GENERAL APPLICATION**

#### **15.1 Entitlement to Accumulation Benefits**

A benefit becomes payable in respect of an Accumulation Benefit Member on the occurrence of any of the following:

- (a) the Member retires from the workforce at or after their preservation age under Superannuation Law;
- (b) the Member suffers Total and Permanent Disablement;
- (c) the Member suffers a Terminal Medical Condition;
- (d) the Member suffers Temporary Disablement, where a benefit is payable on Temporary Disablement under the terms of a policy of insurance applicable to the Member;
- (e) the Member, being a temporary resident, permanently departs Australia in circumstances where the departure meets a condition of release in the preservation rules under Superannuation Law;
- (f) the Member's employment with an Employer terminates (subject to preservation rules under Superannuation Law);
- (g) the Member attains age 65 (subject to preservation rules under Superannuation Law); or
- (h) the Member dies.

#### **15.2 Amount of Accumulation Benefits**

- (a) The amount of the benefit payable to or in respect of an Accumulation Benefit Member, other than on Temporary Disablement, is the balance of the Member's accumulation account including any lump sum Insurance Benefit received by the Trustee for the credit of the Member.



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- (b) The amount of and terms on which a benefit is payable on an Accumulation Benefit Member's Temporary Disablement are in accordance with the policy of insurance under which the benefit is paid.

### **15.3 Entitlement to and amount of Defined Benefits**

A benefit becomes payable in respect of a Defined Benefit Member, on the occurrence of an event, and of an amount, provided in Chapter 3, Chapter 4 or Chapter 5, as applicable to the Member.

### **15.4 Retained Members**

- (a) Where:
  - (i) a benefit becomes payable to a Member (other than a benefit payable on Temporary Disablement); and
  - (ii) the Member does not request the Trustee to pay the benefit, or to transfer or rollover the benefit to another Superannuation Entity,the Member continues as a **Retained Member**.
- (b) An Accumulation Benefit Member who becomes a Retained Member continues as an Accumulation Benefit Member, and the Trustee must maintain their accumulation account.
- (c) For a Defined Benefit Member who becomes a Retained Member, the Trustee must:
  - (i) allocate the amount of their Defined Benefit to an accumulation account for the Member; and
  - (ii) continue their membership as an Accumulation Benefit Member.

### **15.5 Allocation of Death Benefits**

- (a) Where a Death Benefit becomes payable in respect of an Accumulation Benefit Member, the Trustee must maintain their accumulation account until the benefit is paid.
- (b) Where a Death Benefit becomes payable in respect of a Defined Benefit Member, the Trustee must allocate the amount of their Defined Benefit to an accumulation account to be maintained until the benefit is paid.

### **15.6 Withdrawals and transfers / rollovers by Accumulation Benefit Members**

- (a) An Accumulation Benefit Member may at any time request:
  - (i) payment of all or part of the Member's accumulation account to the Member, where preservation rules under Superannuation Law permit the payment;

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- (ii) transfer or rollover of all or part of the Member's accumulation account to another Superannuation Entity, where Superannuation Law permits the transfer or rollover.
- (b) Subject to Superannuation Law, the Trustee may impose conditions and restrictions on partial payments from the Member's accumulation account, including (for example):
  - (i) minimum or maximum amounts;
  - (ii) minimum amounts that must be retained in the Member's accumulation account;
  - (iii) the frequency of payments.
- (c) The Trustee may on receipt of a request in accordance with clause 15.6(a) which complies with any restrictions imposed by the Trustee under clause 15.6(b), pay the amount requested as a benefit of the Member, or transfer or rollover in respect of the Member.

#### **15.7 Other benefits may be provided under Superannuation Law**

- (a) Despite any other provision, a benefit may be paid to a Member who is not otherwise entitled to be paid a benefit under a provision of this Deed if:-
  - (i) the Trustee is required to pay the benefit in order to comply with Superannuation Law; or
  - (ii) payment of the benefit is authorised by Superannuation Law, and the Trustee has resolved to pay the benefit.
- (b) A resolution under clause 15.7(a)(ii) may be made in respect of a benefit payment to an individual Member, or a class or type of benefit payment.
- (c) Subject to Superannuation Law, for an Accumulation Benefit Member, the amount of a benefit paid under clause 15.7(a) must be debited to the Member's accumulation account.
- (d) Subject to Superannuation Law, for a Defined Benefit Member:-
  - (i) the amount of a benefit paid under clause 15.7(a) must be debited in accordance with clause 15.7(c) to the extent of the balance of all accumulation accounts to which monies are credited for the Member;
  - (ii) if the balance of that account or those accounts is less than the amount paid:-
    - (A) the Trustee must calculate the benefit to which the Member would have been entitled under the relevant clause;
    - (B) the amount of that benefit must be credited to the Member's accumulation account;

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- (C) so much of the amount of a benefit paid under clause 15.7(a) as was not debited in accordance with clause 15.7(c) must then be debited to the Member's accumulation account; and
  - (D) the Member ceases to be a Defined Benefit Member, and becomes an Accumulation Benefit Member, on the date the benefit under clause 15.7(a) is first paid to the Member.
- (e) In clause 15.7(d)(ii)(A), **"relevant clause"** means the provision of Chapter 3, Chapter 4 or Chapter 5 under which the Member's Defined Benefit would be calculated:-
  - (i) for a Member who has not reached the age at which a retirement benefit may be paid on the date the benefit is first paid, as though the Member had ceased employment on that date;
  - (ii) for a Member who has reached the age at which a retirement benefit may be paid on the date the benefit is first paid, as though the Member had retired on that date.
- (f) To avoid doubt, **"amount of a benefit paid under clause 15.7(a)"** includes, in the case of an account based pension (including a transition to retirement income stream) or similar benefit, the total amount required to establish the pension or similar facility <sup>13</sup>.

## **15.8 Beneficiary under legal disability**

- (a) If:-
  - (i) a Beneficiary (including a Member) is under a legal disability (for example, if the Beneficiary is a minor child);
  - (ii) the Trustee considers that the Beneficiary is unable to manage the Beneficiary's affairs; or
  - (iii) 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 –
  - (iv) towards the maintenance or education of the Beneficiary;
  - (v) directly for the benefit of the Beneficiary; or
  - (vi) 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.

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<sup>13</sup> Explanatory Note: Thus, if the total amount required to "purchase" an account based pension or similar benefit available under this clause for a Defined Benefit Member exceeds that Member's accumulation account balance, clause 15.7(d) will apply, even though initial payments of the pension would not, in themselves, exhaust the Member's accumulation account balance.

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- (b) Any payment or application of the whole or part of a benefit under clause 15.8(a) 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.

## **15.9 Changes in employment status**

Except where specifically dealt with in Chapter 3, Chapter 4 or Chapter 5, if a Member's employment status changes:-

- (a) for example, any change between employment on full-time, part-time, casual, temporary or permanent basis, or any change in the combination of bases of employment;
- (b) including any change in the proportion of a full time week worked,

the Member's benefit entitlement under the Scheme 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.

## **15.10 Disablement benefits after termination of employment**

To avoid doubt, payment of a benefit on termination of employment does not prevent a Member from subsequently claiming a Total and Permanent Disablement benefit, to which that person is subsequently shown to be entitled. The benefit paid on termination of employment must be taken into account, and is deemed to be part payment of the Total and Permanent Disablement benefit.

# **16. TRANSFERS TO AND FROM SCHEME**

## **16.1 Transfer to Scheme**

- (a) The Trustee may accept money or other assets from another Superannuation Entity in respect of a Member or prospective Member, or a group of Members or prospective Members (with or, where permitted by Superannuation Law, without, the Member or prospective Member's consent).
- (b) If the Trustee accepts money or other assets under clause 16.1(a) in respect of a prospective Member, then that person becomes a Member on the date determined in accordance with clause 5.2.
- (c) The Trustee may make such arrangements as the Trustee considers appropriate with:
- (i) a Member or prospective Member;
  - (ii) a Participating Employer, Employer or former Employer of a Member or prospective Member, or group of Members or prospective Members; or
  - (iii) the trustee or administrator of that Superannuation Entity,

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in relation to providing benefits for the Member or prospective Member, or group of Members or prospective Members, from the money or assets accepted from the Superannuation Entity in respect of them.

- (d) The arrangements may include transfer to the Scheme of any amount to be allocated to a reserve, or any other unallocated amount, on terms determined by the Trustee.

## **16.2 Transfer from Scheme**

- (a) An Accumulation Benefit Member may transfer or rollover all or any part of their accumulation account to another Superannuation Entity in accordance with clause 15.6.
- (b) The Trustee may transfer or rollover all or any part of an Accumulation Benefit Member's accumulation account, or a pension account, to another Superannuation Entity;
- (i) with the Member's consent; or
- (ii) without the Member's consent if permitted under Superannuation Law.
- (c) All or part of an ES Defined Benefit Member's accrued benefit entitlement may be transferred or rolled over to another Superannuation Entity if permitted under 30.16.
- (d) This clause 16.2 does not limit the circumstances in which the Trustee may transfer or rollover a Member's benefit where required or permitted under Superannuation Law.

## **16.3 Effect of Transfer from the Scheme**

No person (including any contingent Beneficiary) has a right of action against the Trustee or a Participating Employer in respect of any amount transferred to another Superannuation Entity. The receipt of the person responsible for the other Superannuation Entity is a complete discharge to the Trustee and the Trustee has no responsibility to see to the application of the amount transferred.

## **17. FORM OF BENEFITS**

### **17.1 Elections for form of benefits**

- (a) Instead of taking a benefit in the usual form provided in this Deed for that benefit, a Beneficiary may elect that all or part of that benefit be replaced with another benefit payable:-
- (i) in a different form; or
- (ii) in different circumstances,
- unless the Trustee determines otherwise, but:-
- (iii) the Beneficiary must make the election at the time and within the period determined by the Trustee; and

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- (iv) the terms and conditions determined by the Trustee will apply.
- (b) Any election under clause 17.1(a), 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.
- (c) The Trustee may pay a pension in accordance with clause 17.2 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.
- (d) 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.

## **17.2 Payment of benefits as lump sum or pension**

Any benefit payable from the Scheme must be paid as a lump sum to the recipient unless:-

- (a) the benefit is payable on Temporary Disablement, or Superannuation 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 Superannuation Law permits payment of the benefit to that recipient as a pension.

## **17.3 Pension benefits**

- (a) Where a benefit is paid as a pension:
  - (i) the Trustee must establish, or convert the Member's accumulation account or accrued benefit to, a pension account for the Member; and
  - (ii) the terms of the pension must comply with Superannuation Law applicable to, as required:
    - (A) account based pensions;
    - (B) transition to retirement income streams; or
    - (C) market linked pensions, and the terms of a market linked pension must also comply with the Social Security Act 1991.
- (b) A pension of a Transferred ES Member continues in the Scheme on the ES Merger Date, on the same terms as applied in Energy Super immediately before the ES Merger Date. A pension of a Transferred SMT Member continues in the Scheme on the SMT Merger Date, on the same terms as applied in SMT immediately before the SMT Merger Date.
- (c) A pension account cannot be added to by way of contribution or rollover after the pension has commenced.

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- (d) The Trustee may offer the person entitled to the pension benefit such options in relation to:-
- (i) the annual amount of the pension;
  - (ii) the frequency of pension payments;
  - (iii) the term for which the pension is payable;
  - (iv) 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 Superannuation Law applicable to the pension permits, and the person may select from the options offered.
- (e) Nomination of a Reversionary Beneficiary of a pension benefit revokes any previous Binding Nomination or Death Benefit Instruction, or previous nomination of Reversionary Beneficiary, in respect of that pension account. (To avoid doubt, any Binding Nomination, Death Benefit Instruction or Non-Binding Nomination remains in place on establishment of a pension account, unless and until revoked or replaced).
- (f) 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 Superannuation Law applicable to the pension.
- (g) 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 Superannuation 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.
- (h) If a Member in receipt of a pension dies:-
- (i) where there is a Reversionary Beneficiary, the Trustee must pay a pension to the Reversionary Beneficiary;
  - (ii) 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 14.11, clause 14.11A, clause 14.12, or clause 14.13 (as applicable).
- (i) On the death of a person then in receipt of a Death Benefit paid as a pension, the Trustee must pay the balance of the Member's benefit then remaining as a Death Benefit of the Member in accordance with clause 14.11, clause 14.11A, clause 14.12, or clause 14.13 (as applicable) (unless clause 17.3(j) applies).
- (j) 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:-

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- (i) as a Death Benefit of the Member in accordance with clause 14.11; or
  - (ii) to one of more of the Spouse's Dependants (and if more than one in proportions determined by the Trustee) or to the Spouse's legal personal representative.
- (k) Where a benefit is payable as a lump sum, the Trustee:
- (i) must pay the benefit as soon as practicable after the benefit becomes payable;
  - (ii) may pay the benefit in more than one instalment unless Superannuation Law requires that the benefit be paid in single lump sum.

## **17A APPENDICES B, C AND D APPLY INSTEAD OF CHAPTER 2**

### **17A.1 Application of Appendices B, C and D**

Appendix B, Appendix C or Appendix D apply instead of the provisions in this Chapter 2 (clauses 10 to 17 inclusive), in respect of benefits payable to or in respect of a Member under:-

- (a) a Benefit Policy;
- (b) the Group Annuity Policy; or
- (c) the Establishment Phase Policy and / or the Income Phase Policy.

### **17A.2 Pensions payable under Appendices B, C and D**

Where an income stream is payable under Appendix B, Appendix C or Appendix D on the basis that the pension qualifies as a pension (or a particular type of pension) under Superannuation Law, any condition, standard or requirement of Superannuation Law which is required to be satisfied in order for the income stream to qualify as a pension (or as a particular type of pension) under Superannuation Law is deemed to be included in this Deed for so long as that condition, standard or requirement is so required.

## **17B APPENDICES B, C AND D APPLY INSTEAD OF CHAPTER 2**

Appendix E applies to the payment of a death benefit in respect of a Member that Appendix E applies to, instead of clauses 14.11, 14.12 and 14.13.



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## CHAPTER 3 - CONTRIBUTION AND BENEFIT PROVISIONS FOR LG SUPER MEMBERS

### 18. APPLICATION OF CHAPTER 3

#### 18.1 Application to LG Super Members

This Chapter 3 applies only to Members for whom a LG Employer is required to contribute under the LGAct.

#### 18.2 Definition of Chapter 3 Members

The Members to whom this Chapter 3 applies are referred to in other Chapters of this Deed as “Chapter 3 Members”.

### 19. CONTRIBUTIONS AND ACCOUNTS FOR LG SUPER MEMBERS

#### 19.1 Required contributions

- (a) LG Employers must make and remit to the Trustee contributions on behalf of each *permanent employee* who is a Defined Benefit Member at the following rates:-
  - (i) if the Employee is a *special permanent employee*—16% of the Employee's Salary;
  - (ii) if the Employee is a *standard permanent employee*—18% of the Employee's Salary.
- (b) The contributions include or form part of contributions required to be paid:-
  - (i) to the Scheme for the Member under an industrial agreement or award; and
  - (ii) in order to avoid liability for the Superannuation Guarantee Charge.
- (c) The contributions also include the Member's own contribution required by the LGAct, and which the Member is liable to reimburse the LG Employer under the LGAct.
- (d) LG Employers must make and remit to the Trustee contributions on behalf of each *permanent employee* who is an Accumulation Benefit Member at the rate required by the LGAct.
- (e) Each *permanent employee* who is an Accumulation Benefit Member must make contributions at the rate provided under the LGAct, and may alter their contributions as permitted under the LGAct.
- (f) Contributions must be remitted to the Trustee in accordance with the LGAct and this Deed and any procedures (not inconsistent with the LGAct and this Deed) determined by the Trustee.

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- (g) The Trustee may alter the contributions payable for a *permanent employee* who is a Defined Benefit Member (but the alteration may only be made by alteration to this Deed).
- (h) Also, an alteration referred to in clause 19.1(g) may only be made:-
  - (i) for the purpose of ensuring that the yearly contributions paid by LG Employers for Defined Benefit Members are sufficient to (but no more than is reasonably necessary to<sup>14</sup>) support the Defined Benefits to which those Members are or may become entitled, including provision of a reasonable reserve in the LG Defined Benefits Fund to provide for fluctuations in investment performance; and
  - (ii) in accordance with the advice and recommendations of the Actuary received pursuant to instructions by the Trustee to the Actuary to provide advice about appropriate ways of achieving that purpose, including ways, if any, in which the purpose might be achieved without altering contributions by LG Employers.

## **19.2 Requirements for salary package with no Member Contributions**

- (a) This clause 19.2 applies where, as part of the terms of employment between a LG Employer and a Member relating to remuneration, the LG Employer and the Member have agreed, under a salary sacrifice arrangement, that the LG Employer will pay contributions for the Member in substitution for Member contributions deducted from the Member's remuneration.
- (b) Where this clause 19.2 applies:-
  - (i) clauses 19.2(c)(i) and 19.2(d) to 19.2(f) apply to all Members; and
  - (ii) clauses 19.2(c)(ii), 19.2(g) and 19.2(i) apply to Defined Benefit Members (only).
- (c) Where this clause 19.2 applies, the LG Employer must advise the Trustee in writing:-
  - (i) of the date of commencement and, where applicable, the date of termination, of each salary sacrifice arrangement; and
  - (ii) for a Defined Benefit Member:
    - (A) of the amount of the Member's Salary for the purposes of 19.2(a); and
    - (B) that the LG Employer agrees to pay the additional contribution mentioned in either of clauses 19.2(g) and 19.2(h).
- (d) If a LG Employer complies with clause 19.2(c) and, where relevant, pays the additional contribution under either of clauses 19.2(g) and 19.2(h), the Trustee will recognise the salary sacrifice arrangement (from the date notified under clause 19.2(c)) and:-

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<sup>14</sup> The power to vary contributions for Defined Benefit Members might, in appropriate circumstances, be exercised to reduce those contributions, as well as to increase them. For example, if adverse investment returns which resulted in an increase in an earlier year had turned to become strongly positive, a contribution reduction may be appropriate to "refund" some or all of the previous increase to LG Employers.

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- (i) the Salary notified under clause 19.2(c)(ii) will be the Member's Salary for the purpose of calculating benefits; and
  - (ii) the whole of the contribution received in respect of the Member must be treated as an Employer contribution (with no part being treated as a Member Contribution), for the purposes of Superannuation Law.
- (e) If a LG Employer does not comply with clause 19.2(c) the Trustee will not recognise the salary sacrifice arrangement.
- (f) The Trustee will cease to recognise a salary sacrifice arrangement with effect from a date notified under clause 19.2(c).
- (g) For a Defined Benefit Member to whom this clause applies, but subject to 19.2(h), the LG Employer must pay an additional contribution to the Trustee calculated as follows:-
  - (i) for a *standard permanent employee*, 1.05882% of the Member's Salary; and
  - (ii) for a *special permanent employee*, 0.88235% of the Member's Salary.<sup>15</sup>
- (h) Despite clause 19.2(g), if the income tax payable by the Trustee in respect of Employer contributions made in respect of any Defined Benefit Member is greater than 15%, the additional contribution payable in respect of that Member must be increased in proportion to the additional tax, so that the total contribution less income tax is the same as if the income tax were 15% (and the additional contribution were that payable under clause 19.2(g)).
- (i) In addition, if by reason of a LG Employer failing to comply with clause 19.2(c) the Trustee is assessed to any tax, additional tax or penalty which:-
  - (i) would have been offset by the additional contribution under clauses 19.2(g) and 19.2(h); or
  - (ii) would not have been assessed,if the LG Employer had complied with clause 19.2(c), the LG Employer must indemnify the Trustee in respect of the tax or penalty.

### **19.3 Contributions during disablement**

No contributions are payable by a LG Employer in respect of any period during which a Member:

- (a) is receiving a Disability Pension; and

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<sup>15</sup> Member Contributions deducted from after-tax Salary are treated as a Member's own contributions for the purposes of Superannuation Law and are not subject to tax in the Scheme. As there are no Member Contributions under a salary sacrifice arrangement to which this clause applies, all contributions are Employer contributions and are subject to 15% tax. The additional payment reimburses the Scheme for that tax so that the net amount received by the Scheme in respect of the Member is the same as would occur if there were Member Contributions being paid.

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- (b) is not receiving any Salary from the LG Employer.<sup>16</sup>

#### **19.4 Contributions during periods of absence or between employment – Accumulation Benefit Members**

If an Accumulation Benefit Member is absent from employment and is not receiving remuneration:

- (a) The LG Employer is not required to continue to pay contributions for the Member (unless required under the LGAct or under an Industrial Instrument applicable to the terms of the Member's employment);
- (b) the Member may continue to make contributions, at a rate and at such times as the Member elects.

#### **19.5 Contributions during periods of absence or between employment - Defined Benefit Members**

- (a) This clause 19.5 applies:-

- (i) only to Defined Benefit Members;<sup>17</sup> and
- (ii) where a Member (other than a Member receiving a Disability Pension):-
- (A) is absent without pay for any reason (including by reason of illness or injury);
- (B) is absent on Parental Leave that is wholly or partly paid leave; or
- (C) has terminated employment with LG Employer in circumstances where the termination does not constitute Ceasing Employment,

the time during which any such circumstance exists being a “**period of absence**”.

- (b) If:-

- (i) the period of absence does not exceed 4 weeks; and
- (ii) where relevant, the LG Employer has granted leave of absence,

the period of absence forms part of the Member's Superannuation Scheme Membership for the purposes of calculating the Member's Accrued Benefit Multiple, even though no contributions have been paid to the Scheme by a LG Employer for that period.

- (c) Where clause 19.5(b) does not apply and:-

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<sup>16</sup> If a Member is receiving a partial Disability Pension but remains employed (eg in reduced or lighter duties), contributions remain payable by the LG Employer in respect of the actual Salary being paid.

<sup>17</sup> This clause deals with the continuity, or otherwise, of Superannuation Scheme Membership during breaks in employment when no contributions are paid. The period of Superannuation Scheme Membership is not relevant to determination of Accumulation Benefits.

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- (i) a Member is absent due to illness or injury and is receiving payments under the WCR Act;
- (ii) the Member notifies the LG Employer that the Member wishes contributions to continue to be paid to the Scheme by the LG Employer as though the Member were not absent; and
- (iii) the Member agrees in writing with the LG Employer to pay the LG Employer the amounts which would be payable by the LG Employer under the LGAct if the Member were not absent,

then:-

- (iv) contributions must continue to be paid to the Scheme by the LG Employer as though the Member were being paid by the LG Employer during the period of absence; and
- (v) the period of absence forms part of the Member's Superannuation Scheme Membership for the purposes of calculating the Member's Accrued Benefit Multiple.

(d) in all other cases where this clause 19.5 applies:-

- (i) no LG Employer is required to make contributions to the Scheme for the period of absence; and
- (ii) the period of absence:-
  - (A) does not form part of the Member's Superannuation Scheme Membership for the purposes of calculating the Member's Accrued Benefit Multiple; but
  - (B) does not otherwise interrupt the continuity of the Member's Superannuation Scheme Membership over the periods before and after the period of absence; and
- (iii) clauses 19.6 and 19.7 apply in relation to maintenance or suspension of the Member's Insurance Benefits.

(e) The LG Employer must notify the Trustee of the dates of beginning and end of an absence to which this clause 19.5 applies.

## **19.6 Maintenance of Insurance Benefits**

- (a) This clause 19.6 applies where an Insured Member (other than a Member receiving a Disability Pension):-
  - (i) is absent without pay for any reason (including by reason of illness or injury);
  - (ii) is absent on Parental Leave that is wholly or partly paid leave; or

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- (iii) has terminated employment with a LG Employer in circumstances where the termination does not constitute Ceasing Employment.
- (b) However, this clause 19.6 applies only to the extent that, the Trustee, by paying or continuing to pay a premium to an external insurer, has or continues to have indemnity from the external insurer, or the right to payment from the insurer, for any relevant claim for Insurance Benefits.
- (c) The Member may notify the Trustee in writing that he or she does not wish to maintain an entitlement to Insurance Benefits, in which case clause 19.7 applies.
- (d) If the Member does not give notice under 19.6(c), and until any such notice is given:-
  - (i) for an Accumulation Benefit Member:-
    - (A) the Trustee must continue to deduct the Member's Insurance Premium under clause 11.3(b) for each year of the absence or broken period, and pro rata for periods shorter than 1 year; and
    - (B) the Member continues to be entitled to Insurance Benefits in respect of death or disability which occurs during the period of absence; and
  - (ii) for a Defined Benefit Member:-
    - (A) the Member is liable to pay to the Trustee the prescribed amount for each year of the absence or broken period, and pro rata for periods shorter than 1 year;
    - (B) the prescribed amount:-
      - (1) may be deducted from the Member's accumulation account;
      - (2) if not so deducted<sup>18</sup> will be debited to a separate account in the Member's name;
      - (3) if so debited, bears interest (from the date debited) at the rate of net investment returns determined under clause 7.3 which would apply to the Member's accumulation account if the accumulation account contained a positive balance;
    - (C) the Member continues to be entitled to Insurance Benefits in respect of death or disability which occurs during the period of absence;<sup>19</sup>
    - (D) the amount owing to the Trustee under clause 19.6(d)(ii)(A), if not previously paid to the Trustee, be deducted from any benefit at the time

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<sup>18</sup> Because there are no or insufficient funds in the accumulation account.

<sup>19</sup> Though the Member's Superannuation Scheme Membership, and hence Accrued Benefit Multiple, will be reduced because of clause 19.6(d)(ii).

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of payment of the benefit to the Member, or when the Member otherwise becomes entitled to the benefit.

- (e) In clause 19.6(d)(ii)(A), “**prescribed amount**” means an amount determined by the Trustee (but not exceeding two percent (2%) of the Member’s annual Salary).

## **19.7 Suspension of Insurance Benefits**

Where notice is given under clause 19.6(c):-

- (a) clause 19.6(d) ceases to apply from the day specified in the notice or, if no date is specified, from the day on which the notice is received by the Trustee;
- (b) if the Member is an Accumulation Benefit Member:-
- (i) no Disability Pension is payable in respect of any event occurring during the period of absence; and
- (ii) if the Member dies or becomes Totally and Permanently Disabled during the period of absence, the benefit payable in respect of the death or disability does not include the Member’s Insurance Component for death or TPD;
- (c) if the Member is a Defined Benefit Member:-
- (i) no Disability Pension is payable in respect of any event occurring during the period of absence; and
- (ii) if the Member dies or becomes Totally and Permanently Disabled during the period of absence, the benefit payable in respect death or disability is only the Member’s Accrued Retirement Benefit calculated, for a Member under the Insured Age, after multiplying the Member’s Accrued Benefit Multiple by the Age Discount Factor.

## **19.8 Advice of contributions and payment of contributions**

- (a) Each LG Employer must advise the Trustee, in a form acceptable to the Trustee, of the Salary of each *permanent employee* as follows:-
- (i) for a Defined Benefit Member, as at 1 January and 1 July in each year; and
- (ii) for an Accumulation Benefit Member, as at 1 July in each year,
- by not later than 31 January or 31 July in each year, as the case requires, whether or not there has been any change in Salary since the last notification.
- (b) When the Salary of a Member changes:-
- (i) for an Accumulation Benefit Member, the LG Employer may notify the Trustee of the change before the next notification is required under clause 19.2(a); and

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- (ii) for a Defined Benefit Member, the LG Employer must notify the Trustee of the change within 30 days after the end of the pay period in which the new Salary first applies (unless the changed Salary is included in a notification under clause 19.2(a) given within 30 days after the end of that pay period).
- (c) In advising of Salary under clauses 19.8(a) and 19.8(b) for a Defined Benefit Member, LG Employer must not advise a change in Salary, as compared to the Salary advised for the preceding period, to the extent that the change would be a result of :-
  - (i) the inclusion in a remuneration package of entitlements (such as, without limitation, an allowance other than a permanent allowance) that were not previously part of the Member's Salary for the purposes of this Deed, but were nevertheless previously enjoyed by the Member, so that there has been no substantial change in the Member's overall Salary and entitlements;
  - (ii) a decision by the Member to substitute Salary for a portion of a remuneration package that was not previously part of the Member's Salary for the purposes of this Deed; or
  - (iii) a decision by the Member to substitute a non-salary entitlement for a portion of the value that was previously the Member's Salary for the purposes of this Deed,

and any such change must be disregarded for all purposes of this Deed.<sup>20</sup>

- (d) If LG Employer contravenes clause 19.8(c):-
  - (i) if the contravention is discovered before payment of any benefit to the Member (other than a Disability Pension), the Trustee may make all adjustments which are necessary to place the Member in the position that he or she would have been in if the contravention had not occurred, and:-
    - (A) any amount overpaid by the LG Employer must be refunded to the LG Employer;<sup>21</sup> and
    - (B) any amount underpaid by the LG Employer must be paid by the LG Employer to the Trustee on demand and, if not so paid, is recoverable pursuant to the LGAct as an unpaid contribution;
  - (ii) if the contravention is discovered after payment of a benefit to the Member (other than a Disability Pension), the LG Employer must:-
    - (A) pay to the Trustee on demand the amount of any benefit overpaid to the Member by reason of the contravention;

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<sup>20</sup> The purpose of clause 19.8(c) is to prevent attempts to artificially increase Defined Benefits, particularly close to retirement, by changing a mix of remuneration and related entitlements for that purpose, without in fact increasing what the LG Employer and the Employee regard as the overall package of remuneration.

<sup>21</sup> To the extent that the overpaid amount was recovered from the Employee under s 220A of the LGAct, the LG Employer will be under a general law obligation to refund the relevant amount to the Employee.



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- (B) pay to the Member the amount of any benefit underpaid by the Trustee to the Member by reason of the contravention;
  - (C) indemnify the Trustee against any claim made against the Trustee by the Member by through or in connection with the contravention.
- (e) The contributions required by the LGAct or this Deed to be paid to the Trustee in respect of each *permanent employee*:-
  - (i) must be calculated by the LG Employer, pro rata for each pay period, based on the Salary applying in that pay period; and
  - (ii) must be remitted to the Trustee, pro rata for each pay period, within 14 days after the end of each pay period for the Employee.
- (f) The LG Employer must remit any other contributions payable by the LG Employer, pro rata for each pay period, within 14 days after the end of each pay period for the Employee.
- (g) In respect of a Non-Permanent Employee, contributions must be calculated by the LG Employer for each pay period in accordance with Superannuation Law and remitted to the Trustee for each pay period within:-
  - (i) 14 days after the end of each pay period for the Employee; or
  - (ii) such longer period as is agreed by the Trustee.

## **20. BENEFITS AND PAYMENTS FOR LG SUPER MEMBERS**

### **20.1 Benefits for LG Super Accumulation Benefit Members**

Benefits for an Accumulation Benefit Member are payable as set out in Chapter 2.

### **20.2 Defined Benefit - Age retirement between ages 55 and 70**

- (a) The Trustee must pay a benefit to a Defined Benefit Member who retires between ages 55 and 70.
- (b) The benefit under this clause 20.2 consists of two components being:-
  - (i) a Defined Benefit component being the amount of the Member's Accrued Retirement Benefit at the Cessation Date; and
  - (ii) an accumulation component being the balance of the Member's accumulation account.

### **20.3 Defined Benefit - Age retirement after age 70**

- (a) The Trustee must pay a benefit to a Defined Benefit Member who Ceases Employment after age 70.

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- (b) When a Defined Benefit Member reaches age 70, but has not Ceased Employment, the Trustee must calculate the amount of the lump sum benefit which would have been payable to the Member had he or she retired at age 70.
- (c) The amount calculated under clause 20.3(b) must be allocated to the Member's accumulation account.
- (d) The benefit under this clause 20.3 is the balance of the Member's accumulation account.

#### **20.4 Defined Benefit - Total and Permanent Disablement**

- (a) The Trustee must pay a benefit to a Defined Benefit Member who Ceases Employment by reason of Total and Permanent Disablement.
- (b) The benefit under this clause 20.4 for a Member who has reached the Insured Age on the date of Ceasing Employment is the amount that would have been payable under clauses 20.2 or 20.3 had the Member retired on the date of Ceasing Employment.
- (c) The benefit under this clause for a Member who has not reached the Insured Age on the date of Ceasing Employment consists of two components being:-
  - (i) a Defined Benefit component calculated under clause 20.4(d); and
  - (ii) an accumulation component being the balance of the Member's accumulation account.
- (d) The Defined Benefit component is:-
  - (i) the Member's Accrued Retirement Benefit on the date of Ceasing Employment, calculated on the basis that the Member's Projected Final Average Salary is taken to be the Member's Final Average Salary for the purpose of the calculation;

PLUS

  - (ii) the product of:-
    - (A) the Member's Projected Benefit Multiple (determined as stated in clause 20.4(e)); multiplied by
    - (B) the Member's Projected Final Average Salary.
- (e) In clause 20.4(d), the Member's "**Projected Benefit Multiple**" is a multiple, calculated on the same percentage basis as applies to calculation of the Member's Superannuation Scheme Multiple under clause 21.4, but only for the period from the day after the date of Ceasing Employment to the date the Member would have attained the Insured Age (both dates inclusive).
- (f) However, for a Pre-change Member, the benefit under this clause 20.4 must not be less than the benefit which would have been payable to that Member if the Articles had remained in force up to the date on which the Member Ceased Employment.

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- (g) Also, this clause 20.4 is subject to other clauses in this Deed prescribing requirements for or limits on the payment of the benefit.

## **20.5 Defined Benefit - Failure of Health**

- (a) The Trustee must pay a benefit to a Defined Benefit Member who Ceases Employment before reaching age 55 by reason of Failure of Health.
- (b) The benefit consists of two components being:-
- (i) a Defined Benefit component being the amount of the Member's Accrued Retirement Benefit at the Cessation Date, calculated after multiplying the Member's Accrued Benefit Multiple by the Age Discount Factor; and
  - (ii) an accumulation component being the balance of the Member's accumulation account.
- (c) However, this clause 20.5 is subject to other clauses in this Deed prescribing requirements for or limits on the payment of the benefit.

## **20.6 Defined Benefit - Death of Member**

- (a) The Trustee must pay a benefit on the death of a Defined Benefit Member.
- (b) The benefit under this clause 20.6 must be calculated in the same manner as the benefit that would have been paid if the Member had retired on account of Total and Permanent Disablement on the date of death.

## **20.7 Defined Benefit - Terminal illness**

- (a) The Trustee must pay a benefit to a Member who is suffering from a Terminal Medical Condition.
- (b) The benefit is equal to the benefit which would be paid to the Member if the Member had Ceased Employment due to Total and Permanent Disablement.

## **20.8 Defined Benefit – Disability Pension**

- (a) The Trustee must pay a Disability Pension to a Defined Benefit Member who:-
- (i) has not attained the Insured Age; and
  - (ii) is suffering Total and Temporary Disablement.
- (b) The annual amount of the Disability Pension is the product of:-
- (i) twelve and one half per centum (12½%); and

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- (ii) the amount which would have been payable to the Member under clause 20.4(c)(i) if the Member had retired on account of Total and Permanent Disablement on the date on which the pension first becomes payable.
- (c) However, this clause 20.8 is subject to other clauses in this Deed prescribing requirements for or limits on the payment of the benefit.

## **20.9 Defined Benefit - Resignation and dismissal**

- (a) The Trustee must pay a benefit to a Defined Benefit Member who:-
  - (i) Ceases Employment with any LG Employer; and
  - (ii) is not entitled to payment of a benefit under another clause.
- (b) The benefit under this clause is the sum of:-
  - (i) the greater of:-
    - (A) the Member's minimum vested benefit; and
    - (B) the Member's Reserve; and
  - (ii) the supplementary resignation benefit; and
  - (iii) the balance of the Member's accumulation account.
- (c) In addition to the amounts under clause 20.9(b), but only for a Defined Benefit Member who was a Member of the Former LG Super on 30 June 1992, the lump sum benefit also includes the amount of the Member's Accrued Retirement Benefit but with:-
  - (i) the calculation being based on:-
    - (A) the Member's age and Final Average Salary on the Cessation Date; and
    - (B) the Member's period of Superannuation Scheme Membership to 30 June 1992; and
  - (ii) the Member's Accrued Benefit Multiple being multiplied by the Age Discount Factor; and
  - (iii) the Member's Prior Scheme Accumulation and the Member's Superannuation Scheme Accumulation being, for the purposes of the calculation, the amounts of those accumulations as at 30 June 1992 together with Compound Interest at the Accumulation Comparison Rate from 1 July 1992 to the Cessation Date.
- (d) In this clause, "**minimum vested benefit**" means the amount of:-
  - (i) Award Contributions and/or SG Contributions made in respect of the Member while the Member was a *permanent employee*; and

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(ii) Member Contributions,

made during the period of Superannuation Scheme Membership from 1 July 1992 to the Cessation Date, less tax (if any) debited in the manner specified in clause 11.3 and less an appropriate allowance for the cost of insurance provided to the Member, with Compound Interest at the Accumulation Comparison Rate.

For the purposes of this definition, “**Member Contributions**” includes an amount paid by a LG Employer under a salary sacrifice arrangement mentioned in clause 19.2 in substitution for contributions by the Member.

(e) In this clause, “**supplementary resignation benefit**” means the difference between:-

- (i) the Member’s minimum vested benefit; and
- (ii) the amount that would be the Member’s minimum vested benefit if it were calculated using the Supplemental Rate (rather than the Accumulation Comparison Rate).

(f) Earnings rate for minimum vested benefits:

- (i) This clause 20.9(f) applies if, in order to comply with Superannuation Law, it is necessary to use an earnings rate (the “**SIS-required rate**”) higher than the Accumulation Comparison Rate for calculating the minimum vested benefit <sup>22</sup>.
- (ii) If this clause 20.9(f) applies, the minimum vested benefit must be calculated using the SIS-required rate.
- (iii) Also, if this clause 20.9(f) applies, the Trustee must calculate an amount equal to the sum of the Member’s:-
  - (A) Prior Scheme Accumulation (if any); and
  - (B) Superannuation Scheme Accumulation as at 30 June 1992,but using the SIS-required rate, rather than the Accumulation Comparison Rate, for the calculation of Compound Interest. <sup>23</sup>
- (iv) The total benefit calculated under clause 20.9(f)(iii) is the Member’s “**Minimum Requisite Benefit**”.
- (v) If the Member’s Minimum Requisite Benefit is greater than the sum of the amounts otherwise calculated under clauses 20.9(b)(i) and 20.9(c), the Member must be paid the Minimum Requisite Benefit instead of those amounts.

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<sup>22</sup> The circumstance specifically contemplated by clause 20.9(f) is one where the rate of “investment earnings” mandated by applicable benefit standards in Superannuation Law is higher than the Accumulation Comparison Rate. This explanatory footnote does not limit the operation of clause 20.9(f) according to its terms.

<sup>23</sup> Ordinarily, the calculations of these amounts include Compound Interest at the Accumulation Comparison Rate – see definitions in clauses 21.1 and 32.

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#### **20.10 Defined Benefit - former *permanent employees* who remain as casuals**

Where a Defined Benefit Member:-

- (a) ceases to be a *permanent employee*; but
- (b) nevertheless remains in employment by an LG Employer on a casual basis,  
the Member becomes an Accumulation Benefit Member on the date that the Member ceases to be a *permanent employee*, and the Trustee must:-
- (c) calculate a benefit for the Member under this clause 20 as though the Member had Ceased Employment on the date the Member ceases to be a *permanent employee*; and
- (d) credit the amount so calculated to the Member's accumulation account.

#### **20.11 Defined Benefit - Requirements for payment of cessation benefits**

A benefit payable upon Ceasing Employment:-

- (a) subject to clause 20.11(c), may be paid in one or more lump sums;
- (b) where the benefit relates to retirement, may be paid, in whole or in part, after the Member's retirement date;
- (c) must be paid in full no later than the mandatory benefit payment age (if any) specified in Superannuation Law; and
- (d) must be preserved to the extent (if any) and for the period (if any) required by Superannuation Law.

#### **20.12 Defined Benefit - Disability established after retirement**

- (a) Payment of a benefit under clause 20.9 does not prevent a Defined Benefit Member from subsequently claiming a Total and Permanent Disablement benefit to which that person is subsequently shown to be entitled, but:-
  - (i) the benefit paid under clause 20.9 must be taken into account at the time of payment of the other benefit so that the Member receives no additional payment by reason of having initially claimed a benefit under clause 20.9 (as compared to the situation if the Member had not initially claimed a benefit under clause 20.9); and
  - (ii) for the purpose of calculating interest on the other benefit, the payment of a benefit under clause 20.9 is deemed to have been a part payment of the other benefit; and
  - (iii) where the Trustee has external insurance for the benefit, the total Insurance Benefit payable must not in any event exceed the amount for which the Trustee is indemnified, or which the Trustee is paid, by an external insurer for the benefit.

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- (b) Clause 20.12(a) does not permit a benefit to be paid in respect of the death of a Member where the Member dies after Ceasing Employment with any LG Employer.

#### **20.13 Defined Benefit - Members continuing in employment after age 65 and requesting benefit**

- (a) A Member who has attained age 65 but has not Ceased Employment with the Member's LG Employer must (on request by the Member) be paid the benefit under clause 20.2 or clause 20.3, as the case requires, calculated up to the date on which the Member's request is received by the Trustee (the "**Benefit Date**") as though the Benefit Date were the date of retirement.
- (b) Any contributions which are paid in respect of that Member after the Benefit Date must be credited to the Member's accumulation account, and the balance the accumulation account must be paid to the Member on the Member's Cessation Date.

#### **20.14 Defined Benefit - Disability determinations of no effect unless employment terminated**

A determination by the Trustee that a Member has suffered Total and Permanent Disablement or Failure of Health has no effect, and no benefit is payable in respect of either of those matters, if the Member does not permanently Cease Employment with any LG Employer within:-

- (a) 30 days of the determination; or
- (b) such other maximum time period as the Trustee notifies Members from time to time as necessary to be met in order for the Trustee to be indemnified for the claim by an external insurer.

#### **20.15 Defined Benefit - Disability Pensions**

The Trustee may make determinations about:-

- (a) the time when payment of a Disability Pension commences and ends;
- (b) the total amount or amounts payable as a Disability Pension; and
- (c) the payment of partial Disability Pension to a Member who is undertaking limited, restricted or different duties during a period of recovery,

on terms which are consistent with the terms and conditions of the Trustee's indemnity or payment for the Member from an external insurer for the Disability Pension, and which limit the amount for which the Trustee is liable to the amount for which it is indemnified or entitled to payment.

#### **20.16 Disability Pensioner to submit to medical examination etc.**

- (a) The Trustee may, by notice in writing to a Disability Pensioner, require him or her:-
- (i) to submit himself or herself for medical examination by a registered medical practitioner at a time and place specified in the notice; or

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- (ii) to furnish in writing to the Trustee, within such period as is specified in the notice, such information as is required by the notice with respect to any employment (whether as an Employee or on his or her own account) in which the Member has been engaged during such period as is specified in the notice.
- (b) Where a Member fails to comply with a notice given under this clause and does not satisfy the Trustee that there was reasonable excuse for the failure, the Trustee may in its discretion suspend the Member's pension.
- (c) However:-
  - (i) the Trustee may exercise the Trustee's powers under this clause 20.16 only when necessary in order for the Trustee to be or continued to be indemnified or paid by an external insurer for the Disability Pension; and
  - (ii) the cost of any medical examination carried out for the purposes of this clause 20.16, if not paid by an external insurer, must be paid by the Trustee.

## **20.17 Medical examinations generally**

- (a) If required by the Trustee for any other purpose of this Deed relating to Insurance Benefits, an Insured Member must undergo a medical examination by a registered medical practitioner specified by the Trustee at a time and place specified by the Trustee.
- (b) After receipt of a report prepared following an examination under clause 20.17(a), the Trustee may in the Trustee's discretion:-
  - (i) require a Member to undergo further medical examinations or tests, including examinations by specialist medical practitioners; or
  - (ii) require further statements from the Member or reports from medical practitioners he or she has consulted.
- (c) Where an Insured Member fails to undergo any medical examination, or provide statements reports or information required under clauses 20.17(a) or 20.17(b) within the time specified by the Trustee, then the Trustee is not liable to pay any claim for Insurance Benefits by that Member, unless the Trustee is nevertheless indemnified for the claim, or paid for the claim, by an external insurer for the claim, and then only to the extent of that indemnity or payment.
- (d) However:-
  - (i) the Trustee may exercise the Trustee's powers under this clause 20.17 only when necessary in order for the Trustee to be or continued to be indemnified or paid by an external insurer for the Insurance Benefit; and
  - (ii) the cost of any medical examination carried out for the purposes of this clause 20.17, if not paid by an external insurer, must be paid by the Trustee.



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## **21. DEFINITIONS AND INTERPRETATION FOR CHAPTER 3**

### **21.1 Defined terms for Chapter 3**

In this Chapter 3, except where a contrary intention appears (and except in the recitals):-

**“Accrued Benefit Multiple”** means in relation to a Member at any particular date the sum of:-

- (a) the Member’s Superannuation Scheme Multiple; and
- (b) the Member’s Prior Scheme Multiple.

**“Accrued Retirement Benefit”** means in relation to a Member at any particular date the greater of:-

- (a) the product of the Member’s Accrued Benefit Multiple and the Member’s Final Average Salary,
- (b) the Member’s Minimum Retirement Benefit; and
- (c) the Member’s Minimum Requisite Benefit,

**plus** (whichever of the above applies):-

- (d) the Supplementary Benefit (if any).

**“Age Discount Factor”** means the factor applicable to a person at the Cessation Date, calculated by:-

- (a) selecting from Table 1 the factor set opposite the Member’s age in full years at the Cessation Date; and
- (b) adjusting the factor to 4 decimal places to include the fraction of a full year of the Member’s age that has passed between the Member’s last birthday and the Cessation Date.

**“Articles”** means the Articles of the Former LG Super Scheme made under the *Local Government Superannuation Act 1985*.

**“Ceases Employment”**<sup>24</sup>: A Defined Benefit Member **“Ceases Employment”** for the purposes of this Chapter 3 only where the Member ceases to be employed by any LG Employer and:-

- (a) there follows a period of not less than 60 successive days during which the Member is not employed by any LG Employer and is not in the position of having accepted an offer of employment by any LG Employer; or

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<sup>24</sup> For an Accumulation Benefit Member, “ceases employment” has its ordinary meaning. The definition preserves continuity of service (ie period of “Superannuation Scheme Membership”) in certain circumstances for Defined Benefit Members only.

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- (b) the Trustee is otherwise satisfied that the Member has ceased to be employed by any LG Employer, and has no intention of taking up employment with any LG Employer.

However, paragraph (a) does not apply to a Member who has notified the Trustee, before expiry of the period referred to in paragraph (a) that he or she is seeking employment with an LG Employer. A person who gives such notice **“Ceases Employment”** only when:-

- (c) the Trustee determines that a reasonable time has elapsed since the Member ceased employment with any LG Employer; or
- (i) the Trustee notifies the Member that he or she will be treated as having ceased employment for the purposes of this Deed at the expiration of a further period (not less than 30 days) specified in the notice; and
- (ii) at the expiration of the period so specified, the Member is not employed, and is not in the position of having accepted an offer of employment by a LG Employer.

**“Cessation Date”** means the date on which a person Ceases Employment with any LG Employer or LG Employers.

**“Failure of Health”** means injury or illness of a Defined Benefit Member which in the opinion of the Trustee:-

- (a) permanently incapacitates a Member from carrying out his or her ordinary work with his or her LG Employer, or any reasonably available and suitable alternative work with the LG Employer; but
- (b) does not constitute Total and Permanent Disablement.

**“Final Average Salary”** has the meaning given by clause 21.2.

**“Insured Age”** means:-

- (a) where the Trustee is externally insured, the age at which Insurance Benefits cease to be payable under the relevant policy;
- (b) otherwise:-
- (i) for an Accumulation Benefit Member who was eligible to make an election under the Former LG Super Deed to increase their Insured Age<sup>25</sup>, but did not make the election - 55 years;
- (ii) for any other Accumulation Benefit Member - 60 years; and
- (iii) for a Defined Benefit Member - 60 years.

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<sup>25</sup> Most, though not all, persons who became Insured Members under the former LG Scheme between 1 July 1995 and 30 June 2002 had an Insured Age of 55. If these Members were Accumulation Benefit Members, they had an election under the former deed to have an Insured Age of 60 from 1 July 2002. That election had to be made by 30 June 2002.

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**“Member”** means a Chapter 3 Member.

**“Minimum Requisite Benefit”** – see clause 20.9(f).

**“Minimum Retirement Benefit”** means in relation to a Defined Benefit Member at any particular date:-

(a) the greater of:-

- (i) the product of the Member’s Superannuation Scheme Multiple and the Member’s Final Average Salary; and
- (ii) the amount equal to the Member’s Superannuation Scheme Accumulation;

**plus** (for a Prior Scheme Member):-

(b) the greater of:-

- (i) the product of the Member’s Prior Scheme Multiple and the Member’s Final Average Salary; and
- (ii) the amount equal to the Member’s Prior Scheme Accumulation.

**“Non-Permanent Employee”** means a Member who is not a *permanent employee*.

**“Pre-change Member”** means a Member who last became a Member of the Former LG Super Scheme on or before 30 June 1989.

**“Prior-Scheme Accumulation”** means in relation to a Prior Scheme Member at any particular date the sum of:-

- (a) the Member’s transfer value, with Compound Interest from 1 January 1986 at the Accumulation Comparison Rate; and
- (b) the Member’s Provident Fund Entitlement with Compound Interest from 1 January 1986 at the Accumulation Comparison Rate.

**“Prior Scheme”** means the scheme established and maintained under the *Local Government Superannuation Act 1964*.

**“Prior Scheme Death Cover”** means, in relation to a prior scheme Member, the sum of:-

- (a) the amount calculated under the prior scheme of the Member’s sum assured and bonuses if any; and
- (b) the Member’s Provident Fund Entitlement together with Compound Interest at the Accumulation Comparison Rate to the Cessation Date.

**“Prior Scheme Member”** means a Member who was a Member of the Prior Scheme.

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**“Prior Scheme Multiple”** means the multiple applying to periods of membership before 1 January 1986 as calculated according to the Articles.

**“Projected Final Average Salary”** means a Member’s Final Average Salary at the Insured Age calculated on the basis that:-

- (a) he or she continues in employment with an LG Employer until he or she attains the Insured Age; and
- (b) the Member’s Salary remains unaltered.

**“Provident Fund Entitlement”** means, in respect of a prior scheme Member, the amount standing to his or her credit paid into the Former LG Super Scheme by the Trustee as at 1 January 1986 from the Local Government (Employees) Provident Fund established and maintained under the Prior Scheme.

**“Reserve”**, in relation to a Defined Benefit Member, means the amount calculated using the formula -

**MRSSM x FAS x F;**

in which, at the Cessation Date -

**“MRSSM”** is the Member’s Reserve Superannuation Scheme Multiple;

**“FAS”** is the Member’s Final Average Salary;

**“F”** is the Age Discount Factor.

**“Reserve Superannuation Scheme Multiple”** has the meaning given by clause 21.3.

**“Salary”**: In relation to a *permanent employee*:

- (1) who is a Defined Benefit Member; or
- (2) who is an Accumulation Benefit Member, in respect of a period before the Salary Conversion Date,

**“Salary”** means the payment (whether called salary or wages) made by the LG Employer to the Member in respect of his or her employment by way of fixed remuneration including:-

- (a) any allowance that is a permanent addition to that payment;
- (b) any non-cash entitlement which is part of a packaging arrangement and which may, at the election of the Employee, be taken in cash; and
- (c) an amount which is the subject of a salary sacrifice arrangement referred to in clause 19.2,

and does not include:-

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- (d) an amount paid for or during Parental Leave;
- (e) an amount paid as a lump sum in lieu of any form of leave accrued but not taken, whether paid on termination of employment or paid at some other time;
- (f) an amount excluded from Salary under clause 19.8(c)<sup>26</sup>;
- (g) the value of contributions made by employers as prescribed by the LGAct for which the LG Employer is not entitled to be reimbursed by the Member under the LGAct;
- (h) the value of contributions made by LG Employers for Non-Permanent Employees to avoid liability for the Superannuation Guarantee Charge;
- (i) an amount paid by an LG Employer for the Superannuation Guarantee Charge;
- (j) any additional remuneration paid while acting in a higher classification;
- (k) overtime, bonuses, or any allowance paid to the Member from time to time which is not a permanent addition to the fixed remuneration applicable to his or her classification.

**“Salary”:** In relation to a *permanent employee* who is an Accumulation Benefit Member, in respect of a period on and after the Salary Conversion Date, has the meaning given in the LG Regulation.

The following additional provisions apply to the determination of **“Salary”** at particular dates or in particular events:-

- (l) where a Defined Benefit Member is on absence with leave (other than Parental Leave) for a period not exceeding 4 weeks (so that contributions continue in respect of the Member<sup>27</sup>), the Member’s Salary is the amount he or she would have been paid if at work during the period of leave;
- (m) where a Member is otherwise absent and contributions for that Member are suspended:-
  - (i) the Member’s Salary for the purpose of calculating contributions upon the Member resuming work; and
  - (ii) the Member’s Salary for the purpose of determining any benefit payable if the Member does not return to work,are in both cases the amount of his or her Salary as at the last day in respect of which contributions were paid in respect of the Member;
- (n) Where a Member is absent due to illness or injury and is receiving compensation under the WCR Act (but is not receiving a Disability Pension from the Scheme), the Member’s

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<sup>26</sup> Clause 19.8 deals with purported Salary changes which are changes in the form of entitlement which do not in fact change overall Salary and entitlements in substance.

<sup>27</sup> See clause 19.5.

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Salary for the purpose of calculating contributions is the amount he or she would have been paid if at work during the period of leave;

- (o) Where a Defined Benefit Member has elected, under section 222(3) of the LGAct and following a Salary decrease, to continue to have the Member's contributions calculated and paid on the basis of the Member's Salary before the decrease, the Member's Salary for the purpose of calculating contributions and Defined Benefits is taken to be the amount upon which contributions are calculated and paid.

**"Superannuation Scheme Accumulation"** has the meaning given by clause 21.3.

**"Superannuation Scheme Membership"** means in relation to a Member, and subject to clause 19.5, the most recent uninterrupted period during which contributions (not being solely Award Contributions or solely SG Contributions) have been paid in respect of the Member under the LGAct or a corresponding previous Act. For the purpose of this definition, and for a Defined Benefit Member, a period during which contributions are not paid solely because the Member is receiving a Disability Pension must be disregarded, and does not create a break in the continuity of Superannuation Scheme Membership.

**"Superannuation Scheme Multiple"** has the meaning given by clause 21.4.

**"Supplementary Benefit"**, for a Defined Benefit Member, means the difference between:-

- (a) the Member's Superannuation Scheme Accumulation; and
- (b) the amount that would be the Member's Superannuation Scheme Accumulation if it were calculated using the Supplemental Rate (rather than the Accumulation Comparison Rate)

**plus** (for a Prior Scheme Member) the difference between:-

- (c) the Member's Prior Scheme Accumulation; and
- (d) the amount that would be the Member's Prior Scheme Accumulation if it were calculated using the Supplemental Rate (rather than the Accumulation Comparison Rate)

**"Supplemental Rate"**, for any financial year, means the sum of:-

- (a) the Accumulation Comparison Rate; and
- (b) the rate (if any) determined by the Trustee from time to time as that part of the net investment return rates determined by the Trustee for the financial year attributable to supplementation of the net investment return to Members based upon utilisation of available reserves or other sources apart from direct investment returns.

## **21.2 Meaning of "Final Average Salary"**

- (a) Subject to clauses 21.2(d) and 21.2(e), *"Final Average Salary"* is a Member's time weighted average annual Salary during the period of 1 year ending on the Cessation Date (the **"calculation period"**).

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- (b) If Salary changed during the calculation period, Final Average Salary is calculated on the basis that the Member's Salary accrued and was paid daily at the rates applying:-
  - (i) at the start of the calculation period until the day before the first change; and
  - (ii) from date of each change until the day before the next change; and
  - (iii) from the date of the last change until the Cessation Date.
- (c) Subject to clauses 21.2(d) and 21.2(e), if a Member has been a *permanent employee* for less than 1 year, "Final Average Salary" is the Member's Salary calculated under clauses 21.2(a) and 21.2(b), over the period that the Member was a *permanent employee*, extrapolated pro rata over a period of 1 year.
- (d) Subject to clause 21.2(e), a Member's Final Average Salary must not, unless otherwise determined by the Trustee after consideration of advice from the Member's Employer explain the reasons for any marked escalation in Salary payable for the year ending on the Cessation Date as compared to previous Salary, exceed 120% of the Member's Salary 3 years before the Cessation Date.
- (e) In any event, for a Prior Scheme Member, a Member's Final Average Salary must not be less than the Member's Final Average Salary as defined by the Articles as in force before 7 April 1990.

### **21.3 Meaning of "Superannuation Scheme Accumulation"**

**"Superannuation Scheme Accumulation"** is, on a given date, the sum of:-

- (a) twice the amount of Member Contributions paid to the Scheme during the Member's Superannuation Scheme Membership from 1 January 1986 to 30 June 1988;
- (b) twice the amount of Member Contributions paid to the Scheme during the Member's Superannuation Scheme Membership from 1 July 1988 to the Cessation Date less any tax (calculated in accordance with clause 11.3) that would have been paid by the Trustee on the Member Contributions had they been contributed to the Scheme by the LG Employer from 1 July 1988 to the Cessation Date;
- (c) 5% of the total of the Member's Salary during the Member's Superannuation Scheme Membership from 1 July 1992 to the Cessation Date less any tax (calculated in accordance with clause 11.3) that would have been paid by the Trustee on that amount had it been contributed to the Scheme by the LG Employer from 1 July 1992 to the Cessation Date; and
- (d) Award Contributions paid to the Scheme by the LG Employer for a period before 1 July 1992 during which the Member was a *permanent employee* less any tax (calculated in accordance with clause 11.3) payable by the Trustee on that amount had it been contributed to the Scheme by the LG Employer before 1 July 1992,

all with Compound Interest at the Accumulation Comparison Rate (calculated on the assumption, where the amounts do not represent contributions actually made, that the amounts were received

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at the same time and covering the same periods as the contributions actually paid for the Member pursuant to the LGAct or a corresponding previous Act).

For the purposes of this clause, “**Member Contributions**” includes an amount paid by a LG Employer under a salary sacrifice arrangement mentioned in clause 19.2 in substitution for contributions by the Member.

#### **21.4 Meaning of “Superannuation Scheme Multiple”**

- (a) “**Superannuation Scheme Multiple**” in relation to a *standard permanent employee* (other than one mentioned in clause 21.4(c)) is 18% for each complete year of the Member’s Superannuation Scheme Membership from 1 January 1986 before the Member attains age 70 and pro rata for each additional complete day in that period.
- (b) “**Superannuation Scheme Multiple**” in relation to a *special permanent employee* is 15.75% for each complete year of the Member’s Superannuation Scheme Membership from 1 January 1986 before the Member attains age 70 and pro rata for each additional complete day in that period.
- (c) “**Superannuation Scheme Multiple**” in relation to a Member who -
  - (i) made an election under section 39(2) of the *Local Government Superannuation Act 1985*; and
  - (ii) made a further election under section 38B of that Act, is:-
  - (iii) 15.75% for each complete year of the Member’s Superannuation Scheme Membership from 1 January 1986 to 30 June 1992 and pro rata for each additional complete day in that period;
  - (iv) 18% for each complete year of the Member’s Superannuation Scheme Membership from 1 July 1992 before the Member attains age 70 and pro rata for each additional complete day in that period.

#### **21.5 Meaning of “Reserve Superannuation Scheme Multiple”**

- (a) A Member’s “**Reserve Superannuation Scheme Multiple**” in relation to a *standard permanent employee* is 18% for each complete year of the Member’s Superannuation Scheme Membership from 1 July 1992 before the Member attains age 70 and pro rata for each additional complete day in that period;
- (b) A Member’s “**Reserve Superannuation Scheme Multiple**” in relation to a *special permanent employee* is 15.75% for each complete year of the Member’s Superannuation Scheme Membership from 1 July 1992 before the Member attains age 70 and pro rata for each additional complete day in that period.

#### **21.6 Special arrangements for part-time Employees**

- (a) To the extent not specifically dealt with in clauses 19 and 20, the Trustee is to determine special terms and conditions in respect of benefits relating to any period when a Member is employed in other than a full-time capacity.



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- (b) The terms and conditions must achieve the result that, as nearly as is practicable, the benefits payable bear the same proportion to the benefits which would have been payable to the Member if he or she was in full time employment as the contributions paid by or in respect of the Member bear to the contributions which would have been paid if the Member was in full time employment.

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## **CHAPTER 4 -CONTRIBUTION AND BENEFIT PROVISIONS FOR CITY SUPER MEMBERS**

### **22. APPLICATION OF CHAPTER 4**

#### **22.1 Application to City Super Members**

This Chapter 4 applies only to Members:

- (a) who are Employees of CS Employers; or
- (b) were Councillors' Fund Pensioners under City Super immediately before the CS Merger Date, and their eligible Spouses.

#### **22.2 Definition of Chapter 4 Members**

The Members to whom this Chapter 4 applies are referred to in other Chapters of this Deed as **"Chapter 4 Members"**.

### **23. CITY SUPER DEFINED BENEFITS PLAN**

#### **23.1 Eligibility for City Super Defined Benefits Pan**

Membership of the Defined Benefits plan is restricted to Members who were entitled to Defined Benefits under City Super immediately before the CS Merger Date.

#### **23.2 Restriction on further eligibility for City Super Defined Benefits Pan**

No other person is eligible to become a Defined Benefit Member without the consent of Brisbane City Council and the Trustee.

#### **23.3 Defined Benefits - CS Employer contributions**

- (a) A CS Employer must contribute to the Scheme for that CS Employer's Employees who are Defined Benefit Members such contributions from time to time as are specified by the Trustee as necessary to fund the Defined Benefits which are or may become payable for those Members.
- (b) The Trustee may make arrangements with CS Employers for payment of contributions by instalments or otherwise.
- (c) Brisbane City Council must also contribute to the Scheme such contributions from time to time as are specified by the Trustee as necessary to fund the benefits which are or may become payable for councillors' fund pensioners.

#### **23.4 Defined Benefits - Basic Member Contributions**

- (a) Each Defined Benefit Member must contribute to the Scheme, by equal fortnightly instalments unless the Trustee determines otherwise, 5% of the Member's Annual Salary, as the Member's "basic contributions", until the Member attains age 70.

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- (b) The CS Employer must deduct the basic contributions from the Member's Salary.

### **23.5 Defined Benefits - Temporary absence from Employment**

- (a) A Member on temporary leave of absence from Employment without Salary may elect to continue the Member's basic contributions or to suspend the Member's basic contributions.
- (b) If the Member continues the Member's basic contributions, and also pays the amount of the CS Employer's contributions for the period of leave, the period of leave is included in the Member's Completed Membership.
- (c) If the Member does not continue the Member's basic contributions, and pay the amount of the CS Employer's contributions for the period of leave, the period of leave is not included in the Member's Completed Membership.
- (d) If the Member makes contributions of an amount which is less than the Member's basic contributions and the CS Employer's contributions for the period of leave:-
- (i) the period is not included in the Member's period of Completed Membership; and
- (ii) the contributions are treated as additional contributions, and credited to the Member's accumulation account.
- (e) In this clause, the "**CS Employer's contributions**" are the percentage of the Member's Annual Salary which is the same as the percentage of the Annual Salaries of the Employees that the CS Employer is currently required to contribute under clause 23.3 to fund Defined Benefits, applied pro rata to the period of leave.

### **23.6 Defined Benefits - Additional contributions**

A Member may with the consent of the Trustee make contributions in addition to the basic contributions.

### **23.7 Defined Benefits - Trustee may excuse contributions**

The Trustee may at the request of a CS Employer excuse a Member from making basic contributions, for a period determined by the Trustee on the advice of an Actuary, in which case the Trustee must determine any or a combination of the following having regard to the arrangement proposed by the CS Employer and the Actuary's advice:-

- (a) that the benefits and contributions in respect of the Member are to be adjusted;
- (b) that the Member's benefits are to be calculated as if the Member had made the basic contributions;
- (c) that the CS Employer must contribute an amount equivalent to the Member's basic contributions.

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### **23.8 Additional Employer contributions for Defined Benefit Members**

A CS Employer must contribute to the Scheme for each Defined Benefit Member employed by that CS Employer at the rate of 3% of Salary, those contributions to be allocated to the Member's accumulation account.

### **23.9 Additional voluntary benefits for Defined Benefit Members**

A CS Employer may direct the Trustee to provide benefits for any Member employed by that CS Employer, in addition to the Defined Benefits provided under this Part 2, where the CS Employer agrees to make such additional contributions (if any) as may be required to fund those additional benefits.

### **23.10 CS Employer funding of Defined Benefits during maternity leave**

- (a) Where a Member:-
  - (i) at the direction of the Member's CS Employer, remains temporarily absent from Employment on maternity leave for a period in excess of 6 weeks; and
  - (ii) continues to pay the Member's basic contributions for the excess period,

the excess period is included in her years of Completed Membership up to a maximum period determined under clause 23.10(b).
- (b) The maximum period is 6 weeks unless the CS Employer notifies the Trustee that a longer maximum period applies.

### **23.11 Accumulation account for Defined Benefit Members**

- (a) The Trustee must keep an accumulation account for each Defined Benefit Member, and may divide the accumulation account into sub-accounts or notional sub-accounts.
- (b) The Trustee must credit to the Member's accumulation account:-
  - (i) additional contributions by the Member;
  - (ii) contributions by the CS Employer under clause 23.8;
  - (iii) additional contributions by the CS Employer under clause 23.9;
  - (iv) any contributions made for the benefit of the Member by any other person;
  - (v) any amounts transferred from another Superannuation Entity, or debited from another Member's benefit, for allocation to the Member.

### **23.12 Payment of surplus from contributions to BCC or other CS Employer**

The Trustee may make a payment from the CS Defined Benefits Fund to Brisbane City Council (or, at the direction of the Council, to another CS Employer of Defined Benefit Members) where:-

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- (a) the amount of the payment is no greater than the amount by which the value of the CS Defined Benefits Fund at the time of payment exceeds the amount necessary to provide for the benefit entitlements of all Defined Benefit Members accrued at that time; and
- (b) any requirements of Superannuation Law have been complied with.

### **23.13 Other application of CS Defined Benefits Fund**

- (a) Brisbane City Council may request the Trustee to allocate from the CS Defined Benefits Fund any or all of the contributions:-
  - (i) that a CS Employer is required to make for any Accumulation Benefit Members under clauses 25.8, 25.9 and 25.10;
  - (ii) that a CS Employer elects to make for any Accumulation Benefit Members, under clause 25.11;
  - (iii) that an Accumulation Benefit Member is required to make as basic contributions, or that the Member makes as selected contributions, under clause 25.3, where there is a salary sacrifice arrangement in place for those contributions under clause 25.7.
- (b) The Trustee may agree to the request, provided that:-
  - (i) the Actuary certifies that the CS Defined Benefits Fund is sufficient to fund the allocations; and
  - (ii) the Trustee is satisfied the allocations will not adversely affect funding of benefits for any other Members.
- (c) Where the Trustee agrees to the request:-
  - (i) the Trustee must allocate amounts for the credit of the accumulation accounts of those Members as if the CS Employer had made those contributions, and in full satisfaction of the CS Employer's obligation or election to make those contributions;
  - (ii) the amounts allocated will be determined by the Trustee, taking into account such adjustments as the Trustee on the advice of the Actuary considers appropriate (for example, adjustments for notional tax or Scheme Expenses that would have been deducted had the CS Employer made the contributions).

### **23.14 Defined Benefit - Entitlement to retirement benefits**

A retirement benefit is payable in respect of a Defined Benefit Member when:-

- (a) the Member retires, or otherwise ceases Employment:-
  - (i) on the Normal Retirement Date, or after the Normal Retirement Date up to age 70; or

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- (ii) within 10 years before the Normal Retirement Date;
- (b) the Member attains age 70 and requests payment of the benefit at that time.

### **23.15 Defined Benefit - Amount of retirement benefits**

The amount of a retirement benefit of a Defined Benefit Member is the sum of:-

- (a) 17.5% of the Member's Final Average Salary for the Member's period of Completed Membership; and
- (b) the balance of the Member's accumulation account.

### **23.16 Defined Benefit - Late retirement benefits**

If a Defined Benefit Member remains in Employment after age 70, a late retirement benefit is payable when the Member:-

- (a) retires; or
- (b) subsequently requests payment of the benefit.

### **23.17 Defined Benefit - Amount of late retirement benefits**

The amount of a late retirement benefit for a Defined Benefit Member is:

- (a) the amount calculated as the Member's retirement benefit on the date the Member attains age 70; and
- (b) any contributions made for the Member and any other amounts received for the credit of the Member after the Member attains age 70,

credited or debited with net investment returns determined under clause 7.3 allocated to those amounts from time to time.

### **23.18 Defined Benefit - death before Normal Retirement Date**

A benefit is payable on the death of a Defined Benefit Member before the Normal Retirement Date, of an amount calculated as the sum of:

- (a) 17.5% of the Member's Annual Salary at the date of death, multiplied by the Member's period of Completed Membership; and
- (b) the balance of the Member's accumulation account.

### **23.19 Defined Benefit - death after Normal Retirement Date**

A benefit is payable on the death of a Defined Benefit Member on or after the Normal Retirement Date, of an amount calculated as if the Member had retired on the date of death.

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#### **23.20 Defined Benefit Total and Permanent Disablement**

- (a) A benefit is payable if, before the Normal Retirement Date, a Defined Benefit Member becomes Totally and Permanently Disabled, as a result of which the Member ceases to be in Employment.
- (b) The amount of a Total and Permanent Disablement benefit is the sum of:-
  - (i) 17.5% of the Member's Final Average Salary at the Date of Disablement, multiplied by the Member's period of Completed Membership; and
  - (ii) the balance of the Member's accumulation account.

#### **23.21 Defined Benefit - Terminal illness**

- (a) The Trustee may pay a benefit to a Defined Benefit Member who is suffering from a Terminal Medical Condition.
- (b) The benefit is equal to the benefit which would be paid in respect of the death of the Member on the date on which the benefit is payable.

#### **23.22 Defined Benefit - Temporary Disablement**

- (a) A benefit is payable if, before the Normal Retirement Date, the Defined Benefit Member becomes Temporarily Disabled, where the Member is covered under a policy of insurance which provides a benefit on Temporary Disablement.
- (b) Where a benefit is payable on Temporary Disablement, the amount of and terms on which the benefit is paid will be in accordance with the policy of insurance pursuant to which the benefit is paid.

#### **23.23 Defined Benefit on other cessation of Employment**

A benefit is payable if a Defined Benefit Member ceases Employment and is not entitled to a benefit under any other clause, of an amount calculated in accordance with the following formula:

$$\text{EFB} + \text{MFB} + \text{PC}$$

where:

**EFB** = Employer Financed Benefit

**MFB** = Member Financed Benefit

**PC** = the balance of the Member's accumulation account.

#### **23.24 Defined Benefit - Minimum statutory benefit**

Notwithstanding any other provision of this Deed, the benefit payable in respect of a Defined Benefit Member must not be less than the amount determined by the Trustee on the advice of the

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Actuary which is the minimum benefit required to avoid the CS Employer being liable to pay Superannuation Guarantee Charge for any period of the Member's membership.

### **23.25 Death and TPD Defined Benefits for part-time Employees**

Where a benefit is payable on death or Total and Permanent Disablement of a part-time Employee, the Member's average working hours for the period:-

- (a) beginning on the most recent Annual Review Date, or the commencement of the Member's part-time Employment if the Member had not commenced part-time Employment on that Annual Review Date; and
- (b) ending on the date the benefit becomes payable or, if the Member was not at work on that date, the date on which the Member was last at work,

are deemed to continue for the Member's period of Completed Membership after that date.

### **23.26 Becoming a part-time Employee and going on leave**

A CS Employer must notify the Trustee when a Defined Benefit Member:

- (a) who was a full-time Employee, becomes a part-time Employee;
- (b) commences Parental Leave, leave without Salary or leave classified as a funded "midcareer break".

### **23.27 Defined Benefits for part-time Employees**

- (a) If a Defined Benefit Member becomes entitled to a benefit while a part-time Employee, other than where clause 23.28 applies, the following modifications apply in calculating the benefit:
  - (i) the Member's Annual Salary or Final Average Salary is determined as if the Member had been employed on a full-time basis;
  - (ii) the Member's Part-Time Multiple is used to calculate the benefit instead of the rate of 17.5%.
- (b) Where a part-time Employee who is not eligible for cover under a policy of insurance for Defined Benefit Members dies or becomes Totally and Permanently Disabled, the amount of the benefit for death or disability is limited to the benefit calculated as if the Member had retired on the date of death or Date of Disablement.

### **23.28 Death and TPD Defined Benefits on or after Parental Leave**

- (a) This clause applies in the calculation of benefits payable on death or Total and Permanent Disablement for a Defined Benefit Member who is:
  - (i) on Parental Leave; or



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- (ii) a part-time Employee after a period of Parental Leave,

and the aggregate period of Parental Leave and part-time Employment does not exceed 2 years or such other period as the Trustee approves generally or in a particular case.

- (b) If the Member dies or becomes Totally and Permanently Disabled, the following modifications apply in calculating the benefit:

- (i) the Member's Annual Salary or Final Average Salary is determined as if the Member had been Employed on a full-time basis;
- (ii) if the Member is a part-time Employee, the benefit must not be less than the benefit that would have been payable if the Member had died or become Totally and Permanently Disabled on the last Annual Review Date before the Member became a part-time Employee.

### **23.29 Recommencement to full-time Employment**

Where a part-time Employee recommences full-time Employment, the Employee becomes entitled to benefits calculated on the same basis as a full-time Member, with such adjustments to the benefits to take account of the period of part-time Employment as the Trustee determines on the advice of the Actuary.

### **23.30 Death and TPD Defined Benefits on unpaid leave**

- (a) If a Member while on leave of absence from Employment without Salary classified as a "mid-career break":-
  - (i) dies or becomes Totally and Permanently Disabled no later than 1 year after the beginning of the leave, the benefit is calculated as if the Member were not on leave (except that the Member's period of Completed Membership is determined as provided in clause 23.24);
  - (ii) dies or becomes Totally and Permanently Disabled 1 year or later after the beginning of the leave, the amount of the benefit is limited to the benefit calculated as if the Member had retired on the date of death or Date of Disablement.
- (b) If a Member while on leave of absence from Employment without Salary, other than Parental Leave or leave classified as a "mid-career break":-
  - (i) dies no later than 2 years after the beginning of the leave, or becomes Totally and Permanently Disabled no later than one year after the beginning of the leave, the benefit is calculated as if the Member were not on leave (except that the Member's period of Completed Membership is determined as provided in clause 23.5);
  - (ii) dies 2 years or more after the beginning of the leave, or becomes Totally and Permanently Disabled one year or more after the beginning of the leave, the amount of the benefit is limited to the benefit calculated as if the Member had retired on the date of death or Date of Disablement.

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- (c) Notwithstanding clauses 23.30(a) and 23.30(b):-
- (i) the benefit payable on death or Total and Permanent Disablement of a Member while on leave of absence from Employment without Salary is subject to the Trustee making arrangements with an external insurer for continuation of Insurance Benefits for the Member;
  - (ii) if no insurance cover is arranged, the benefit is limited to the benefit calculated as if the Member had retired on the date of death or Date of Disablement.

## **24. COUNCILLORS' PENSION BENEFITS**

### **24.1 Entitlement to benefits for Councillors' Fund pensioners**

- (a) This division replicates and continues the rules in the Former CS Deed applicable to Councillors' Fund pensioners.
- (b) No new Members can be admitted as Councillors' Fund pensioners.
- (c) The only persons entitled to benefits under this division are eligible councillors and eligible spouses.

### **24.2 No other benefits payable to Councillors' Fund pensioners**

A Councillors' Fund pensioner, in that capacity, has no rights or entitlements under the Scheme other than the right to a pension benefit under this clause 24.

### **24.3 Brisbane City Council must fund benefits for Councillors' Fund pensioners**

Brisbane City Council must contribute to the Scheme such contributions from time to time as are specified by the Trustee as necessary to fund the benefits payable under this clause 24.

### **24.4 Definitions for Councillors' pension benefits**

In this clause 24:-

**"basic rate"** in relation to a pension, means the rate at which the pension was payable when the pension commenced.

**"basic salary"** means the basic salary for councillors of Brisbane City Council, from time to time.

**"eligible councillor"** means a person who:-

- (a) held office as an alderman of the Brisbane City Council before 1 February 1988;
- (b) has ceased to hold office as an alderman of the Brisbane City Council; and
- (c) immediately before the CS Merger Date had an entitlement to a benefit from City Super under the Councillors' Fund pensioner rules in the Former CS Deed.

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**“eligible spouse”** means a person who was married to an eligible councillor at the time he or she ceased to hold office. To avoid doubt, this definition:-

- (a) includes a person who separates from or divorces an eligible councillor after he or she ceases to hold office;
- (b) does not include a person who becomes a spouse of an eligible councillor after he or she ceases to hold office.

**“index”** means the table described as the Consumer Price Index Numbers - All Groups, Brisbane that is published by the Commonwealth Statistician.

**“pay-period”** means the period with respect to which the fortnightly instalment of pension is payable.

**“salary”** of a councillor means the official salary which was payable to the councillor in that capacity.

**“year”** except in clause 24.15, means a year commencing on 1 October.

#### **24.5 Entitlement to Councillor’s pension benefit**

Subject to this clause 24, a person who served as a councillor:-

- (a) for an aggregate period of 11 years or more; or
- (b) for an aggregate period of 8 years or more and has obtained the age of 60 years; or
- (c) for an aggregate period of 8 years or more and ceased to hold office as a councillor as the result:-
  - (i) of defeat at an election; or
  - (ii) being a representative of a recognised political party, of not standing for re-election by reason that such party has not selected him or her to so stand; or
  - (iii) of resignation for, or of not seeking re-election owing to, good and sufficient reasons which satisfy the Trustee,

shall, on ceasing to hold office as a councillor and ceasing to be entitled to payment of salary, be entitled to be paid an annual pension at the rate ascertained in accordance with the formula

$$A \times \frac{B}{C} \text{ where:}$$

**A** is an amount calculated at the rate of 41.20% of the basic salary in force immediately before the time at which the eligible councillor ceased to hold office plus, in respect of each month of service as a councillor exceeding 8 years, 0.20% of the basic salary, but such amount shall not be at a rate greater than 70% of the basic salary.

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**B** is the total salary payable to that person in respect of the period of service of that person;

and

**C** is the total basic salary in respect of the period of service of that person.

#### **24.6 Councillor's length of service**

In computing the length of an eligible councillor's service for the purpose of determining the right to a pension, the following rules shall be observed:-

- (a) Every eligible councillor shall be deemed to commence service on and from the day for taking the poll appointed in the writ for the election at which he or she is elected.
- (b) Every eligible councillor continuing as such until the termination by effluxion of time of a Council of Brisbane City Council shall, notwithstanding the expiration thereof, be deemed to continue his or her service to and including the day next preceding the day for taking the polls named in writs for the triennial election of Members to serve in the next succeeding Council duly elected.
- (c) Every eligible councillor whose service in a Council of Brisbane City Council is terminated for any reason whatsoever before that Council has terminated by effluxion of time is deemed to serve until the date when his or her service is so terminated and no longer.

#### **24.7 Refund where Councillor's pension not paid**

Subject to this clause 24, a person who ceases to hold office as a councillor other than by reason of death, and who is not entitled to a pension under this clause 24, shall be entitled to have refunded the amounts deducted under this clause 24, or under corresponding provisions of the Former CS Deed or the Councillors' Fund rules, from his or her salary, together with simple interest at the rate of 3.5% to the date on which he or she ceased to hold office, less any amount previously refunded.

#### **24.8 Suspension of Councillor's pension where refund not paid**

Where any refund of contributions is or was made under clause 24.7 or a corresponding provision of the Former CS Deed or the Councillors' Fund rules, and where that councillor becomes entitled to a pension under clause 24.5, the payment of the pension or other benefit under this clause 24 shall, unless the amount of that refund of contributions is or has been paid into the Scheme, be suspended until such time as the aggregate of the pension or other benefit which would have been payable apart from this clause would, if so paid, equal the amount of the refund of contributions received by that Member.

#### **24.9 Right of Councillor to convert entitlement to lump sum entitlement**

- (a) Despite anything in this clause 24, an eligible councillor who is entitled to a pension under clause 24.5 and who is under the age of 75 years at the time of ceasing to hold office as a councillor may, within the period of 3 months after becoming entitled to receive a pension, elect by notice in writing served on the Trustee to convert the whole or any part of the

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pension entitlement to a lump sum payment determined in accordance with clause 24.9(b).

- (b) A lump sum payment under clause 24.9(a) shall be:
- (i) in the case of a person under the age of 66 years on the date on which he or she becomes entitled to the pension, the amount of the annual pension entitlement in respect of which the election is made, multiplied by 10;
  - (ii) in the case of a person who is 66 years or over on the date on which he or she becomes entitled to the pension, the amount of the annual pension entitlement in respect of which the election is made multiplied by 10 less half of the difference between the number of years of his age on that date and 65.
- (c) An eligible councillor who makes an election under clause 24.9(a) shall be entitled to receive a lump sum payment calculated under clause 24.9(b), and from the date of payment of that lump sum the annual pension entitlement of that eligible councillor shall be reduced by the amount of annual pension entitlement in respect of which the election was made.

#### **24.10 Entitlement of surviving spouse to pension**

On the death of a person receiving, or who if he or she had not converted the whole of a pension entitlement to a lump sum, would have been entitled to receive a pension under this clause 24, the eligible spouse of that person shall until death or remarriage be entitled to an annual pension at the rate of:

- (a) five-eighths of the pension that became payable to the eligible councillor or, if the eligible councillor had converted the whole or part of the pension entitlement to a lump sum payment, five-eighths of the pension that would have been payable to the eligible councillor under this clause 24 if the eligible councillor had not so converted the whole or part of the pension; or
- (b) 40% per annum of the basic salary at the time the eligible councillor ceased to hold office,
- (c) whichever is the greater.

#### **24.11 Refund of contributions for eligible spouse pension**

Where payment of a pension or other benefit to a person is suspended pursuant to clause 24.8, and the person's eligible spouse becomes entitled to a pension under this clause 24, the payment of the pension to the eligible spouse shall likewise be suspended for the period or the balance of the period (as the case requires) for which the pension or other benefit would have been suspended under clause 24.8, if the pension had been payable to the eligible councillor.

#### **24.12 Re-commencement of Councillor's pension on death of subsequent spouse**

Subject to clause 24.10, where an eligible spouse remarries and the subsequent spouse later dies, the eligible spouse shall be entitled to pension benefit at the same rate as he or she would be receiving had he or she not remarried, as from the date of the death of the subsequent spouse, until his or her death or further remarriage.

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#### **24.13 Pension through one Councillor only**

Clause 24.12 does not entitle an eligible spouse to derive a pension through more than one councillor, and where but for this clause he or she would be so entitled, he or she shall be deemed to derive their sole entitlement to pension through the person through whom he or she would derive the greatest entitlement to pension.

#### **24.14 Adjustment of Councillor's pensions**

- (a) The annual amount of a pension which first became payable under the Councillor's Fund rules before 27 March 1975 is not adjusted.
- (b) The Trustee must adjust the annual amount of a pension which first became payable under the Councillor's Fund rules on or after 27 March 1975 and before 1 July 1976 by increasing the annual amount by 3% from each 1 October.
- (c) The annual amount of a pension which first became payable under the Councillor's Fund rules on or after 1 July 1976 shall be adjusted in accordance with clause 24.15 to 24.23 (inclusive).

#### **24.15 Determination of Index percentage for Councillor's pension**

The Trustee shall, as soon as practicable after 30 June in each year, ascertain the percentage (expressed to a degree of accuracy of not more than one decimal place) by which the index for the quarter ended on that day is greater or less than the index for the same quarter in the immediately preceding year.

#### **24.16 Annual percentage adjustment for Councillor's pension**

Upon ascertaining the percentage referred to in clause 24.15, the Trustee shall:-

- (a) declare that amount as the percentage by which pensions shall be adjusted (whether by way of increase or decrease) in the year commencing on 1 October next after the quarter first mentioned in clause 24.15; or
- (b) if, by reason of the operation of clause 24.20, no adjustment is to be made in respect of that year, declare that pensions shall not be adjusted in respect of that year.

#### **24.17 Implementation of annual adjustment for Councillor's pension**

An adjustment of a pension in respect of any year shall be made:-

- (a) by increasing, or as the case may require by decreasing, the rate at which immediately before the making of the adjustment, the pension was payable by the percentage declared in respect of that year under clause 24.16; and
- (b) so as to operate from and including the commencement of the first pay period occurring in the month of October in that year.

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#### **24.18 Adjustment for new Councillor's pensions**

The following provisions apply to and in relation to the first adjustment of a pension pursuant to clause 24.17 if at the time when the adjustment is to be made, the pension has been in force for less than twelve months:-

- (a) in the case of a pension that comes into force after 1 September in any year, the first adjustment of that pension shall be made so as to operate from and including the commencement of the first pay period in the month of October in the second year after the year in which the pension comes into force;
- (b) in the case of a pension that comes into force on or before 1 September in any year, the first adjustment of that pension shall be made so as to operate from and including the commencement of the first pay period in the month of October immediately following that day; and
- (c) the annual amount by which a pension to which clause 24.18(b) applies is to be increased or decreased shall be calculated in accordance with the prescribed formula in clause 24.19.

#### **24.19 Prescribed formula for adjustment of new Councillor's pensions**

For the purposes of clause 24.18(c), the prescribed formula is the formula:

$$V = A \times \frac{M}{12}$$

Where:

**V** is the annual amount referred to in clause 24.18(c);

**A** is the amount by which, but for the operation of clause 24.18(c), the pension would have been increased or decreased; and

**M** is the number of whole months from the day on which the pension came into force until the following 30 September (both days inclusive).

#### **24.20 No adjustment of Councillor's pensions for fractional percentage**

Except as provided in clause 24.21, where the percentage ascertained by the Trustee pursuant to clause 24.15 in respect of any year is less than one, no adjustment of pensions shall be made in respect of that year.

#### **24.21 Fractional percentages in successive years**

Where each of the percentages ascertained by the Trustee pursuant clause 24.15 in respect of any two or more successive years is less than one but those percentages are in the aggregate, equal to, or greater than, one, (whether by way of increase or decrease) pensions shall be adjusted in respect of the later or latest, as the case may be, of those years as if the percentage declared in respect of that year were a percentage equal to that aggregate.

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#### **24.22 No decrease of Councillor's pensions below basic rate**

Nothing in this clause 24 requires the rate of a pension to be decreased below the basic rate and if, by reason of the making of an adjustment under this clause 24, the rate of a pension would be so decreased, that pension shall, until it is next increased, to a rate exceeding the basic rate by reason of the making of such an adjustment, be deemed to be payable at the basic rate.

#### **24.23 Adjustments of Councillor's pensions from basic rate**

Where:

- (a) by reason solely of the operation of clause 24.22, a pension is being paid at the basic rate; and
- (b) an adjustment, by way of increase, is required to be made to the rate of that pension in respect of any year,

that adjustment shall be made as if, immediately before the making of the adjustment, the pension were payable at the rate at which, but for the operation of clause 24.22, it would have been payable.

#### **24.24 Councillor's pensions accrue from compliance**

All pensions payable under and in pursuance of this clause 24 shall accrue as from the day following the day compliance has been made with the requirements of this clause 24 under which a pension is payable.

#### **24.25 Councillor's pensions payable fortnightly**

Pensions under this clause 24 shall be payable in fortnightly instalments.

#### **24.26 Councillor's pensions apportionable**

Pensions under this clause 24 shall be apportionable in point of time.

#### **24.27 Proof of age for entitlement to Councillor's pension**

A person claiming an entitlement to a pension under this clause 24 must produce to the Trustee for inspection a certificate of birth or such other evidence of age as the Trustee may require.

#### **24.28 Councillor's pensions not capable of disposition**

Pensions and other rights under this clause 24 shall not be assigned, charged, take in execution, attached or passed by operation of law or otherwise howsoever to any person other than the Beneficiary or payee nor shall any claim be set off against the same.



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## **25. CITY SUPER ACCUMULATION BENEFITS PLAN**

### **25.1 Clause 25 applies to Accumulation Benefit Members**

All Chapter 4 Members who are not members of the Defined Benefits plan are members of the Accumulation Benefits plan. This clause 25 applies to Accumulation Benefit Members.

### **25.2 Transfer to Accumulation Benefits Plan from Defined Benefits Plan**

- (a) A Defined Benefit Member may become an Accumulation Benefit Member by having Member's entitlement to benefits converted to an entitlement to benefits that this clause 25 applies to, if Brisbane City Council, the CS Employer (if not Brisbane City Council) and the Member agree.
- (b) On the conversion taking effect, the Trustee must:-
  - (i) calculate the value of the Member's entitlement under clause 23; and
  - (ii) allocate the Member's accrued benefit to such sub-accounts of the Member's accumulation account as is appropriate to maintain proper records of the components of the Members' benefit.

### **25.3 Permanent employees' own contributions**

Each Member who is a *permanent employee* must:

- (a) in respect of a period before the Salary Conversion Date, contribute to the Scheme, by equal fortnightly payments unless the Trustee determines otherwise, at the rate of 5% of Salary as the Member's "basic contributions", until the Member attains age 70;
- (b) in respect of a period on and after the Salary Conversion Date, make contributions at the rate provided under the LGAct, and may alter their contributions as permitted under the LGAct (the Member's "selected contributions"),

### **25.4 Contributions by other Employees**

A Member who is not a *permanent employee* is not required to make contributions.

### **25.5 Contributions during temporary absence**

A Member on temporary leave of absence from Employment without Salary:-

- (a) is not required to contribute to the Scheme during the period of leave;
- (b) may elect to continue to make the Member's basic contributions or selected contributions, or may on returning from that leave make the basic contributions or selected contributions applicable to the period of the Member's leave.

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## **25.6 Additional Member Contributions**

Each Member may with the consent of the Trustee make additional contributions.

## **25.7 "Salary sacrifice of Member contributions**

- (a) This clause 25.7 applies where, as part of the terms of employment between a CS Employer and a Member relating to remuneration, the CS Employer and the Member have agreed, under a salary sacrifice arrangement, that the CS Employer will pay contributions for the Member in substitution for Member contributions deducted from the Member's remuneration.
- (b) Where this clause 25.7 applies, the CS Employer must advise the Trustee in writing the date of commencement and, where applicable, the date of termination, of each salary sacrifice arrangement.
- (c) If a CS Employer complies with clause 25.7(b) and, where relevant, pays the additional contribution, the Trustee will recognise the salary sacrifice arrangement (from the date notified under clause 25.7(b)) and the whole of the contribution received in respect of the Member must be treated as an Employer contribution (with no part being treated as a Member Contribution), for the purposes of Superannuation Law.

## **25.8 CS Employer contributions for *permanent employees***

Each CS Employer must contribute to the Scheme for each of the CS Employer's *permanent employees* who is a Member:

- (a) in respect of a period before the Salary Conversion Date, at the rate of 14% of Salary, comprising:
  - (i) the percentage of the Member's Salary required to avoid the CS Employer becoming liable to superannuation guarantee charge for that Member ("**prescribed contributions**"); and
  - (ii) an additional percentage, calculated so that the total percentage is 14%, or such lesser percentage or amount as the CS Employer and the Member agree (subject to the LGAct);
- (b) in respect of a period on and after the Salary Conversion Date, at the rate required by the LGAct.

## **25.9 CS Employer contributions for other Employees**

Each CS Employer must contribute to the Scheme for each of the CS Employer's Employees who is a Member other than a *permanent employee*, at a rate which is the percentage of the Member's Salary required to avoid the CS Employer becoming liable to Superannuation Guarantee Charge for that Member for any period.

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#### **25.10 CS Employer contributions during maternity leave**

- (a) Where a Member who is a *permanent employee*, at the direction of the Member's CS Employer, remains temporarily absent from Employment on maternity leave for a period in excess of 6 weeks, then, in respect of a period before the Salary Conversion Date, if the Member continues to pay the Member's basic contributions for the excess period, the CS Employer must continue to pay the CS Employer's contributions under clause 25.8 for the excess period up to a maximum period determined under clause 25.10(d).
- (b) Subject to clause 25.10(c), where a Member who is a *permanent employee*, at the direction of the Member's CS Employer, remains temporarily absent from Employment on maternity leave for a period in excess of 6 weeks, then, in respect of a period on or after the Salary Conversion Date, if the Member continues to pay the Member's selected contributions for the excess period, the CS Employer must continue to pay the CS Employer's contributions under clause 25.8 for the excess period up to a maximum period determined under clause 25.10(d).
- (c) A CS Employer is not obliged to pay contributions under clause 25.10(b), in respect of a period on or after the Salary Conversion Date, of a greater amount than the CS Employer would have paid had the Member continued to pay basic contributions calculated under the definition of Salary that applied before the Salary Conversion Date.
- (d) The maximum period is 6 weeks unless the CS Employer notifies the Trustee that a longer maximum period applies.

#### **25.11 Additional CS Employer contributions**

A CS Employer may pay to the Trustee such additional amounts as the CS Employer determines, to be applied by the Trustee for the benefit of a Member, as the CS Employer directs in writing.

#### **25.12 CS Employer contributions to age 75**

A CS Employer is required to contribute for a *permanent employee* in accordance with clauses 25.8 and 25.10 until the Member attains age 75, and is not required to so contribute after the Member attains age 75.<sup>28</sup>

#### **25.13 Contributions for *permanent employees* of the Trustee**

Despite clauses 25.3, 25.8 and 25.10, the contributions payable by:

- (a) a Member who is a *permanent employee* of the Trustee; and
- (b) the Trustee in respect of a *permanent employee*,

shall be as the Trustee and the Member agree (subject to the LGAct).

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<sup>28</sup> SG Legislation has no age limit on SG Contributions.

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#### 25.14 Members' accumulation accounts

The Trustee shall maintain such sub-accounts of the Member's accumulation account as is appropriate to maintain proper records of the components of the Members' benefit.

#### 25.15 Benefits for City Super Accumulation Benefit Members

Benefits for an Accumulation Benefit Member are payable as set out in Chapter 2.

#### 25.16 Accumulation Benefit - Calculation of Insurance Benefit

- (a) The amount of an Insurance Benefit for an Accumulation Benefit Member who is a *permanent employee* Employed on a full-time basis is calculated in accordance with the following formula, unless clause 25.16(b) applies:-

**$K \times \text{Annual Salary} \times \text{Future Service}$**

where:

**K** is whichever of 7.5%, 12.5% or 20% (or such other percentage as may be available under the terms of the insurance cover) applies to the Member in accordance with the Member's most recent written election, or 20% if no written election has been received;

**Annual Salary** = Annual Salary at the date of death or the Date of Disablement.

- (b) The Trustee may provide Insurance Benefits for *permanent employees* on either of the following bases in substitution for Insurance Benefits under clause 25.16(a):
- (i) the Trustee may arrange with an external insurer insurance cover of a specified amount or calculated in accordance with a specified formula to apply to *permanent employees* generally;
- (ii) the Trustee may:-
- (A) arrange with an external insurer more than one option for the method of calculation that can be applied in calculating the Insurance Benefit for Members; and
- (B) invite Members to nominate one of those methods of calculation,

in which case the method of calculation nominated by the Member (or the method of calculation determined by the Trustee if the Member fails to make a nomination) applies in calculating the Insurance Benefit for that Member.

#### 25.17 Accumulation Benefit - Insured Benefits for part-time Employees

For an Accumulation Benefit Member who is a *permanent employee* and is a part-time Employee:-

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- (a) the Trustee may make arrangements with the Member and an external insurer for provision or continuation of the Member's Insurance Benefit, or substitution of a different Insurance Benefit, on agreed terms;
- (b) if required by Superannuation Law, the Trustee must make such arrangements for a MySuper Member, unless the Member opts to cancel insurance cover;
- (c) no Insurance Benefit is payable if no insurance cover is arranged.

**25.18 Accumulation Benefit - Insurance Benefits for Employees other than *permanent employees***

For Accumulation Benefit Members who are not *permanent employees*:-

- (a) the Trustee may make arrangements with an external insurer for provision of Insurance Benefits for such Members, on terms that the Trustee decides;
- (b) if required by Superannuation Law, the Trustee must make such arrangements for a MySuper Member, unless the Member opts to cancel insurance cover;
- (c) no Insurance Benefit is payable if no insurance cover is arranged.

**25.19 Accumulation Benefit - Insurance Benefits during unpaid leave**

- (a) If an Accumulation Benefit Member while on leave of absence from Employment without Salary, other than Parental Leave or leave classified as "a mid-career break":-
  - (i) dies no later than 2 years after the beginning of the leave; or
  - (ii) becomes Totally and Permanently Disabled not later than 1 year after the beginning of the leave,the Insurance Benefit is calculated as if the Member were not on leave.
- (b) If a Member, while on Parental Leave, dies or becomes Totally and Permanently Disabled not later than 2 years after the beginning of the leave, the Insurance Benefit is calculated as if the Member were not on leave.
- (c) If a Member, while on leave of absence from Employment without Salary classified as a "mid-career break", dies or becomes Totally and Permanently Disabled not later than 1 year after the beginning of the leave, the Insurance Benefit is calculated as if the Member were not on leave.
- (d) No Insurance Benefit is payable in respect of death or disability suffered while on leave of absence from Employment without Salary other than as provided in clauses 25.19(a), 25.19(b) or 25.19(c).
- (e) Notwithstanding clauses 25.19(a), 25.19(b) or 25.19(c):-

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- (i) the benefit payable on death or Total and Permanent Disablement of a Member while on leave of absence from Employment without Salary is subject to the Trustee making arrangements with an external insurer for continuation of Insurance Benefits for the Member; and
- (ii) no Insurance Benefit is payable if no insurance cover is arranged.

## **26. DEFINITIONS FOR CHAPTER 4**

### **26.1 Defined terms for Chapter 4**

In this Chapter 4:-

**“Annual Review Date”** means 1 July in each year, or such other date as the Trustee may determine from time to time.

**“Annual Salary”** of a Member means the amount registered in the Trustee’s records as the Member’s Annual Salary for Insurance Benefits:-

- (a) at the most recent Salary Review Date; or
- (b) for a Member who was not a Member on the most recent Salary Review Date, on commencement of the Member’s membership.

**“Completed Membership”** in relation to a Member means a period calculated in years, with complete months counted as fractions of a year, determined as follows:

- (a) the period commences on the date on which the Member becomes a Member, but if the Member was a Member of a Former Fund the period commences on commencement of membership of a Former Fund;
- (b) the period ends:
  - (i) to calculate benefits other than on death or Total and Permanent Disablement, on the later of:
    - (A) the date Employment ceases;
    - (B) the date the Member attains age 70;
  - (ii) to calculate benefits on death or Total and Permanent Disablement, on the date that would have been the Member’s Normal Retirement Date;
- (c) the period excludes any period during which the Member was temporarily absent from Employment and not receiving Salary, unless the period is included under clause 23.5, or the Trustee decides to include that period.

**“CS Ordinary Time Earnings”** means, in relation to:-

- (1) a Defined Benefit Member; and

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- (2) an Accumulation Benefit Member, in respect of a period before the Salary Conversion Date,

the amount payable by the CS Employer to the Member calculated in accordance with the classification rate, and:

- (a) includes the amount of any:
- (i) supplementary payment (where relevant);
  - (ii) over award payment;
  - (iii) shift loading;
- (b) does not include the amount of any:
- (i) bonus;
  - (ii) commission;
  - (iii) overtime payment;
  - (iv) vehicular hire allowance;
  - (v) weekend or other penalty rate;
  - (vi) other fee or allowance.

**“CS Ordinary Time Earnings”** in relation to an Accumulation Benefit Member, in respect of a period on and after the Salary Conversion Date, has the meaning given in the LG Regulation.

**“Councillors’ Fund”** means the Brisbane City Councillors Superannuation Fund established by resolution of the Council made on 25 August 1969.

**“Councillors’ Fund Pensioner”** means a person who is entitled to a benefit under clause 24.

**“Councillors’ Fund Rules”** means the document titled *“The B.C.C. Councillors’ Superannuation Fund Rules”*, comprising the rules of the Councillors’ Fund which came into effect on 1 July 1995 including the *“Former Rules”* as therein defined.

**“Date of Disablement”** means in respect of a Member who is Totally and Permanently Disabled:

- (a) the date on which the Member was last at work, unless paragraph (b) applies;
- (b) if the Member was on leave at the time an illness, accident or injury commenced or occurred as a result of which the Member is totally and permanently disabled, the date on which the illness, accident or injury commenced or occurred.

**“Employer Financed Benefit”** of a Member means an amount calculated in accordance with the following formula:

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$$[(17.5\% \times \mathbf{FAS} \times \mathbf{CM}) \times \mathbf{E}] - \mathbf{MFB}$$

where:

**FAS** = Final Average Salary

**CM** = Completed Membership

**E** =  $1 - [1\% \times (55 - \text{age})]$ , where age is the Member's age in years, with completed months expressed as fractions of a year

**MFB** = the Member's Member Financed Benefit.

**“Employment”:**

- (a) For a casual Employee, the period of employment which the CS Employer notifies to the Trustee from time to time.
- (b) For a Defined Benefit Member, continuous service with a CS Employer, where service does not cease to be continuous by reason of temporary absence:
  - (i) while the Member is engaged in compulsory military service or in service in the armed forces of Australia or its allies in time of war;
  - (ii) in any other circumstances which the CS Employer notifies the Trustee do not result in a break in continuity of employment;
  - (iii) while the Member is suspended by the CS Employer.
- (c) For an Accumulation Benefit Member, other than a casual Employee, continuous service with a CS Employer, where service does not cease to be continuous by reason of:-
  - (i) temporary absence where the CS Employer does not regard the absence as resulting in a break in continuity of service;
  - (ii) temporary absence while the Member is suspended by the CS Employer;
  - (iii) transfer of service from one CS Employer to another.

**“Final Average Salary”** of a Member means the average of the Member's Annual Salary on each of the Salary Review Dates in the three years immediately preceding the date on which a retirement benefit is calculated in respect of the Member, but if the Member:-

- (a) has been a Member for less than three years, Final Average Salary means the average of the Member's Annual Salary at the date of commencement of membership and each subsequent Salary Review Date;
- (b) was not a Member on last Salary Review Date, Final Average Salary means the Member's Annual Salary at the date of commencement of membership.



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**“Former Fund”** means, as the context allows or requires:-

- (a) the superannuation fund established by a trust deed dated 12 November 1951 as amended, and known in the course of administration as the *“Brisbane City Council Superannuation Fund”*; and
- (b) City Super.

**“Future Service”** means the period in years, counting complete months as fractions of a year, from:-

- (a) the Annual Review Date preceding a Member's death or Date of Disablement; or
- (b) for a Member who was not a Member on the most recent Annual Review date, commencement of the Member's membership,

to the Normal Retirement Date.

**“Member”** means a Chapter 4 Member.

**“Member Financed Benefit”** of a Member means an amount calculated in accordance with the following formula:

$$5\% \times \text{FAS} \times \text{CM}$$

where:

**FAS** = Final Average Salary

**CM** = Completed Membership

**“Normal Retirement Date”**:-

- (a) where used in relation to a benefit for which the Trustee is externally insured, means the age at which the Insurance Benefit ceases to be payable under the relevant policy of insurance; and
- (b) otherwise, means a Member's 65<sup>th</sup> birthday.

**“Part-Time Multiple”** of a Defined Benefit Member who becomes entitled to a benefit while a part-time Employee means a rate the Trustee determines, on the advice of the Actuary, by reducing the rate of 17.5% to take into account the proportionate reduction in the Member's average working hours during the period the Member has been a part-time Employee.

**“Review Period”** means a period of up to 12 months as determined by the Trustee.

**“Salary”** means, in respect of each Member, the amount (whether called salary or wages) calculated on a weekly basis payable by the CS Employer to the Member by way of CS Ordinary Time Earnings.

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**“Salary Review Date”** means 1 April and 1 October in each year, or such other date or dates as the Trustee may determine from time to time..

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## **CHAPTER 5 - CONTRIBUTIONS AND BENEFITS FOR ENERGY SUPER MEMBERS**

### **27. APPLICATION OF CHAPTER 5**

#### **27.1 Application to Members employed by ES Employer**

This Chapter 5 applies only to ES Members who are employed by an ES Employer. (Chapter 2 applies to contributions and benefits for ES Members who are not employed by an ES Employer.)

#### **27.2 Definition of Chapter 5 Member**

The Members to whom this Chapter applies are referred to in other Chapters of this Deed as “**Chapter 5 Members**”.

### **28. GENERAL PROVISIONS FOR CHAPTER 5**

#### **28.1 ES Employer's decision final**

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

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

#### **28.2 Special arrangements by ES Employers**

- (a) The ES Employer and either a Member or an Employee who has not yet become a Member of the Scheme may vary by agreement any or all of:-
  - (i) the benefits which would otherwise be payable as a result of that person's membership of the Scheme; and/or
  - (ii) the contributions otherwise payable as a result of that person's membership of the Scheme; and/or
  - (iii) other terms and conditions of membership.
- (b) The Trustee may refuse to honour any agreement made under clause 28.2(a) if any further contributions which the Actuary advises are necessary to finance that special arrangement are not paid.
- (c) An ES Employer may request the Trustee to, subject to clause 9.3(b), amend this Deed in relation to the benefits of Members who are Employees of that ES Employer, to the extent that:-

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- (i) the amendment is permitted by Superannuation Law; and
- (ii) the affected Members consent to the change in accrued benefit.

Subject to Superannuation Law the Trustee must not unreasonably refuse to consent to such request, provided that the requesting ES Employer undertakes to fund and funds any increase in benefits in accordance with clause 29.1(a)(ii)(B).

### **28.3 Augmentation of benefit**

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

### **28.4 Information from ES Employers**

An ES Employer must give the Trustee all information in the ES Employer's power or possession which is reasonably required by the Trustee in relation to the Scheme.

### **28.5 Information and evidence from Members, and special restrictions or conditions**

- (a) Each Member must:-
  - (i) give such information and evidence;
  - (ii) sign such documents;
  - (iii) undergo such medical examinations and tests; and
  - (iv) satisfy such other requirements, as and when the Trustee requires.
- (b) If:-
  - (i) a Member fails to comply with any of the requirements imposed under clause 28.5(a); or
  - (ii) the Trustee considers the results of a medical examination or test are not satisfactory; or
  - (iii) any statement made or evidence given contains a miss-statement, mistake, inaccuracy or omission,

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

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

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- (d) The Trustee may remove or change any special terms, conditions, limitations and/or restrictions in relation to benefits and/or contributions previously imposed.
- (e) Any special terms, conditions, limitations and/or restrictions in relation to benefits and/or contributions applicable to an ES Member in Energy Super immediately before the ES Merger Date continue to apply in respect of their membership of the Scheme.

## **28.6 Contributions and entitlements if Scheme terminates**

If the Scheme terminates:-

- (a) Each ES Employer and each Member must immediately pay any arrears of contributions up to the date of termination.
- (b) The Trustee may make any arrangements the Trustee considers appropriate in securing the entitlements of beneficiaries on the termination of the Scheme, including:-
  - (i) the purchase of an annuity;
  - (ii) the transfer of assets representing the entitlement to another Superannuation Entity; or
  - (iii) payment to the Member,or any combination of paragraph (i), (ii) and (iii).
- (c) Subject to Superannuation Law, the Trustee does not need to obtain a Beneficiary's consent in relation to an arrangement under clause 28.6(b) to secure that Beneficiary's entitlement, and the Trustee may proceed with any arrangement even if the arrangement is contrary to the Beneficiary's wishes.
- (d) The completion of the arrangement under clause 28.6(b) is a complete discharge to the Trustee for all entitlements under the Scheme 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 the Scheme.
- (e) The Trustee has no obligation to enquire about the application of any money or assets transferred to another Superannuation Entity.

## **29. CONTRIBUTIONS FOR ENERGY SUPER MEMBERS**

### **29.1 Employer contributions**

- (a) Unless contributions are varied under another provision (for example, clause 28.2):-
  - (i) each ES Employer must contribute at the rate, if any, specified in this clause 29; and

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- (ii) each ES Employer must also contribute such additional contributions as may be agreed between the Trustee and the ES Employer, on the advice of the Actuary, as being necessary:
    - (A) to finance the benefits payable from the Scheme to Members who are employed by that ES Employer; or
    - (B) to finance the cost of any augmentation of benefits requested by that ES Employer.
- (b) An ES Employer may make extra contributions to the Scheme in respect of some or all Members, in addition to the contributions which are required under clause 29.1(a). Unless the extra Employer contributions are made to satisfy a requirement under another clause of this Chapter 5, they must be applied as the ES Employer directs.
- (c) ES Employer contributions must be paid to the Scheme in the manner and at the times directed by the Trustee.
- (d) An ES Employer may request the Trustee to allocate, out of any unallocated amount in the Scheme attributable to the sub-fund maintained for the ES Employer under clause 29.20, amounts equal to any or all of the contributions the ES Employer is required to make under clause 29.1(a), or which the ES Employer elects to make under clause 29.1(b), for the benefit of any Defined Contribution Members. The Trustee must allocate those amounts for the credit of those Members as if the ES Employer had made those contributions, where the Actuary certifies that the unallocated amount attributable to that ES 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>29</sup>

## **29.2 Payment of Member Contributions**

- (a) Any Member Contributions must be deducted by the ES Employer from the Member's pay, except where the law does not allow.
- (b) Member Contributions must be paid to the Scheme in the manner and at the times directed by the Trustee.
- (c) 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.
- (d) The ES Employer:-
  - (i) may release a Member from making contributions to the Scheme; and
  - (ii) may attach conditions to such release.

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Clause 29.1(d) does not apply to in relation to the participation of Energex companies. Energex companies means:  
Energex Limited ABN 40 078 849 055;  
Allgas Energy Pty Ltd ABN 52 009 656 446;  
Service Essentials Pty Ltd ABN 48 101 691 409.

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- (e) 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 the Scheme; and
  - (ii) an ES 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.

### **29.3 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 Disability Pension, 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 ES Employer from the Member's Salary when the Member resumes duty;
- (b) if the period of such leave exceeds 14 consecutive days, the ES 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 Scheme during such period.

### **29.4 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 Disability Pension.

### **29.5 Contributions during periods of other absence without pay**

Where a Defined Benefit 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 ES 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 ES Employer to either:-
  - (i) continue contributing to the Scheme and also pay the ES Employer's contributions for that period; or
  - (ii) suspend contributions to the Scheme 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 ES Employer shall notify the Trustee of:-

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- (i) any election by a Member pursuant to clause 29.5(b)(ii) and the period of approved leave; and
  - (ii) the date the Member resumes duty and recommences contributions to the Scheme;
- (d) a Member who fails to make an election in accordance with clause 29.5(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 Scheme, 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.

## **29.6 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 ES Employer, the following provisions shall apply:-

- (a) the Member will, except where the Member makes an election in accordance with clause 29.6(b), be required to pay both the Member's and ES Employer's normal contributions to the Scheme 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 ES Employer to suspend the Member's contributions to the Scheme 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 ES Employer shall notify the Trustee immediately of any election by a Member under clause 29.6(b).

## **29.7 Insurance during periods of absence without pay**

- (a) 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 ES Employer and the Trustee may make arrangements by agreement between them for continuation of:-
  - (i) 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
  - (ii) any other funding arrangement adopted by the Trustee to provide the benefits payable on the Member's death or disablement.
- (b) Arrangements made under clause 29.7(a) may include (but are not limited to):-
  - (i) 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;



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- (ii) 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).

## **29.8 [Deleted]**

## **29.9 Notice to cease, reduce or suspend ES Employer contributions**

An ES Employer may cease, reduce or suspend the ES Employer's 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 ES Employer and the Trustee agree otherwise, even if the ES 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.

## **29.10 Effect of notice**

- (a) The Trustee must adjust benefits (in respect of the Members concerned) to take account of:-
  - (i) termination, reduction or suspension of an ES Employer's obligation (or agreement) to contribute; or
  - (ii) failure by an ES Employer to contribute as required or agreed.
- (b) The adjustment must be determined:-
  - (i) after obtaining the Actuary's advice; and
  - (ii) ignoring any surplus in the Scheme (therefore if the ES Employer concerned is on a contribution holiday the adjustment must be the same as if that ES Employer was not on a contribution holiday).

## **29.11 Revocation of notice**

A person who gives a notice to terminate, reduce or suspend contributions may revoke the notice 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.

## **29.12 Basic Contributions – Accumulation Benefit Member**

- (a) Unless otherwise provided for by this Chapter 5 each Accumulation Benefit Member shall contribute to the Scheme at a rate equal to:-
  - (i) for Members who immediately before the ES Merger Date contributed at a rate of 3.75% of Salary because they had been a Member of QESI, 3.75% of Salary;

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- (ii) for Members who immediately before the ES Merger Date contributed at a rate of 5% of Salary because they had been a Member of QESI ESS, 5% of Salary;
  - (iii) for all other Members, at such rate as may be agreed from time to time between the Member and the ES Employer of which written notice has been given to the Trustee.
- (b) Contributions under this clause 29.12 will cease on the earlier of the Member:-
  - (i) ceasing to be an Employee of an ES Employer; and
  - (ii) attaining the age of 65 years.

### **29.13 Voluntary Contributions – Accumulation Benefit Member**

- (a) Accumulation Benefit Members may and at such times as the Trustee may determine elect to make Voluntary Contributions to the Scheme 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 that applied while a member of Energy Super will continue as an election to make Voluntary Contributions to the Scheme.
- (b) An ES Employer may make additional contributions in respect of a Member which shall if so nominated by the ES Employer be deemed to be Member Contributions.

### **29.14 Employer Contributions – Accumulation Benefit Member**

- (a) Each ES Employer shall contribute to the Scheme with respect to each Accumulation Benefit Member employed by that ES Employer, other than a GPS 3B Member, as follows:-
  - (i) if the Member contributes at a rate of 3.75% of Salary under clause 29.12(a)(i), 11.475% of the Member's Salary;
  - (ii) if the Member contributes at a rate of 5% of Salary under clause 29.12(a)(ii), 10.225% of the Member's Salary; and
  - (iii) in all other cases at such rate as the ES 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.
- (b) Each ES Employer shall contribute to the Fund with respect to each GPS 3B Member 11% of the Member's GPS Salary.

### **29.15 SG Legislation – Accumulation Benefit Member**

In addition to any contributions made by an ES Employer to the Scheme with respect to an Accumulation Benefit Member under clause 29.14, an ES Employer shall contribute to the Scheme such additional amounts, if any, which, when added to the contributions made by the ES Employer with respect to that Member to another Superannuation Entity, will be sufficient to

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ensure that the ES Employer does not incur a liability to pay a charge under the SG Legislation with respect to that Accumulation Benefit Member.

## **29.16 Contributions by Prescribed Employers**

- (a) Subject to this Deed, each Prescribed ES Employer shall contribute to the Scheme in respect of:
- (i) each Accumulation Benefit Member employed by that Prescribed ES Employer; and
  - (ii) each week or part of a week from the commencement of that person's membership whichever of the following amounts apply:
    - (A) such amounts the Trustee from time to time determines;
    - (B) such amount (whether or not calculated by reference to a percentage or rate of salary, wage or earnings) as the Prescribed ES 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 Prescribed ES Employer with respect to that Member to another Superannuation Entity, will be sufficient to ensure that the Prescribed ES Employer does not incur a liability to pay a charge under the SG Legislation with respect to that Member.

- (b) The number of weeks in respect of which a Prescribed ES Employer is required by clause 29.16(a) to make contributions in respect of an Accumulation Benefit 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 Prescribed ES Employer.
- (c) In this clause 29.16:

**“active employment”** means active continuous attendance by a Member to the Member's normal duties as an Employee of an ES Employer at the Member's usual place of employment;

**“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 ES Employer.

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

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- (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 an ES Employer that the trustee of Energy Super notifies the Trustee:

- (i) was required to make contributions to SPEC Super in respect of Employees on the same terms as this clause 29.16 before the SPEC Super merger with Energy Super;
  - (ii) agreed to make contributions on the same terms as this clause 29.16 in respect of that ES Employer’s Employees who became members of Energy Super; or
  - (iii) agreed to be substituted for an ES Employer that was so required or made such an agreement.
- (d) Where a Prescribed ES Employer is contributing to the Scheme in respect of an Accumulation Benefit Member who is receiving compensation under the WCR Act, the Prescribed ES Employer shall continue to contribute to the Scheme 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 WCR Act PROVIDED THAT:
- (i) the contribution by the Prescribed ES Employer referred to in this clause 29.16(d) shall only be made whilst the Member is an employee of the Prescribed ES Employer; and
  - (ii) the contribution by the Prescribed ES Employer under this clause 29.16(d) shall cease when the compensation received by the Member under the Act is reduced from such initial rate or is ceased.

#### **29.17 Basic Contributions – Defined Benefit Members**

- (a) Each Defined Benefit Member, other than a GPS 2A Member, shall contribute to the Scheme at a rate of 5% of Salary from time to time until the happening of the earlier of the Member:-
  - (i) ceasing to be an Employee; and
  - (ii) attaining the age of 70 years.
- (b) A GPS 2A Member shall contribute to the Scheme at the rate of 5% of GPS Salary unless released from making contributions pursuant to clause 29.2.

#### **29.18 Additional Contributions – former QESI ESS Members**

A Defined Benefit Member who, immediately before the ES Merger Date, was making additional contributions to Energy Super that the Member was making to QESI ESS before the

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commencement of Energy Super shall continue to pay those additional contributions to the Scheme until the Member ceases to be an Employee or attains the age of 60 years.

### **29.19 Voluntary Contributions – Defined Benefit Members**

Defined Benefit Members may at such times as the Trustee may determine elect to make Voluntary Contributions to the Scheme 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 that applied in Energy Super will continue as an election to make Voluntary Contributions to the Scheme.

### **29.20 Sub-funds and ES Defined Benefits Fund**

- (a) The Trustee may determine to divide the ES Defined Benefits 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 ES Employer for the purpose of determining the contributions to be made by that ES Employer under clause 29.1(a)(ii) but not for other purposes.)
- (b) The Trustee must separately account for the ES Defined Benefits Fund. (However, to avoid doubt, this clause 29.20 does not require the Trustee to segregate assets or to maintain any particular sub-funds.)

## **30. BENEFITS AND PAYMENTS FOR ENERGY SUPER MEMBERS**

### **30.1 Benefits for Energy Super Accumulation Benefit Members**

Benefits for an Accumulation Benefit Member are payable as set out in Chapter 2.

- (a) Defined Benefits
- (b) Benefits for ES Defined Benefit Members, other than GPS 2A Members, are set out in clauses 30.3 to 30.14 (inclusive).
- (c) Benefits for GPS 2A Members are set out in Appendix A. Clauses 30.3 to 30.14 (inclusive) do not apply to GPS 2A Members.

### **30.2 Transfer to Accumulation Benefits from Defined Benefits**

Where a Member has been a Defined Benefit Member, and is to become an Accumulation Benefit Member where the ES Employer of the Member nominates the Member to be an Accumulation Benefit Member, the Trustee shall on the advice of the Actuary determine:

- (a) the amount of the Member's accrued benefit calculated in accordance with clauses 30.3 to 30.14 (inclusive) or Appendix A, as applicable to the Member, as at the date on which the Member becomes an Accumulation Benefit Member; and
- (b) the allocation of the Member's accrued benefit to such sub-accounts of the Member's accumulation account as is appropriate to maintain proper records of the components of the Members' benefit.

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### **30.3 Defined Benefit - Retirement between 55 and 70**

The Trustee must pay a benefit to a Defined Benefit Member, on the Member ceasing to be an Employee of an ES Employer and a Member on or after attaining 55 but on or before attaining 70, if a benefit is not payable under clause 30.5 or clause 30.6, 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.

### **30.4 Defined Benefit - Retirement after age 70**

The Trustee must pay a benefit to a Defined Benefit Member, on the Member ceasing to be an Employee of an ES Employer 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 investment returns determined under clause 7.3 allocated to that amount from time to time until the Member ceases Employment; plus
- (b) the Member's Accumulation Account Balance.

### **30.5 Defined Benefit - Retirement on Total and Permanent Disablement**

- (a) The Trustee must pay a benefit to a Defined Benefit Member on the Member ceasing to be an Employee of an ES Employer and a Member because of the Member's Total and Permanent Disablement.
- (b) In the case of a Defined Benefit Member who has not attained 60 when the Member ceases to be an Employee of an ES Employer and a Member, subject to any special restrictions or conditions imposed by the Trustee under clause 28.5(b), the benefit is an amount equal to the sum of -
  - (i) the greater of:-
    - (A) the Member's Benefit Multiple x Projected Final Average Salary; and

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- (B) 2.5 times the balance of the Member Account of the Member immediately before the Member attained age 55; plus
  - (ii) the Member's Accumulation Account Balance.
- (c) In the case of a Defined Benefit Member who has attained 60 but not yet 70 when the Member ceases to be an Employee of an ES Employer and a Member, the benefit is an amount equal to the benefit that would have been payable under clause 30.3 had a benefit been payable under clause 30.3.
- (d) In the case of a Defined Benefit Member who has attained 70 when the Member ceases to be an Employee of an ES Employer and a Member, the benefit is an amount equal to the benefit that would have been payable under clause 30.4 had a benefit been payable under clause 30.4.

### **30.6 Defined Benefit - Pension on Temporary Disablement**

- (a) The Trustee must pay a Disability Pension to a Defined Benefit Member who:-
  - (i) is suffering Temporary Disablement;
  - (ii) has not attained 65; and
  - (iii) is otherwise eligible for a benefit on Temporary Disablement under the terms of the policy of insurance applicable to the Member.
- (b) The Disability Pension is to continue to be paid until:-
  - (i) the Member resumes full-time Employment or, if the Member is employed part-time, resumes part-time Employment for comparable hours;
  - (ii) the Member dies; or
  - (iii) the Member becomes Totally and Permanently Disabled; or
  - (iv) the expiry of 2 years after the Disability Pension commenced to be paid, whichever first happens.
- (c) To avoid doubt, if a person becomes entitled to a benefit on ceasing to be an Employee of an ES Employer, for any reason other than death or Total and Permanent Disablement, the Disability Pension is to continue to be paid until an event referred to in clause 30.6(b) occurs.
- (d) The amount of the Disability Pension of a Member is 80% of Salary, or such other amount as is payable under the applicable policy of insurance.
- (e) Despite any other provision of this clause 30.6, the maximum payment that a Member is entitled to be paid under this clause 30.6 is the amount that, when added to any workers' compensation payment and any payment from the ES Employer received by the Member after becoming entitled to a Disability Pension, does not exceed -

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- (i) for a full-time Employee - 80% of the Member's Salary; or
- (ii) 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.

### **30.7 Cessation of Disability Pension on restoration of health**

- (a) If a Disability Pensioner has not attained 65, and:-
  - (i) 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
  - (ii) the Member has otherwise ceased to satisfy the definition of Temporary Disablement,

the Trustee must by writing certify to that fact to the Disability Pensioner.

- (b) The Disability Pension ceases on:-
  - (i) the Disability Pensioner resuming Employment as contemplated in clause 30.7(b)(i); or
  - (ii) if the Disability Pensioner:
    - (A) fails to resume Employment, where the Trustee has certified in accordance with 30.7(a)(i) that the Member is fit to resume Employment – the day after the day the Member receives the certification;
    - (B) 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.

### **30.8 Death or Total and Permanent Disablement of Disability Pensioner**

- (a) The Trustee must pay a benefit on the death or Total and Permanent Disablement of a Disability Pensioner.
- (b) The benefit is that payable under clause 30.10 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 Disability Pension.



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### **30.9 Lump Sum benefit if Disability Pension continues for 2 years**

If:-

- (a) a Member has not attained 65;
- (b) the Member has received a Disability Pension for a continuous period of 2 years; and
- (c) the Trustee, in the Trustee's 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.

### **30.10 Defined Benefit on death of Member**

- (a) The Trustee must pay a benefit on the death of a Member.
- (b) 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.

### **30.11 Defined Benefit for retrenchment or resignation (or termination) for Serious Ill Health**

- (a) The Trustee must pay a benefit to a Member who has not attained 55 on:-
  - (i) the Member's retrenchment (the fact of which shall be determined by the ES Employer and notified to the Trustee in writing); or
  - (ii) the Member's resignation (or termination of services by the ES 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.
- (b) The benefit is the sum of:-
  - (i) the Member's Reserve of the Member; plus
  - (ii) the Member's Accumulation Account Balance.

### **30.12 Defined Benefit - Resignation or dismissal**

- (a) If, in relation to a Member's cessation of Employment, the Member is not entitled to any benefit under any other provision of this clause 30, the Member is, subject to clause 30.12(b), entitled to a benefit equal to the sum of:-

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- (i) the Member's Reserve of the Member; plus
  - (ii) the Member's Accumulation Account Balance.
- (b) 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 30.12 and shall continue to be a Member.

### **30.13 Defined 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 30.4 as if the Member had ceased to be an Employee on the date of the request.

### **30.14 Accounts for Defined Benefit Members**

- (a) The Trustee shall establish for each Defined Benefit Member such of the following accounts as is applicable to the Member:-
  - (i) **"Staff Retiring Provident Account"** to which the Trustee allocates the balance of the Staff Retiring Providing Account transferred from Energy Super;
  - (ii) **"Employer Account"** to which the Trustee allocates the balance of the Staff Retiring Providing Account transferred from Energy Super.
  - (iii) **"Voluntary Contribution Account"** to which the Trustee allocates:-
    - (A) the balance of the Voluntary Contribution Account transferred from Energy Super; and
    - (B) Voluntary Contributions made by the Member to the Scheme;
  - (iv) **"Member Account"** to which the Trustee allocates (as credits or debits, as applicable):-
    - (A) the balance of the Member Account transferred from Energy Super;
    - (B) basic contributions made by the Member pursuant to clause 29.17, and any contributions deemed under clause 29.2(e)(ii) to have been made for the credit of the Member in substitution for the Member's basic contributions;

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- (C) Additional Contributions made by the Member, and any contributions deemed under clause 29.2(e)(ii) to have been made for the credit of the Member in substitution for the Member's Additional Contributions;
  - (D) Scheme Expenses and tax, if any, which the Trustee determines to allocate to the Member Account; and
  - (E) net investment returns determined under clause 7.3 allocated from time to time from the ES Merger Date to the date of payment.
- (b) A Staff Provident Account, Employer Account or Voluntary Contribution Account is maintained as an accumulation account under clause 11.
  - (c) Member Accounts are notional accounts maintained for the purpose of calculating the Member's Defined Benefit, and are not accumulation accounts.

### **30.15 Interest payments on Defined Benefits**

The Trustee may add interest to a Defined Benefit payable under this clause 30 in respect of the period between when the benefit became payable and the actual date of payment.

### **30.16 Transfer of Defined Benefit to other Superannuation Entity**

- (a) Subject to clause 30.16(b), if a Defined Benefit Member, who remains in Employment, becomes or is eligible to become a member of another Superannuation Entity, the Trustee may transfer -
  - (i) 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
  - (ii) on any conditions set by the ES Employer) any greater amount agreed between the Trustee and the ES Employer,to that Superannuation Entity,
  - (iii) with the consent of the ES Employer; but
  - (iv) without the consent of that Member if permitted to do so under Superannuation Law.
- (b) If a Defined Benefit Member, who remains in Employment, becomes or is eligible to become a member of another Superannuation Entity and wishes to transfer part of the Member's benefit entitlement accrued in the Scheme to another Superannuation Entity, 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 Superannuation Law. The benefits payable in respect of the Member under this Deed must be reduced by an equivalent amount, unless the ES Employer otherwise agrees. The Trustee may impose such conditions or restrictions on partial transfers as the Trustee determines in accordance with Superannuation Law.

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### **30.17 ES Defined Benefits Fund on termination of Scheme**

If the Scheme terminates:

- (a) On termination of the Scheme, the Trustee must apply the ES Defined Benefits Fund in the following order of priority:
- (i) All costs, expenses and liabilities which have been incurred or are likely to be incurred in respect of the ES Defined Benefits Fund (including the termination of the Scheme);
  - (ii) Pensions being provided from the ES Defined Benefits Fund which commenced payment before the date of termination, and any Minimum Requisite Benefits;
  - (iii) the amount the Actuary determines has accrued in respect of each Member under the ES Defined Benefits Fund during the period up to the Termination Date (less the amount mentioned in clause 30.17(a)(ii) in respect of that Member),

subject to clause 30.17(b) and clause 30.17(c).

- (b) If the ES Defined Benefits Fund attributable to sub-funds maintained for ES Employers 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 those ES Employers:
- (i) the amount to be applied in respect of the Defined Benefits of those Members must be proportionately reduced; and
  - (ii) 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 in respect of those Members, but has no obligation to do so.)

- (c) If the ES Defined Benefits Fund attributable to any sub-funds maintained for ES 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 ES Employers, any balance must be paid to the ES 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:—
- (i) an ES Employer requests the Trustee to use all or part of the balance the Trustee has determined to allocate to that ES Employer in increasing entitlements, and/or pensions then in payment from the Scheme, in relation to Members employed by that ES Employer, and the Trustee agrees;
  - (ii) an ES Employer requests the Trustee to transfer all or part of the balance the Trustee has determined to allocate to that ES Employer to another Superannuation Entity for the purpose of providing benefits for Employees of that ES Employer; or
  - (iii) an ES Employer:

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(A) is insolvent;

(B) is in liquidation, or under any form of external administration; or

(C) has ceased to carry on business,

in which event the balance the Trustee has determined to allocate to that ES Employer must be applied in increasing entitlements, and/or pensions then in payment from the Scheme, in relation to Members employed by that ES Employer, on a proportionate basis.

## **31. DEFINITIONS AND INTERPRETATION PROVISIONS FOR CHAPTER 5**

### **31.1 Defined terms for Chapter 5**

In this Chapter 5, except as otherwise provided in Appendix A in respect of GPS 2A Members:-

**“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) the balance of the Member’s Employer Account.

**“Additional Contributions”** means the additional contributions that a Member is required to contribute to the Scheme under clause 29.18.

**“Annual Salary”** of a Member at any date means the actual Salary as defined in clause 31.3 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 annualised.

**“Articles”** means the Articles of the QESI ESS as at 30 June 1995.

**“Deemed Employment”** means any arrangement or agreement between an ES Employer and a person other than an Employee for the supply of services by that person where the ES 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.

**“Employment”** means actual employment or Deemed Employment with an ES Employer.

**“Final Average Salary”** has the meaning given by clause 31.4.

**“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.

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**“GPS 2A Member”** means a Transferred ES Member who the Energy Super Trustee notifies the Trustee was a Part 2A member under the Gladstone Power Superannuation Plan within Energy Super immediately before the ES Merger Date.

**“GPS 3B Member”** means:

- (a) a Transferred ES Member who the Energy Super Trustee notifies the Trustee was a Part 3B member under the Gladstone Power Superannuation Plan within Energy Super immediately before the ES Merger Date; and
- (b) any Member that an ES Employer notifies the Trustee is a GPS 3B at any time.

**“GPS Salary”** means, in relation to a GPS 2A Member or a GPS 3B Member, the payment (whether called salary or wages) made by the ES 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 ES 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.

**“Member”** means a Chapter 5 Member.

**“Member’s Accumulated Balance”** of a Defined Benefit Member means the amount of the Member’s Accumulated Balance transferred from Energy Super, adjusted for net investment returns determined under clause 7.3 allocated to that amount from time to time from the ES Merger Date to the date of payment.

**“Member’s Benefit Multiple”** of a Defined Benefit Member means -

- (a) the Member’s benefit multiple notified to the Trustee by the Energy Super Trustee as at the ES Merger Date; and
- (b) 19.5% for each complete year, and pro-rata for the remaining period, of Membership from the ES Merger Date to the date on which the Member ceases to contribute to the Scheme.

**“Member’s Portion”** of a Defined Benefit Member means the amount of the Member’s Portion transferred from Energy Super, adjusted for net investment returns determined under clause 7.3 allocated to that amount from time to time from the ES Merger 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

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(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 Table 2 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,

**"Membership"** and **"Membership Period"** have the meanings given by clause 31.2.

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

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

**"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 Scheme until attaining age 60; and

(b) the Member's Salary remains unaltered.

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

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

**"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.

### **31.2 Meaning of "Membership" and "Membership Period"**

(a) In this Chapter 5, subject to the following subsections of this clause 31.2, Membership or Membership Period of a person means the sum of:-

(i) the period during which the person contributed, or under this Chapter 5 is taken to have contributed, to the Scheme; and

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- (ii) any other period included in the person's Membership or Membership Period under this Chapter 5.

(b) If, during a period:–

- (i) a person is Employed part-time; and
- (ii) 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.

- (c) For benefits that become payable in respect of a Full-Time Employee, for the purpose of calculating a Member's Total and Permanent Disablement benefit 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.
- (d) For benefits that commence to be payable in respect of a Part-Time Employee, for the purpose of calculating a Member's Total and Permanent Disablement benefit 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.

- (e) An ES 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



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ES Employer pays any further contributions to the Scheme which the Trustee, acting on the advice of the Actuary, advises the ES Employer is required to finance that increase.

- (f) 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.

### **31.3 Meaning of "Salary"**

- (a) Subject to this clause 31.3, "**Salary**" of a person means the amount (by whatever name) that is paid to the person by the person's ES Employer by way of fixed remuneration, including any allowance permanently included in the remuneration.
- (b) To avoid 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.
- (c) For the purposes of this Chapter 5, the amount of an Employee's Salary:-
- (i) if the Employee is a shift worker other than a salaried shift worker the amount that would otherwise be the Employee's Salary plus:-
- (A) for a "continuous 3-shift worker" - 30% of the amount; or
- (B) for any other shift worker - 15% of the amount; or
- (ii) if the Employee's Salary consists wholly or partly of commission - the amount notified to the Trustee under clause 31.5.
- (d) In clause 31.3(c) 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.
- (e) For the purposes of this Chapter 5, 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.
- (f) For the purposes of calculating a Member's benefit under this Chapter 5, 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.
- (g) In any particular case and notwithstanding the other provisions of this clause 31.3, Salary shall be such other amount or determined in such other manner as may be agreed by the ES Employer, the Trustee and the Member for the purposes of the whole or any particular provision of this Chapter 5.

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### **31.4 Meaning of “Final Average Salary”**

- (a) Subject to clause 31.4(b), Final Average Salary in relation to a Member means at any particular date, the Member's average Annual Salary during -
- (i) in the case of a Member who at that date had been in Employment for less than 2 years - the Member's Employment; or
- (ii) in any other case - the 2 years ending on that date.
- (b) 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:-
- (i) the Member's Final Average Salary calculated when the Member ceased Employment; or
- (ii) the Member's Final Average Salary immediately before the Member's Salary reduction indexed in accordance with clause 31.4(c).
- (c) The Member's Final Average Salary mentioned in clause 31.4(b)(ii) 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 clause 31.4(b)(ii);
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.

- (d) For the purposes of this clause 31.4, “in Employment” means Employment with the Member's current ES Employer or, if employed by a Participating Entity, consecutive periods of Employment with Participating Entities.

### **31.5 Employer to notify trustee of the amount of commission paid**

- (a) This clause 31.5 applies to an ES Employer who pays to an Employee a Salary that consists wholly or partly of commission.

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- (b) As soon as is practicable after each financial year, the ES Employer must notify the Trustee of the amount of the Employee's Salary for the year.
- (c) If the Trustee requests the ES Employer to notify the Trustee of the amount of the Employee's Salary for any other period, the ES Employer must comply with the request.

## CHAPTER 6 - INTERPRETATION (GENERAL)

### 32. Defined terms in this Deed

#### 32.1 Defined terms and definitions

In this Deed generally, except where a contrary intention appears:-

**"Accumulation Benefit"** means a benefit which is not a Defined Benefit.

**"Accumulation Benefit Member"** means a Member who is not a Defined Benefit Member.

**"Accumulation Benefits Fund"** means that part of the assets of the Scheme which the Trustee has determined to constitute the Accumulation Benefits Fund in order to fund Accumulation Benefits, together with future contributions and investment earnings allocated to the Scheme.

**"Accumulation Comparison Rate"** means the rate determined by the Trustee from time to time having regard to:

- (a) the objective of ensuring, so far as it is reasonably possible so to do, that a benefit paid to a Defined Benefit Member (other than an amount representing the balance, if any, in the Member's accumulation account) is at least an amount representing the total of the required Employer and Employee contributions made under the LGAAct (or its statutory predecessors) for the Member, together with a reasonable level of notional earnings on those contributions over the contribution period, but taking into account costs incurred by the Trustee for the Member or Defined Benefit Members generally over the contribution period;
- (b) the need to ensure that a Defined Benefits Fund remains adequate to meet the value of the liabilities for remaining Members whose benefits are to be paid from that Fund.

The rate may be set differently for:

- (c) calculation of benefits under Chapter 3;
- (d) calculation of family law offset accounts under clause 13.8, and may be different for family law offset accounts applicable to Defined Benefit Members under any of Chapter 3, Chapter 4 or Chapter 5.

**"Actuary"** means a person appointed by the Trustee from time to time to provide actuarial services in respect of the Scheme, being a person who is:-

- (a) an accredited member, or a fellow, of the Institute of Actuaries of Australia; and

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(b) otherwise eligible under Superannuation Law to accept that appointment.

**“Associated Employer”** means a Participating Employer that is associated with Brisbane City Council.

**“Asteron LSL”** means Asteron Life & Superannuation Limited ACN 073 979 530.

**“Asteron Life”** means Asteron Life Limited ACN 001 698 228 (prior to that company’s de-registration).

**“Asteron Policies”** means policies of life insurance:-

(a) that were:-

- (i) issued by Asteron Life to the trustee of Asteron Superannuation Fund;
- (ii) on a successor fund transfer of Asteron Superannuation Fund to SMT, assigned from the trustee of Asteron Superannuation Fund to the SMT Trustee, as policy owner; and
- (iii) assigned from Asteron Life to Asteron LSL, and subsequently assigned from Asteron LSL to TAL, as issuer;

(b) as transferred to the Scheme, by assignment from the SMT Trustee to the Trustee, as agreed with TAL, on the SMT Merger Date.

**“Auditor”** means a person appointed as auditor of the Scheme.

**“Award Contributions”** means, in relation to a Member, contributions made by, or on behalf of, the Employer to the Scheme in relation to the Member in or towards satisfaction of the Employer’s obligation to make contributions for the Member.

**“Beneficiary”** means a person (including but not limited to a Member) to whom a benefit is payable.

**“Benefit Policy”** means an Asteron Policy:-

- (a) that is an individual superannuation policy of life insurance for the benefit of Member who is a former member of SMT; and
- (b) that provides benefits which include an investment component,

as that policy is varied or replaced from time to time, including where a replacement policy is issued by a different Life Insurer.

**“Binding Nomination”** means:

- (a) 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:

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- (i) each person nominated is within a class of persons the Trustee has prescribed as eligible to be nominated in a binding nomination;
  - (ii) the nomination notice is in the form prescribed by the Trustee for binding nominations;
  - (iii) the nomination notice otherwise complies with form and content requirements prescribed by the Trustee for binding nominations;
  - (iv) the nomination notice has not expired, in terms of the expiry period prescribed by the Trustee for binding nominations;
- (b) in respect of a SFT Member, a notice given to the Transferor Trustee that the Transferor Trustee requests and the Trustee agrees is accepted as a Binding Nomination for the Scheme.

**“Chapter 3 Member”** see clause 18.2.

**“Chapter 4 Member”** see clause 22.2.

**“Chapter 5 Member”** see clause 27.2.

**“Child”** has the meaning given by the Superannuation Industry (Supervision) Act 1993 (Cwlth).

**“City Super”** means the Brisbane City Council Superannuation Plan.

**“Compound Interest”** means interest, whether a positive or negative amount, calculated under clause 14.8.

**“CS Defined Benefits Fund”** means that part of the former assets of City Super transferred to the Trustee which the Trustee has determined to constitute the CS Defined Benefits Fund in order to fund Defined Benefits for Chapter 4 Members, together with future contributions and investment earnings allocated to that Fund.

**“CS Merger Date”** means 1 July 2011.

**“CS Employer”** means:

- (a) Brisbane City Council; and
- (b) any Associated Employer of Brisbane City Council that is required to contribute to the Scheme for any Employee on the basis set out in Chapter 4.

**“Current Spouse”** of Member means a Spouse who is in a genuine domestic relationship with the Member at the date of the Member’s death.

**“Death Benefit”** means a benefit paid upon, after or in consequence of the death of a Member. The term includes a benefit which is payable, but not yet paid, at the date of death of a Member.

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**“Death Benefit Instruction”** means:

- (a) 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:
  - (i) each person nominated is within a class of persons the Trustee has prescribed as eligible to be nominated in a Death Benefit instruction;
  - (ii) the notice is in the form prescribed by the Trustee for a Death Benefit instruction;
  - (iii) the notice otherwise complies with form and content requirements prescribed by the Trustee for a Death Benefit instruction;
- (b) in respect of a SFT Member, a notice delivered to the Trustee by the Transferor Trustee that the Transferor Trustee requests and the Trustee agrees is accepted as a Death Benefit Instruction for the Scheme.

**“Deed”** or **“this Deed”** means the provisions of the trust deed as amended by the supplemental deed made by the Trustee to take effect on the ES Merger Date, as those provisions are subsequently amended from time to time.

**“Defined Benefit”** means a benefit or part of a benefit which does not wholly comprise the balance of an accumulation account for a Member.

**“Defined Benefit Member”** means a Member who has an entitlement to a Defined Benefit.

**“Defined Benefits Funds”** means the CS Defined Benefits Fund, the ES Defined Benefits Fund and the LG Defined Benefits Fund.

**“Dependant”** has the meaning given by Superannuation Law.

**“Disability Pension”** means a pension paid or payable in respect of Temporary Disablement.

**“Disability Pensioner”** means a Member who is for the time being entitled to receive a Disability Pension.

**“Eligible Person”** means a person who is eligible under Superannuation Law to become a Member of a regulated superannuation fund.

**“Employee”** means:-

- (a) an employee as defined in Superannuation Law, including a person that an Employer contributes for under SG Legislation; and
- (b) any other person whom the Employer determines is an Employee for the purposes of the Scheme.

**“Employer”** has the meaning given by Superannuation Law, and in relation to a Member means the Employer of the Member.

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**“Energy Super”** means the regulated superannuation fund known as “Energy Super”.

**“Energy Super Trustee”** means the trustee of Energy Super at the ES Merger Date.

**“Energy Queensland Limited”** (ABN 96 612 535 583) as the ultimate parent entity of the Energy Queensland Group including Ergon Energy Corporation Limited (ABN 50 087 646 062) and Energex Limited (ABN 40 078 849 055), or any entity that in the reasonable opinion of the Trustee is a successor entity.

**“ES Employer”** means a Participating Employer that employed any ES Transferred Member on the ES Merger Date.

**“ES Defined Benefits Fund”** means that part of the former assets of Energy Super transferred to the Trustee which the Trustee has determined to constitute the ES Defined Benefits Fund in order to fund Defined Benefits for Chapter 5 Members, together with future contributions and investment earnings allocated to that Fund.

**“ES Member”** means a Member who:

- (a) is a Transferred ES Member;
- (b) is an Employee of an ES Employer;
- (c) joined the Scheme by application under a product disclosure statement labelled “Energy Super”; or
- (d) is an Employee of a Participating Employer that was admitted to the Scheme under a product disclosure statement labelled “Energy Super”,

while that person remains an ES Member.

**“ES Merger Date”** means 1 July 2021.

**“Establishment Phase Policy”** means the SMT Policy “*Endowment Policy for the Establishment Phase of the ALIS*” dated 30 August 2006, as that policy is varied or replaced from time to time, including where a replacement policy is issued by a different Life Insurer.

**“ETU”** means Communications Electrical Electronic Energy Information Postal Plumbing and Allied Services Union of Australia Electrical Division Queensland & Northern Territory Divisional Branch (ABN 80 450 640 455).

**“Financially Dependent Spouse”** of a Member means a Spouse or former Spouse of the Member who, at the date of the Member’s death:-

- (a) is no longer in a genuine domestic relationship with the Member; and
- (b) in the opinion of the Trustee, having regard to such factors as the Trustee considers relevant, is financially dependent on the Member to a significant extent.

**“Fit and Proper Policy”** means the policy adopted by the Trustee as required under Superannuation Law in relation to the criteria for a person to be appointed and to remain as a

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director of the Trustee, including (as required under APRA Prudential Standard SPS 520 “*Fit and Proper*”):

- (a) defined competencies required for directors individually and for the board of directors of the Trustee collectively; and
- (b) criteria to assist the board of directors of the Trustee in assessing whether the person:
  - (i) possesses the competence, character, diligence, experience, honesty, integrity and judgement to perform properly the duties of a director;
  - (ii) possesses the education or technical qualifications, knowledge and skills relevant to the duties and responsibilities of the Trustee (having regard to paragraph (a));
  - (iii) is not disqualified under Superannuation Law from being a director; and
  - (iv) either:
    - (A) has no conflict in performing the duties of a director; or
    - (B) if the person has a conflict, the conflict will not create a material risk that the person will fail to perform properly the duties of a director.

**“Former CS Deed”** means the trust deed dated 24 January 1989 establishing City Super (then named “Brisbane City Council Occupational Superannuation Plan” ) as amended.

**“Former ES Deed”** means the trust deed dated 16 June 1995 establishing Energy Super (then named “Electricity Supply Industry Superannuation Fund (Qld)”) as amended.

**“Former LG Super”** means the LG Super scheme under the Former LG Super Deed immediately before the CS Merger Date.

**“Former LG Super Deed”** means the trust deed made by the Trustee on 5 April 1995 as amended, as in force immediately before the CS Merger Date.

**“Fund”** means any of the Funds mentioned in clause 2.2.

**“Group Annuity Policy”** means:-

- (a) the “Group Annuity Policy – policy endorsement” dated 1 April 2020, that was:
  - (i) issued by Asteron LSL to the SMT Trustee, and restated and varied the terms of annuity policies that had been issued by Asteron LSL to the SMT Trustee (which replaced annuity policies that had been issued for predecessor funds prior to their successor fund transfer to SMT); and
  - (ii) assigned from Asteron LSL to TAL, as issuer;
- (b) as transferred to the Scheme, by assignment from the SMT Trustee to the Trustee, as agreed with TAL, on the SMT Merger Date,



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as that policy is varied or replaced from time to time, including where a replacement policy is issued by another Life Insurer.

**“Income Phase Policy”** means the SMT Policy *“Annuity Policy for the Income Phase of the ALIS”* dated 30 August 2006, as that policy is varied or replaced from time to time, including where a replacement policy is issued by a different Life Insurer.

**“Insurance Benefit”** means:-

- (a) the amount of a benefit in respect of death or Total and Permanent Disablement that is greater than the Member’s accrued benefit;
- (b) a Disability Pension; and
- (c) any other benefit provided as a consequence of the Trustee arranging external insurance in respect of the death or disability of any Members.

**“Insurance Premium”** means an amount:-

- (a) determined by the Trustee from time to time to be charged to a Member for the provision of insurance cover (other than compulsory cover for Defined Benefit Members); and
- (b) not exceeding the Member’s proportionate share, having regard to the type and amount of insurance cover provided for the Member, but otherwise determined on a consistent basis for all Insured Members, of the cost incurred by the Trustee to purchase external insurance and otherwise administer the provision of Insurance Benefits.

**“Insured Member”** means:-

- (a) a Defined Benefit Member; and
- (b) a Member to whom default insurance cover applies who has not opted out of that cover; and
- (c) any other Member who has the benefit of insurance cover.

When used in relation to a particular type of cover (eg **“Insured Member with cover for TPD”**) Insured Member means a person who has the benefit of that particular type of cover.

**“Investment Portfolio”** means a pool of assets of the Accumulation Benefits Fund for the purposes of clause 7.1(c).

**“LGAct”** means the Local Government Act 2009.

**“LG Defined Benefits Fund”** means that part of the assets of the Scheme which the Trustee has determined to constitute the LG Defined Benefits Fund in order to fund Defined Benefits for Chapter 3 Members, together with future contributions and investment earnings allocated to that Fund.

**“LG Employer”** means:-

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- (a) a Local Government other than Brisbane City Council;
- (b) a Local Government Entity; and
- (c) the Trustee.

**“LG Member”** means a Member who:-

- (a) was a member immediately before the ES Merger Date;
- (b) is an Employee of a LG Employer;
- (c) joined the Scheme by application under a product disclosure statement labelled “LGIAsuper” or, before the SMT Merger Date, “Brighter Super”; or
- (d) is an Employee of a Participating Employer that was admitted to the Scheme under a product disclosure statement labelled “LGIAsuper” or, before the SMT Merger Date, “Brighter Super”,

while that person remains a LG Member.

**“LG Regulation”** means the Local Government Regulation 2012.

**“LGAQ”** means Local Government Association of Queensland Ltd.

**“Life Insurer”** means an insurer regulated by the *Life Insurance Act (1975)* (Cth).

**“Local Government”** has the meaning in the LGAct.

**“Local Government Entity”** has the meaning in the LGAct.

**“MEA”** means Master Electricians Australia Limited (ABN 31 145 178 203).

**“Member”** means a person to whom or in respect of whom a benefit is or will be payable from the Scheme (but does not include a person to whom a benefit is payable consequent upon the death of a Member).

**“Member Contributions”** means amounts received by the Scheme as contributions paid by the Member himself or herself.

**“MySuper Member”** means a Member:-

- (a) who is not a Defined Benefit Member;
- (b) who has not chosen an Investment Portfolio under clause 7.1 (other than a choice in respect of an amount which is an accrued default amount as defined by Superannuation Law because of that choice); and
- (c) for whom contributions made for the benefit of the Member are required by Superannuation Law to be paid into a My Super Product.

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**"MySuper Product"** means a class of beneficial interest which satisfies the requirements for a MySuper Product set out in clause 5.6.

**"Overriding Compliance Provisions"** means clause 4.13, clauses 4.14 to 4.21 inclusive, and clause 17A.2.

**"Parental Leave"** includes any of the following:

- (a) maternity leave;
- (b) early paid leave for an expectant mother if the Employer is unable to transfer her to a safe job;
- (c) paternity leave;
- (d) pre-adoption leave;
- (e) adoption leave.

**"Participating Employer"** means an Employer that contributes to the Scheme on behalf of a Member:-

- (a) pursuant to an obligation under the LGAct;
- (b) pursuant to an arrangement made between the Employer and the Trustee; or
- (c) pursuant to an arrangement between the Employer and:-
  - (i) the trustee of City Super; or
  - (ii) the Energy Super Trustee; or
  - (iii) the SMT Trustee,

in each case before the respective mergers with the Scheme.

**"Pre ES Merger Provisions"** means the trust deed made by the Trustee on 5 April 1995 as replaced on 1 July 2011 and as subsequently amended, as in force immediately before the ES Merger Date.

**"Qualifying Child"** means a Child of a Member who at the date of a Member's death:-

- (a) is aged under 18 years;
- (b) is financially dependent on the Member;
- (c) is in an interdependency relationship with the Member; or
- (d) has a disability of the kind described in subsection 8(1) of the Disability Services Act 1986 (Cwlth).

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**“Qualifying Spouse”** of Member means a person who is a Current Spouse or a Financially Dependant Spouse.

**“QSU”** means Australian Municipal, Administrative, Clerical and Services Union Queensland (Services and Northern Administrative) Branch and the Queensland Services, Industrial Union of Employees (ABN 86 351 665 653).

**“Regulator”** means the Australian Prudential Regulation Authority and the Australian Securities and Investments Commission, and any other person or body having statutory jurisdiction over a matter to which this Deed is relevant.

**“Retained Member”** means a Member that a benefit has become payable to under this Deed, and their benefit is retained in the Scheme.

**“Required DB Contributions”** means:-

- (a) in respect of Chapter 3 Members, required contributions by or in respect of Defined Benefit Members under clause 19.1;
- (b) in respect of Chapter 4 Members:-
  - (i) basic contributions by or in respect of Defined Benefit Members under clause 23.4; and
  - (ii) any contributions by a CS Employer in respect of Defined Benefit Members generally under clause 23.3 (but, to avoid doubt, does not include additional contributions under clause 23.8);
- (c) in respect of Chapter 5 Members:-
  - (i) basic contributions by or in respect of Defined Benefit Members under clause 29.17; and
  - (ii) any contributions by an ES Employer:
    - (A) to finance the cost of Defined Benefit Members generally under clause 29.1(a)(ii)(A); or
    - (B) to finance the cost of any augmentation of a Defined Benefit under clause 29.1(a)(ii)(B) (but, to avoid doubt, does not include contributions under clause 29.1(a)(ii)(B) to augment an Accumulation Benefit).

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

- (a) a person:-
  - (i) who 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,

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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 Superannuation 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 SFT Member, a person:-
- (i) who:-
    - (A) the Transferor Trustee notifies the Trustee was nominated by the SFT Member, while a member of the Transferred Fund (or a predecessor fund), as the person entitled to receive the Member's pension benefit on the Member's death; or
    - (B) the Member nominated 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 Superannuation 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).

**"Salary":-**

- (a) for Chapter 3, has the meaning given by clause 21.1;
- (b) for Chapter 4, has the meaning given by clause 26.1;
- (c) for Chapter 5, has the meaning given by clause 31.1.

**"Salary Conversion Date"** of a Member means a date determined under the LG Regulation as the date that the definition of "salary" under regulation 299A commences to apply to the Member, in respect of either or both of (as applicable):

- (a) the contributions payable for the Member under the LGAct by the Member's LG Employer or CS Employer;
- (b) any contributions payable by the Member under the LGAct.

For the definition of **Salary Conversion Date**:

- (c) to avoid doubt, the Salary Conversion Date of a Member may be different for paragraph (a) and for paragraph (b);
- (d) contributions that paragraph (b) applies to include contributions paid in substitution for contributions by the Member:-

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- (i) by a LG Employer under a salary sacrifice arrangement mentioned in clause 19.2; or
- (ii) by a CS Employer under a salary sacrifice arrangement mentioned in clause 25.7.

**“Scheme”** means the superannuation scheme continued in existence under the LGAct.

**“Scheme Expenses”** means the costs and expenses of and incidental to the establishment, operation, management, administration and investment of the Scheme (including remuneration for employees and directors, and all expenses, fees and costs, referred to in clause 4.23) but not including tax.

**“SFT Member”** means a Member who transferred to the Scheme from another Superannuation Entity pursuant to an arrangement between the Trustee and the Transferor Trustee which includes an agreement that the Scheme is a successor fund of that Superannuation Entity in respect of the Member (and includes a Transferred ES Member and a Transferred SMT Member, as applicable).

**“SG Contributions”** in relation to a Member, means contributions by an Employer that are equal to the sum of the contributions made by, or on behalf of, the Employer to the Scheme in relation to the Member, that:

- (a) reduce the Employer’s potential liability for the superannuation guarantee charge imposed by the SG Legislation; or
- (b) are payments of shortfall components under SG Legislation received for the credit of that Member.

**“SG Legislation”** means the Superannuation Guarantee (Administration) Act 1992 and the Superannuation Guarantee Charge Act 1992.

**“SMT”** means the regulated superannuation fund known as “SPSL Master Trust” (formerly named “Suncorp Master Trust” and formerly otherwise named).

**“SMT Employer”** means a Participating Employer that, immediately before the SMT Merger Date, made contributions to SMT for the benefit of any Employees, under an arrangement with the SMT Trustee.

**“SMT Longevity Benefit”** means the interest that a Transferred SMT Member holds, or a pension benefit that a Transferred SMT Member or the Spouse of a deceased former member of SMT is receiving, under the Establishment Phase Policy or the Income Phase Policy immediately before the SMT Merger Date, as a member or beneficiary of:-

- (a) Asteron Superannuation Division Sub-Division 2: “Asteron Longevity Income Stream (Establishment Phase) Sub-Division” in the SMT; or
- (b) Asteron Superannuation Division Sub-Division 3: “Asteron Income Stream (Income Phase) Sub-Division” in the SMT.

**“SMT Merger Date”** means 1 June 2023.

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**“SMT Personal Super Benefit”** means the interest that a Transferred SMT Member holds, or a pension benefit that a Transferred SMT Member or the Spouse of a deceased former member of SMT is receiving, under a Benefit Policy immediately before the SMT Merger Date, as a member or beneficiary of “Suncorp Personal Superannuation Division” in the SMT.

**“SMT Trustee”** means the trustee of SMT at the SMT Merger Date.

**“SMT Wealthstar Policy”** means an Asteron Policy:-

- (a) that is an individual superannuation policy of life insurance for the benefit of Member who is a former member of SMT;
- (b) that provides benefits on death and / or disability (and does not include an investment component),

as that policy is varied or replaced from time to time, including where a replacement policy is issued by a different Life Insurer.

**“Spouse”** has the meaning given by the Superannuation Industry (Supervision) Act 1993 (Cwlth), except in clause 11.1(d) and clause 13.

**“Spouse Contributions”** means contributions which are **“eligible spouse contributions”** under Superannuation Law.

**“Suncorp”** means Suncorp Staff Pty Ltd ACN 010 869 726.

**“Superannuation Entity”** has the meaning given by Superannuation Law.

**“Superannuation Law”** means:-

- (a) Superannuation Guarantee (Administration) Act 1992 (Cwlth);
- (b) Superannuation Guarantee (Charge) Act 1992 (Cwlth);
- (c) Superannuation Industry (Supervision) Act 1993 (Cwlth);
- (d) Superannuation Entities (Taxation) Act 1987 (Cwlth);
- (e) Income Tax Assessment Act 1936 (Cwlth);
- (f) Income Tax Assessment Act 1997 (Cwlth);
- (g) any other Act of the State or of the Commonwealth that the Scheme or the Trustee must comply with in order to secure, or better secure, a tax concession or avoid a penalty, detriment or disadvantage; and
- (h) any modification, direction or guideline issued by the APRA with which the Trustee must or may comply.

**“Superannuation (Family) Law”** see clause 13.2.

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**“Superannuation Guarantee Charge”** means the charge imposed by section 5 of the *Superannuation Guarantee Charge Act 1992*.

**“TAL”** means TAL Life Limited ACN 050 109 450.

**“Terminal Medical Condition”**, in relation to a Member, means the definition of *“Terminal Medical Condition”* or a corresponding term in a policy of insurance taken out by the Trustee to provide cover for terminal illness and, where the Trustee has taken out different policies of insurance for different Members or groups of Members, means the definition in the policy of insurance covering that Member.

However where a Member is entitled to a benefit on suffering a Terminal Medical Condition and there is no applicable policy of insurance, **“Terminal Medical Condition”** has the meaning given in Superannuation Law.

**“Temporary Disablement”** or **“TTD”**, in relation to a Member, means the definition of *“temporary disablement”* or a corresponding term in a policy of insurance taken out by the Trustee to provide income continuance or income protection benefits and, where the Trustee has taken out different policies of insurance for different Members or groups of Members, means the definition in the policy of insurance covering that Member.

**“Total and Permanent Disablement”** or **“TPD”**, in relation to a Member, means the definition of *“total and permanent disablement”* or a corresponding term in the policy of insurance taken out by the Trustee to provide permanent incapacity benefits and, where the Trustee has taken out different policies of insurance for different Members or groups of Members, the definition applicable to a Member is the definition in the policy of insurance covering that Member.

However where a Member is entitled to a benefit on Total and Permanent Disablement and there is no applicable policy of insurance:

- (a) In Chapter 2, other than in respect of Transferred ES Members, and in Chapter 3, **“Total and Permanent Disablement”** means *“permanent incapacity”* as defined in Superannuation Law.
- (b) In Chapter 4, **“Total and Permanent Disablement”** of a Member means disablement resulting from illness, accident or injury to the Member which commences or occurs prior to the Member’s Normal Retirement Date and while the Member is in the active service of the Employer and as a result of which either:
  - (i) the Member suffers the loss by physical separation of two limbs or the complete and irremediable loss of the sight of both eyes or the loss by physical separation of one limb accompanied by the complete and irremediable loss of the sight of one eye (limb means at least an entire hand or entire foot); or
  - (ii) the Member is continuously absent from his or her employment for a period of six consecutive months and after considering the advice of the insurer and any medical opinions provided or obtained, the Trustee is satisfied that it is unlikely he or she will ever be able to engage in any regular remunerative work for which he or she is reasonably fitted by education, training or experience.



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- (c) In Chapter 5, and in Chapter 2 in respect of Transferred ES Members, "**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 the Trustee, 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.

"**Transferor Trustee**" means the trustee of a Superannuation Entity, where members of the Superannuation Entity transfer to the Scheme pursuant to an arrangement between the Trustee and that trustee which includes an agreement that the Scheme is a successor fund of the Superannuation Entity in respect of the Member (and includes the Energy Super Trustee and SMT Trustee, as applicable).

"**Transferred ES Member**" means a Member who transferred to the Scheme from Energy Super on the ES Merger Date.

"**Transferred Fund**" means a Superannuation Entity, where members of the Superannuation Entity transfer to the Scheme pursuant to an arrangement between the Trustee and the trustee of that Superannuation Entity which includes an agreement that the Scheme is a successor fund of that Superannuation Entity in respect of the Member (and includes Energy Super and SMT, as applicable).

"**Transferred SMT Member**" means a Member who transferred to the Scheme from SMT on the SMT Merger Date.

"**Transition End Date**" means 1 January 2023.

"**Trustee**" means Brighter Super Trustee.

"**Valid Death Benefit Instruction**" has the meaning given by clause 14.13(e).

"**WCR Act**" means the Workers' Compensation and Rehabilitation Act 2003 (Qld).

## **32.2 General interpretation**

- (a) Terms defined by statute

- (i) All terms and expressions used in this Deed which are defined in the LG Act or LG Regulation, or in Superannuation Law have, unless a contrary intention appears, the meanings assigned to them by the LG Act, LG Regulation or Superannuation Law.
- (ii) Without limiting clause 32.2(a)(i), the following terms in Chapter 3 and Chapter 4 have the meanings given in the LG Act or LG Regulation (as applicable):-
- permanent employee;*
- special permanent employee;*
- standard permanent employee.*

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(b) Headings

Headings and footnotes do not form part of this Deed but a heading or footnote to a clause or provision may be used to resolve an ambiguity in the meaning of that clause or provision.

(c) Words and references

In this Deed, unless a contrary intention appears -

- (i) Every word in the singular number is construed as including the plural number and every word in the plural number is construed as including the singular number.
- (ii) Derivatives of any defined term or expression have a corresponding meaning.
- (iii) Reference to a statute includes a statute that amends or replaces the statute.
- (iv) Reference to "clause" is to a provision of this Deed (including the Appendices).

(d) "Giving" of Notices

For all purposes of this Deed, a notice or other document is given by the Trustee (or a returning officer) on the day the notice or other document:

- (i) is put into the post or otherwise leaves the office of the Trustee for delivery to the intended recipient;
- (ii) if delivered by an electronic mechanism, on the day the electronic message is sent.

### **32.3 Severance of void provisions**

- (a) A provision of this Deed which is void, prohibited or unenforceable (whether by reason of Superannuation Law or otherwise) is ineffective to the extent that the provision is void, prohibited or unenforceable but remains effective to the extent that it:-
  - (i) is not void, prohibited or unenforceable; and
  - (ii) is capable of sensible operation.
- (b) A provision which is ineffective under clause 32.3(a) does not invalidate the remaining provisions of this Deed.

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## **BENEFIT RELATED TABLES**

**TABLE 1 - AGE DISCOUNT FACTOR TABLE (CHAPTER 4)**

<b>Age of Member</b>	<b>Factor F</b>
35 or younger	0.60
36	0.62
37	0.64
38	0.66
39	0.68
40	0.70
41	0.72
42	0.74
43	0.76
44	0.78
45	0.80
46	0.82
47	0.84
48	0.86
49	0.88
50	0.90
51	0.92
52	0.94
53	0.96
54	0.98

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55	1.00
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**TABLE 2 - MEMBER'S RESERVE FACTOR TABLE (CHAPTER 5)**

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

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## **Schedule 1 - TRANSITIONAL PROVISIONS FOR ES MERGER**

### **1. Entitlements under prior provisions not affected**

Neither this Deed nor any amendment to this Deed affects the:-

- (a) amount;
- (b) calculation of interest on; or
- (c) nature,

of a Member's rights and entitlements with respect to benefits under:-

- (d) the Pre ES Merger Provisions; or
- (e) the Former ES Deed.

### **2. Pre merger benefits not affected**

To avoid doubt, a benefit which is or becomes payable by virtue of an event or occurrence before the ES Merger Date must be calculated and paid:

- (a) in respect of a person who was a Member of Brighter Super (then named "LGIAsuper") before the ES Merger Date, in accordance with the Pre ES Merger Provisions;
- (b) in respect of a person who was a member of Energy Super, under the Former ES Deed.

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## Schedule 2 - TRANSITIONAL PROVISIONS FOR SMT MERGER

### 1. Preservation of rights under Former SMT Deed

If a provision in Chapter 1 or Chapter 2 has, or could be interpreted as having, the effect that a Transferred SMT Member does not have benefit entitlements after the SMT Merger Date which are at least equivalent to those held under the Former SMT Deed:-

- (a) that outcome is unintended;
- (b) the relevant provision must be read down, if possible, to avoid that outcome;
- (c) if the relevant provision cannot be so read down, it does not operate to the extent that it produces that outcome; and
- (d) a provision contained in the Former SMT Deed may be taken to be incorporated by reference into this Deed, and applied accordingly, to the extent necessary to avoid that outcome.

### 2. Entitlements under Former SMT Deed not affected

Neither this Deed nor any amendment to this Deed affects the:-

- (a) amount;
- (b) calculation of interest on; or
- (c) nature,

of a Member's rights and entitlements with respect to benefits under the Former SMT Deed.

### 3. Pre merger benefits not affected

To avoid doubt, a benefit which is or becomes payable in respect of a Transferred SMT Member by virtue of an event or occurrence before the SMT Merger Date must be calculated and paid under the Former SMT Deed.

### 4. Definitions in this Schedule 2

In this Schedule 2:

**"Former SMT Deed"** means the trust deed dated 22 June 1979 establishing SPSL Master Trust (under a former name) as amended.

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## Chapter 5 Appendix A – GPS Plan

### A.1. APPLICATION OF APPENDIX A

**This Appendix A:**

- (a) forms part of Chapter 5; and
- (b) applies only to ES Defined Benefit Members who are GPS 2A Members.

### A.2. ACCUMULATION ACCOUNT

#### A.2.1 GPS 2A ACCUMULATION ACCOUNT

- (a) The Trustee shall establish for each GPS 2A Member an Accumulation Account to which the Trustee allocates (as credits or debits, as applicable):
  - (i) the balance of the accumulation accounts transferred from Energy Super;
  - (ii) any Voluntary Contributions made by the Member to the Scheme;
  - (iii) any additional Employer contributions made in accordance with clause 29.1(b);
  - (iv) any amounts which the Trustee may determine to credit to the Accumulation Account as a consequence of a transfer into the Scheme from another Superannuation Entity;
  - (v) Scheme Expenses and tax, if any, which the Trustee determines to allocate to the Member Account;
  - (vi) net investment returns determined under clause 7.3 allocated from time to time from the ES Merger Date to the date of payment.
- (b) An Accumulation Account established under clause A.2.1(a) is maintained as an accumulation account under clause 11.

#### A.2.2 GPS 2A benefits - payment of Accumulation Accounts

Subject to the preservation rules under Superannuation 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.

### A.3. GPS 2A RETIREMENT BENEFITS

#### A.3.1 GPS 2A benefits – retirement 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 Scheme a lump sum benefit calculated as follows:

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$(TM + MBM) \times FAS$

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 GPS 2A benefits - 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 Superannuation 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 Scheme 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 investment returns determined under clause 7.3 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 GPS 2A benefits – death / TPD before age 60**

Subject to clause A.9, upon the death or Total and Permanent Disablement of a Member while in Service before age 60 there shall be payable from the Scheme 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



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"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 GPS 2A benefits – death / TPD on or after age 60**

Subject to this 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 Scheme 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. GPS 2A BENEFITS ON CESSATION OF EMPLOYMENT IN OTHER CIRCUMSTANCES**

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 Appendix A including resignation for reasons of ill-health there shall be payable to the Member from the Scheme a lump sum benefit equal to the Member's Reserve.

#### **A.6. GPS 2A 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 15.4 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 Entity to which the ES Employer contributes in respect of the Member, shall not be less than the benefit determined by the ES Employer and advised to the Trustee as being sufficient to meet the minimum benefit required to be provided by the ES Employer to or in respect of that Member in accordance with the SG Legislation 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. INSURANCE OF BENEFITS**

- (a) If insurance is effected or sought to be effected by the Trustee in respect of any benefit which might become payable from the Scheme in respect of a GPS 2A Member, or group of GPS 2A Members, or all GPS 2A Members, and:

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- (i) the insurer refuses to provide or increase insurance in respect of a person on the insurers' standard terms; or
- (ii) the 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 ES 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 clause A.9(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 A.9 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.

## **A.9. DEFINITIONS AND GENERAL PROVISIONS FOR APPENDIX A**

### **A.9.1 Defined terms for Appendix A**

In this Appendix A:-

**"Accumulation Account"** means in relation to a Member the account of that Member established in accordance with clause A.3.1.

**"Annual Salary"** means, in relation to a Member, at any particular date the annual rate of the Member's GPS Salary as at that date together with such additional amount advised by the ES Employer from time to time.

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

$$X/Y$$

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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:

- (a) the Member's basic benefit transferred from Energy Super;
- (b) the Member Contributions of the Member under clause 29.17; and
- (c) Employer contributions deemed, under clause 29.2 (Salary sacrifice arrangements), to be Member Contributions of the Member under clause 29.17;

accumulated and adjusted for net investment returns determined under clause 7.3 allocated to them from time to time, and adjusted for any taxation.

**"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 ES Defined Benefit Fund as at that date.

**"Final Average Salary"** means 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 ES Employer and the Normal Retirement Date PROVIDED THAT if the Salary of a Member 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.

**"GPS Plan"** means the employer plan identified in Energy Super as the GPS Plan immediately before the ES Merger Date.

**"Member"** means a GPS 2A Member.

**"Member's Benefit Multiple"** means 19.5% multiplied by the period of Plan Membership calculated in years with completed days counting proportionately, but excluding the Member's Transfer Multiple.

**"Member's Reserve"** means in relation to a Member or Beneficiary as at any particular date the greater of:

- (a) 2.5 x Basic Benefit; or

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- (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 ES Employer and the Member from time to time.

**"Plan Membership"** means in relation to a Member the most recent uninterrupted period during which the Member has been a Member and in the employ of the ES Employer, and also any further period which the ES Employer with the consent of the Trustee may declare to be Plan Membership for the purposes of the whole or any particular provision of Chapter 5.

**"Service"** means continuous Employment with one or more of the ES 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 ES 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.

**"Transfer Multiple"** means the Member's benefit multiple notified to the Trustee by the Energy Super Trustee as at the ES Merger Date.

#### **A.9.2 Transfer from one GPS 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 ES 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 this Appendix A.

#### **A.9.3 Temporary cessation of Employment**

If a Member ceases to be in the employ of an ES 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 ES Employer, the Trustee may determine that the Member's membership of the Scheme under this Appendix A may continue subject to such conditions as may be agreed upon by the Trustee, the Member and the ES Employer.

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#### **A.9.4 Part-time Employment, absence or non-eligibility**

Subject to Superannuation Law, the ES 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 ES Employer the Member is employed by the ES Employer in other than a full- time capacity, the Member is absent from active employment with the ES Employer (whether with or without pay or the approval of the ES Employer) or the Member remains in the employ of the ES Employer but is not a person who is classified as an Eligible Person for the purposes of this Deed.

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## Chapter 2 Appendix B – SMT Personal Super

### B.

#### B.1. APPLICATION OF APPENDIX B

- (a) This Appendix B applies to:-
  - (i) Transferred SMT Members who hold or are in receipt of a SMT Personal Super Benefit; and
  - (ii) other Beneficiaries who are in receipt of a SMT Personal Super Benefit, as a spouse of a former member of SMT.
- (b) Contributions and benefits in respect of Members and Beneficiaries who hold or are in receipt of a SMT Personal Super Benefit are calculated and payable in accordance with this Appendix B instead of Chapter 2 (clauses 10 to 17 inclusive).

#### B.2. BASIS FOR PROVISION OF BENEFITS UNDER APPENDIX B

- (a) In order to provide SMT Personal Super Benefits, the Trustee shall in respect of each Member effect with a Benefit Insurer a Benefit Policy on such terms and conditions as the Trustee and the Benefit Insurer agree.
- (b) If the Member has contributed amounts to the Advance Premium Account the Trustee shall maintain a Member's Credit Account for that Member which shall consist of:-
  - (i) the balance of the Member's Credit Account immediately before the SMT Merger Date, as notified to the Trustee by the SMT Trustee;
  - (ii) **plus** contributions paid into the Advance Premium Account in respect of the Member, and any other amount received by the Trustee for the credit of the Member;
  - (iii) **less** any taxes, premiums pursuant to the Benefit Policy, administration costs and any other costs prescribed by this Appendix B or by law;
  - (iv) **less** any amounts withdrawn from the Member's Credit Account in order to be applied towards the payment of any outstanding premiums;
  - (v) **plus** subject to the discretion of the Trustee, compound interest allocated to the Member's Credit Account at the rate determined by the Benefit Insurer from time to time having regard to the net earning rate of the a capital guaranteed superannuation fund of the Benefit Insurer.

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### **B.3. CONTRIBUTIONS TO BENEFIT POLICIES**

#### **B.3.1 Contribution rate for Benefit Policies**

Contributions shall be made by or in respect of a Member, at least at the rate required under the Benefit Policy.

#### **B.3.2 Arrangements for payment of premiums**

The Trustee may make any arrangements with the Member for the payment of any premiums under the Benefit Policy.

### **B.4. BENEFITS UNDER BENEFIT POLICIES**

#### **B.4.1 Benefit entitlement under Benefit Policies**

A Member's benefit under this Appendix B shall be equal to the Member's Policy Benefit, and shall be payable in whole or in part, in the circumstances set out in the Benefit Policy, or if none, as permitted by Superannuation Law and approved by the Trustee.

#### **B.4.2 Restrictions on partial payments of Members' Policy Benefits**

Despite any other provision of this Appendix B but subject to Superannuation Law, the Trustee may impose conditions and restrictions on partial payment of benefits under this Appendix B, including (for example):-

- (a) limits on how often partial payments are made;
- (b) a minimum amount for partial payment; and
- (c) a minimum balance that must remain in the Member's Credit Account after a partial payment.

### **B.5. CESSATION AS ELIGIBLE PERSON**

A Member shall as soon as possible after ceasing to be an Eligible Person, notify the Trustee and the Trustee shall then:-

- (a) accept no further contributions from or on behalf of the Member;
- (b) within sixty days after becoming aware that the Member has ceased to be an Eligible Person, arrange with a Benefit Insurer for the Member's Benefit Policy to be converted into a paid up assurance for such sum as may be secured in respect of the contributions paid by or on behalf of such Member provided that where the Member's benefit is secured through a Benefit Policy which provides for an investment account and the Member so requests, the Benefit Policy subject to the approval of the Trustee may be continued without being converted into a paid up policy and in such an event a Benefit Insurer will continue to deduct administrative charges and to add investment earnings on the remaining investment account balance pursuant to the terms of the Benefit Policy subject to the investment account balance being sufficient to meet the administration charges as they fall due; and

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- (c) should the Member be eligible for membership of a Superannuation Entity which is required to preserve any benefits so transferred in accordance with Superannuation Law, at the request of such Member (unless the benefit is to be transferred by way of successor fund transfer) and with the approval of the trustee of the Superannuation Entity, assign to that trustee any Benefit Policy effected or acquired together with the balance of the Member's Credit Account.

## **B.6. TRUSTEE INVESTMENT POWERS FOR BENEFIT POLICIES**

### **B.6.1 Authorised investment of Benefit Policies**

The Trustee shall invest all contributions by effecting Benefit Policies with a Benefit Insurer to secure the benefits of individual Members.

### **B.6.2 Method of investment of Benefit Policies**

The Trustee shall invest contributions made in respect of a Member in accordance with the investment choice of that Member under the Benefit Policy.

## **B.7. DEFINITIONS AND GENERAL PROVISIONS FOR APPENDIX B**

### **B.7.1 Definitions for Appendix B**

**“Advance Premium Account”** means the investment account maintained by a Benefit Insurer for the purpose of investing certain contributions made by Members under this Appendix B as advance premium payments towards their benefit entitlement under the Benefit Policy.

**“Benefit Insurer”** means one or more of:

- (a) TAL;-
- (b) any other Life Insurer,

as the Trustee determines.

**“Eligible Person”** means any Gainfully Employed person or other person permitted by Superannuation Law to be a member of the Scheme.

**“Gainfully Employed”** means engagement in any business, trade, profession, vocation, calling, occupation of employment for gain to the extent required by Superannuation Law and ‘Gainful Employment’ shall have a similar meaning.

**“Member’s Credit Account”** means a Member’s credit account established for the Member by the Trustee in the Advance Premium Account.

**“Member’s Policy Benefit”** means the value of the Benefit Policy or the amount payable in respect of the Member under the Benefit Policy.



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#### **B.7.2 Cessation of membership under Appendix B**

A person shall cease to be a Member that this Appendix B applies to, upon the payment of part of the Member's benefit to or in respect of a Member and:-

- (a) the transfer or rollover of the balance of the Member's benefit to another Superannuation Entity; or
- (b) the allocation of the balance of the Member's benefit to an accumulation account, in which case the Member becomes a Retained Member.

#### **B.7.3 Restrictions on partial transfers from Appendix B**

Despite any other provision of this Appendix B but subject to Superannuation Law, the Trustee may impose conditions and restrictions on partial transfer of benefits under this Appendix B, including (for example):-

- (a) limits on how often partial transfers are made;
- (b) a minimum amount for a partial transfer; and
- (c) a minimum balance that must remain in the Member's Credit Account after a partial transfer.

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## Chapter 2 Appendix C – SMT Longevity Benefits

### C.

#### C.1. APPLICATION OF APPENDIX C

- (a) This Appendix C applies to:-
  - (i) Transferred SMT Members who hold or are in receipt of a SMT Longevity Benefit; and
  - (ii) other Beneficiaries who are in receipt of a SMT Longevity Benefit, as a spouse of a former member of SMT.
- (b) Contributions and benefits in respect of Members and Beneficiaries who hold or are in receipt of a SMT Longevity Benefit are calculated and payable in accordance with this Appendix C instead of Chapter 2 (clauses 10 to 17 inclusive).

#### C.2. ESTABLISHMENT PHASE AND INCOME PHASE POLICIES

##### C.2.1 Establishment Phase Policy

- (a) The Trustee must maintain the Establishment Phase Policy.
- (b) The Trustee must request two or more Longevity Investment Portfolios to be offered to the Trustee by the Longevity Insurer under the Establishment Phase Policy.
- (c) The Trustee is only obliged to exercise, and to consider exercising, any right of surrender of the Establishment Phase Policy where:-
  - (i) the Trustee is required to do so by Superannuation Law; or
  - (ii) the Establishment Phase Policy is being terminated.
- (d) For clarity, no Member or Beneficiary has any entitlement or right:-
  - (i) in or to any assets or proceeds of the Longevity EP Pool; or
  - (ii) to interfere in relation to the exercise of any discretion, decision, determination or power by the Trustee or the Longevity Insurer under the Establishment Phase Policy, including to require the Trustee to exercise, or consider exercising, any right of surrender of the Establishment Phase Policy.

##### C.2.2 Authorised investments – Establishment Phase

- (a) Subject to the payment of any charge, expense or taxation liability attributable to a Member, the Trustee must maintain the investment of a Member's Member Contribution Account in the Establishment Phase Policy.

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- (b) The Trustee must make available a choice of Longevity Investment Portfolios to a Member on such terms and conditions as the Trustee considers appropriate.
- (c) A Member may direct the Trustee into which Longevity Investment Portfolio the Member wishes their Member Contribution Account to be invested in the Establishment Phase Policy.
- (d) Subject to clauses C.3.1 and C.3.2, the account balance in a Member Contribution Account is zero, each Member Contribution Account having been applied before the SMT Merger Date as an investment of SMT in the Establishment Phase Policy.

### **C.2.3 Income Phase Policy**

- (a) The Trustee must maintain the Income Phase Policy.
- (b) The Trustee is only obliged to exercise, and to consider exercising, any right of surrender of the Income Phase Policy where:-
  - (i) the Trustee is required to do so by Superannuation Law; or
  - (ii) the Income Phase Policy is being terminated.
- (c) For clarity, no Member or Beneficiary has any entitlement or right in or to any assets or proceeds of the Longevity IP Pool.

## **C.3. BENEFITS – ESTABLISHMENT PHASE**

### **C.3.1 Withdrawal Benefit**

- (a) Subject to clause C.3.4, a Member may request the Trustee to pay a benefit equal to the Member's Withdrawal Benefit.
- (b) From the date a Withdrawal Benefit is paid to a Member, the Longevity Boost will no longer be payable to the Member.
- (c) The Withdrawal Benefit can only be requested by, and paid once to, the Member.
- (d) Where a Member becomes a lost member, the Trustee may pay this benefit by transfer or rollover for the benefit of the Member in accordance with Superannuation Law.

### **C.3.2 Death Benefit – death during Establishment Phase**

If a Member dies during the Establishment Phase and:-

- (a) the Member has nominated an Eligible Reversionary Beneficiary and the Eligible Reversionary Beneficiary is alive at the Member's Conversion Age, the Trustee must establish a Life Pension at the Member's Conversion Age for the benefit of the Eligible Reversionary Beneficiary as a Longevity IP Benefit based on an amount equal to the Member's Conversion Age Benefit;

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(b) there is a Valid Death Benefit Instruction for the Member under clause 14.13, the Trustee must pay a benefit equal to the Member's Death Benefit in accordance with clause 14.13;

(c) either:-

(i) there is no Valid Death Benefit Instruction for the Member; or

(ii) the Member's Eligible Reversionary Beneficiary dies before the Member's Conversion Age,

the Trustee must pay a benefit equal to the Member's Death Benefit to or for the benefit of:-

(iii) the Member's Dependants and / or Legal Personal Representative; or

(iv) any other person in the circumstances permitted by Superannuation Law,

in such manner and in such proportions (if paying to more than one) as the Trustee thinks fit which is consistent with any mode of application disclosed in the Longevity Disclosure Document.

### **C.3.3 Conversion Age Benefit**

On a Member attaining the Conversion Age, the Trustee must:-

- (a) provide to the Member a Longevity IP Benefit; and
- (b) as the Longevity IP Benefit, cause the Longevity Insurer to establish a pension for the benefit of the Member under the Income Phase Policy, based on the Member's Conversion Age Benefit, in accordance with clause C.4.1.

### **C.3.4 Early Income Age Benefit**

On a Member attaining the Early Income Age, the Trustee must:-

- (a) provide to the Member a Longevity IP Benefit; and
- (b) as the Longevity IP Benefit, cause the Longevity Insurer to establish a pension for the benefit of the Member under the Income Phase Policy, based on an amount equal to the Member's Early Income Age Benefit, as provided in clause C.4.2.

### **C.3.5 Limit on benefits under Establishment Phase Policy**

- (a) The benefits payable by the Trustee under this clause C.3 are limited to and dependent on the proceeds received by the Trustee under the Establishment Phase Policy.
- (b) No other benefits are payable under this clause C.3 other than the benefits set out in this clause C.3.

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- *amendments effective 24 September 2024, including amendments with implementation date 1 January 2025*

#### **C.4. BENEFITS – INCOME PHASE**

##### **C.4.1 Standard Pension**

- (a) On a Member attaining their Conversion Age and becoming entitled to a Longevity IP Benefit, the Trustee must pay the Member a pension for the lifetime of the Member comprising:-
- (i) a Guaranteed Income Stream; and
  - (ii) a Variable Income Stream,
- calculated by the Longevity Insurer as follows:-
- (iii) for the first year of the Life Pension, calculated on the Member's Conversion Age for the period from the Member's Conversion Age to the next 30 June; and
  - (iv) thereafter, calculated at the start of each financial year for that financial year.
- (b) If a Member dies and is survived by an Eligible Reversionary Beneficiary, the Trustee must pay the Eligible Reversionary Beneficiary, for the lifetime of the Eligible Reversionary Beneficiary, a pension equal to the Life Pension of the Member multiplied by the Nominated Reversionary Rate.

##### **C.4.2 Early Income Pension**

- (a) On a Member attaining the Early Income Age and becoming entitled to a Longevity IP Benefit, the Trustee must pay the Member a pension for the lifetime of the Member calculated using the Member's Early Income Benefit rather than their Conversion Age Benefit.
- (b) If a Member who is the recipient of an Early Income Pension dies and is survived by an Eligible Reversionary Beneficiary, the Trustee must pay the Eligible Reversionary Beneficiary for the lifetime of the Eligible Reversionary Beneficiary a pension equal to the Early Income Pension of the Member multiplied by the Nominated Reversionary Rate.

##### **C.4.3 Frequency of pension payments**

The amounts referred to in clauses C.4.1 and C.4.2 are payable annually, half-yearly, quarterly or monthly as requested by the Member or the Eligible Reversionary Beneficiary, in each case if agreed to by the Trustee and the Longevity Insurer.

##### **C.4.4 Death Benefit – death during Income Phase**

If a Member dies during the Income Phase, the Trustee must, in accordance with the Member's selection when they became entitled to a Longevity IP Benefit:-

- (a) if the Member has nominated an Eligible Reversionary Beneficiary and the Eligible Reversionary Beneficiary is alive at the Member's death, establish a Life Pension for the benefit of the Eligible Reversionary Beneficiary in accordance with clause C.4.1(b) or C.4.2(b) (as applicable);

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- (b) if there is a Valid Death Benefit Instruction for the Member under clause 14.13, pay a benefit equal to the Member's Death Benefit in accordance with clause 14.13;
- (c) if there is no Valid Death Benefit Instruction for the Member, pay a benefit equal to the Member's Death Benefit to or for the benefit of:-
  - (i) the Member's Dependants and / or Legal Personal Representative; or
  - (ii) any other person in the circumstances permitted by Superannuation Law,in such manner and in such proportions (if paying to more than one) as the Trustee thinks fit which is consistent with any mode of application disclosed in the Longevity Disclosure Document.

#### **C.4.5 No commutation of Life Pension**

Except as required by Superannuation Law, the Member will not be permitted to commute the Life Pension.

#### **C.4.6 Continuation of Life Pensions**

A Life Pension of a Member or Eligible Reversionary Beneficiary, who is receiving a SMT Longevity Benefit immediately before the SMT Merger Date, continues in the Scheme on the SMT Merger Date on the same terms as applied in SMT immediately before the SMT Merger Date.

### **C.5. DEFINITIONS AND GENERAL PROVISIONS FOR APPENDIX C**

#### **C.5.1 Definitions for Appendix C**

**"Conversion Age"** means in relation to a Member, the age which is notified to the Trustee, by the SMT Trustee, as the Member's Conversion Age as at the SMT Merger Date.

**"Conversion Age Benefit"** means in relation to a Member:-

- (a) subject to paragraph (b) of this definition, the amount equal to the Notional Account Balance of the Member determined by the Longevity Insurer at the Member's Conversion Age; or
- (b) if the Member dies before their Conversion Age and has an Eligible Reversionary Beneficiary, the amount equal to the Notional Account Balance of the Member as determined by the Longevity Insurer.

**"Death Benefit"** means in relation to a Member:-

- (a) if the Member dies in the Establishment Phase, the amount equal to:-
  - (i) the value of the Uncommitted Premiums of the Member, being a proportionate refund of the Initial Contribution paid by the Member as determined by the Longevity Insurer;

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- (ii) subject to a minimum of 25% (or such other amount as set out in the Longevity Disclosure Document) of such Initial Contribution net of contribution fees;
- (b) if the Member dies within the First Year Term, an amount equal to the value, determined on a basis that the Longevity Insurer (in its absolute discretion) deems reasonable, of the remaining Pension Entitlement payable between the date of this Member's death and the end of the First Year Term;
- (c) if the Member dies after the First Year Term, nil.

**"Early Income Age"** means in relation to a Member, the age determined by the Trustee where the Trustee is satisfied that the Member:-

- (a) is within three years of the Member's Conversion Age;
- (b) is in Good Health; and
- (c) is experiencing financial hardship based on a statutory declaration and other relevant supporting evidence as required by the Trustee.

**"Early Income Age Benefit"** means in relation to a Member, the amount equal to the Notional Account Balance of the Member determined by the Longevity Insurer at the Member's Early Income Age.

**"Early Income Pension"** means a Life Pension calculated under clause C.4.2.

**"Eligible Reversionary Beneficiary"** means in relation to a Member, the Spouse of the Member nominated by the Member to be paid an income stream following the death of the Member where:-

- (a) the nomination of the Spouse has been accepted by the Trustee, or was accepted by the SMT Trustee and notified to the Trustee;
- (b) the Spouse is no more than ten years younger than the Member; and
- (c) the Spouse satisfies any requirements of Superannuation Law.

**"First Year Term"** means in relation to a Member, the twelve months from the date the Member becomes entitled to a Longevity IP Benefit.

**"Good Health"** means in relation to a Member, at any time, that the Trustee is satisfied that the Member at that time is healthy having regard to (amongst other things) a health certificate for the Member completed by a medical practitioner approved by the Trustee.

**"Guaranteed Income Stream"** means, in relation to a Longevity IP Member, a stream of payments determined by the Longevity Insurer under the Income Phase Policy comprising:-

- (a) in the First Year Term, after receipt of the Member's Conversion Age Benefit or Early Income Age Benefit (as applicable), an amount dependent on the Pension Rates and the value of the Member's Conversion Age Benefit or Early Income Age Benefit (as applicable); and

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- (b) in each subsequent period of 12 months, or part of a year, a subsequent stream of payments which will not fall below 80% (or pro rata for part of year) of the total of the Life Pension paid to the Member in the First Year Term.

As at the SMT Merger Date, the Guaranteed Income Stream of a Member or Eligible Reversionary Beneficiary in receipt of a Life Pension is the monthly pension benefit amount specified as the guaranteed income stream for that Member or Eligible Reversionary Beneficiary, as notified to the Trustee by the SMT Trustee.

**“Initial Contribution”** means in relation to a Member, the amount made up of eligible termination payments and/ or any undeducted contribution that was provided by the Member as a member of SMT at the time they invested in the Establishment Phase Policy, as notified to the Trustee by the SMT Trustee.

**“Investment Earnings”** means the amount of earnings, whether positive or negative, as determined by the Longevity Insurer.

**“Life Pension”** means in relation to a Member, the sum of the Guaranteed Income Stream and the Variable Income Stream for the Member.

**“Longevity Boost”** means in relation to a Member, an amount determined by the Longevity Insurer in respect of the Member under the Establishment Phase Policy.

**“Longevity Disclosure Document”** means the document provided to a Beneficiary on an annual basis regarding information about the SMT Longevity Benefits, that:

- (a) is issued by the Trustee on or after the SMT Merger Date; or
- (b) was issued by the SMT Trustee, or by a former trustee of SMT, before the SMT Merger Date.

**“Longevity EP Pool”** means the pool of assets under the Establishment Phase Policy that supports the benefits which may be paid under the Establishment Phase Policy.

**“Longevity Insurer”** means one or more of:-

- (a) TAL;
- (b) any other Life Insurer,

as the Trustee determines.

**“Longevity Investment Portfolio”** means a separate investment portfolio arrangement or strategy established by the Trustee for Members under clause C.2.2(b).

**“Longevity IP Benefit”** means a pension payable to a Member under the Income Phase Policy, on establishment of a pension for the Member from the applicable proceeds allocated from the Establishment Phase Policy under clause C.3.3 or C.3.4.

**“Longevity IP Pool”** means the pool of assets under the Income Phase Policy supporting the Pension Entitlements.



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- *amendments effective 24 September 2024, including amendments with implementation date 1 January 2025*

**“Member Contribution Account”** means an account established in SMT for a Member’s investment in the Establishment Phase Policy, and maintained by the Trustee under clause C.2.1(a).

**“Nominated Reversionary Rate”** means in relation to a Member, 100%, 75% or such other percentage nominated by the Member and approved by the Trustee and the Longevity Insurer.

**“Notional Account Balance”** means in relation to a Member at any time, the notional amount determined by the Longevity Insurer in respect of the Member at that time which is equal to:-

- (a) the Member’s Notional Account Balance immediately before the SMT Merger Date, as notified to the Trustee by the SMT Trustee;
- (b) **plus** Investment Earnings on the Initial Contribution of the Member;
- (c) **less** the establishment and administration fees (including stamp duty charges unless the Longevity Insurer otherwise determines) applicable to the Member;
- (d) where a Withdrawal Benefit has been paid to a Member, **less** the amount of that Withdrawal Benefit;
- (e) **plus** any Longevity Boost in respect of the Member and Investment Earnings on the Longevity Boost; and
- (f) **less:-**
  - (i) where the Member dies and the Member has an Eligible Reversionary Beneficiary, an amount which reduces the Member’s Conversion Age Benefit to be that amount which is sufficient to fund a Life Pension equal to the amount of the Life Pension that the Member would have received if the Life Pension had been calculated immediately before the death of the Member adjusted by the Nominated Reversionary Rate; or
  - (ii) where the Member has an Eligible Reversionary Beneficiary and where that Eligible Reversionary Beneficiary dies, an amount which reduces the Member’s Conversion Age Benefit to be that amount which is sufficient to fund a Life Pension equal to the amount of the Life Pension that the Member would have received if the Life Pension had been calculated immediately before the death of the Eligible Reversionary Beneficiary.

**“Pension Entitlement”** means the entitlement of a Member or Eligible Reversionary Beneficiary to a Life Pension.

**Pension Rate”** means a rate determined by the Longevity Insurer under the Income Phase Policy as a best estimate of future investment rates and the investment returns at a Longevity IP Member’s Conversion Age or Early Income Age (as applicable).

**“Uncommitted Premiums”** means at any time, in relation to a Member, the portion of the Initial Contribution by the Member determined by the Longevity Insurer which is equal to:

IC x t/n

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- *amendments effective 24 September 2024, including amendments with implementation date 1 January 2025*

where:

IC = the Initial Contribution paid by the Member (net of the applicable contribution fee paid under the Establishment Phase Policy);

n = the term from the date a Member invested in the Establishment Phase Policy while a member of SMT (as notified to the Trustee by the SMT Trustee) to their Conversion Age in days;

t = the unexpired duration at that time until their Conversion Age in days.

**“Withdrawal Benefit”** means the amount which is the lesser of:-

- (a) all or part of the Uncommitted Premiums as requested by a Member and approved by the Trustee and the Longevity Insurer; or
- (b) the Notional Account Balance.

**“Variable Income Stream”** means in relation to a Longevity IP Member at any time, a stream of payments calculated by the Longevity Insurer under the Income Phase Policy having regard to:-

- (a) the amount of the Guaranteed Income Stream of the Longevity IP Member at that time;
- (b) the Longevity IP Pool Value at that time;
- (c) the Longevity Insurer’s best estimate of the life expectancy of the Longevity IP Member at that time; and
- (d) the Longevity Insurer’s best estimate in respect of the investment returns and of inflation over the remaining life expectancy of the Longevity IP Member at that time.

As at the SMT Merger Date, the Variable Income Stream of a Member or Eligible Reversionary Beneficiary in receipt of a Life Pension is the monthly pension benefit amount specified as the variable income stream for that Member or Eligible Reversionary Beneficiary, as notified to the Trustee by the SMT Trustee.

### **C.5.2 Cessation of membership under Appendix C**

- (a) A person ceases to be a Member that this Appendix C applies to when:-
  - (i) all benefits to, or in respect of which, the Member is entitled under the Establishment Phase Policy or the Income Phase Policy (as applicable) have been paid;
  - (ii) the Member dies; or
  - (iii) in relation to a Withdrawal Benefit, the amount of the Withdrawal Benefit at the date the Member requests that the Withdrawal Benefit is paid is less than or equal to the Uncommitted Premiums referable to the Member.

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- (b) For clarity, an Eligible Reversionary Beneficiary does not become a Member but the Trustee must pay the Eligible Reversionary Beneficiary their entitlements under this Appendix C.

### **C.5.3 Fees under Appendix C**

- (a) The Trustee may determine fees from time to time, in relation to the Member's membership of the Scheme in respect of the benefit entitlement under this Appendix C.
- (b) Subject to clause C.5.3(c) on determination of a fee under clause C.5.3(a), the Trustee must disclose those fees in the Longevity Disclosure Document.
- (c) The Trustee may reserve the right in a Longevity Disclosure Document to impose a fee on a Member for a particular event.
- (d) The Member must pay the fees determined under this clause C.5.3.

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- *amendments effective 1 October 2024; and*
- *amendments effective 24 September 2024, including amendments with implementation date 1 January 2025*

## Chapter 2 Appendix D – Classic Pension Benefits

### D.

#### D.1. APPLICATION OF APPENDIX D

- (a) This Appendix D applies to:-
- (i) Transferred SMT Members who were in receipt of a benefit under Division 13 Pension Sub-Division of SMT Trust Deed; and
  - (ii) other Beneficiaries who were in receipt of a benefit under Division 13 Pension Sub-Division of SMT Trust Deed, as a spouse of a former member of SMT,
- where that benefit is paid under the Group Annuity Policy.
- (b) Benefits in respect of Members and Beneficiaries who are in receipt of a Classic Pension are calculated and payable in accordance with this Appendix D instead of Chapter 2 (clauses 10 to 17 inclusive).
- (c) To avoid doubt, any benefit of a Transferred SMT Member or other former beneficiary of SMT, that was payable under Division 13 Pension Sub-Division of SMT Trust Deed as an account based pension, allocated pension or market linked pension, is governed by Chapter 2 and not by this Appendix D.

#### D.2. OVERRIDING PROVISIONS FOR APPENDIX D

##### D.2.1 Paramount provision

For avoidance of doubt, the Overriding Compliance Provisions are paramount provisions and will overrule this clause D.2.

##### D.2.2 Terms and conditions of Classic Pensions

- (a) Notwithstanding any other provision of this Deed including this Appendix D, the Trustee shall pay a pension payable under this Appendix D on the basis of the terms and conditions as the Trustee considers necessary or desirable in order to comply with the requirements of Superannuation Law.
- (b) In order to comply with clause D.2.2(a), the Trustee has the power to adjust in any way the operation of the provisions of this Deed including this Appendix D as the Trustee determines necessary or desirable.

##### D.2.3 Commutations of Classic Pensions

Notwithstanding any other provision of this Deed including this Appendix D, the Trustee shall not commute or agree to arrange for the commutation of any Classic Pension in any way which would contravene Superannuation Law or lose the beneficial tax status of the Scheme.

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- *amendments effective 1 October 2024; and*
- *amendments effective 24 September 2024, including amendments with implementation date 1 January 2025*

#### **D.2.4 Terms of Classic Pensions**

- (a) The Classic Pension Benefit for each Member or Beneficiary continues in the Scheme on the SMT Merger Date, on the same terms as applied in SMT immediately before the SMT Merger Date.
- (b) The terms applicable as at the SMT Merger Date include:-
  - (i) for a Classic Pension designated as “Lifetime option”, the benefit is a pension payable monthly for the life of the Member, and after the death of the Member for the life of the Classic Pension Reversionary Beneficiary if any;
  - (ii) for a Classic Pension designated as “CPI option”, the benefit:-
    - (A) is a pension payable monthly for a term of up to 25 years as selected by the Member on commencement of the pension in SMT; and
    - (B) may provide for lump sum withdrawals, if selected by the Member on commencement of the pension in SMT.
- (c) The terms referred to in clause D.2.4(b) are subject to any future adjustments under clause D.3.

#### **D.3. CLASSIC PENSION BENEFIT ENTITLEMENT**

##### **D.3.1 Form of payment**

Subject to Superannuation Law and the Group Annuity Policy, the Trustee may pay a benefit to a Classic Pensioner:-

- (a) in the form of a pension;
- (b) in the form of a lump sum on commutation;
- (c) by transferring the assets to or for the benefit of the Classic Pensioner to another Superannuation Entity;
- (d) by allocating the assets to an accumulation account or pension account under Chapter 2; or
- (e) in any other manner permitted under the Group Annuity Policy for the type of pension being paid to the Classic Pensioner.

##### **D.3.2 Timing of payment**

- (a) Subject to Superannuation Law and the Group Annuity Policy, the Trustee must make pension payments to the relevant Classic Pensioner with such frequency and at such intervals and times as are agreed between the Trustee and the Classic Pensioner.

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- *amendments effective 1 October 2024; and*
- *amendments effective 24 September 2024, including amendments with implementation date 1 January 2025*

- (b) Subject to any limits set out in clause D.3.2(c), the Trustee may allow a Classic Pensioner to nominate the value of the pension payments to be paid under the Classic Pension during a financial year.
- (c) Where a Classic Pensioner does not nominate the value of a pension payment, the Trustee must make pension payments:-
  - (i) calculated according to any previous agreement relating to pension payments between the Trustee or the SMT Trustee (as applicable) and the Classic Pensioner; or
  - (ii) in the absence of such agreement, at the minimum level prescribed under the Group Annuity Policy or required under Superannuation Law.
- (d) Where there are minimum and maximum limits on the sum of pension payments the Trustee may make to a Classic Pensioner within a calendar year, the Trustee must disclose these limits to that Classic Pensioner.
- (e) Subject to Superannuation Law and the Group Annuity Policy:-
  - (i) the Trustee may alter the frequency with which pension payments are to be made:-
    - (A) at any time the Trustee considers appropriate; or
    - (B) at any time agreed between the Classic Pensioner and the Trustee; and
  - (ii) subject to clause D.3.2(d) the Trustee may, on the request of the Classic Pensioner, make ad hoc lump sum payments from the Classic Pensioner's benefit.
- (f) The Trustee may at any time and without prior notice to the Classic Pensioner adjust the value of pension payments paid to a Classic Pensioner to such a level that complies with Superannuation Law.

### **D.3.3 Commutation of Classic Pension**

The Trustee may permit a Classic Pensioner to commute all or any part of that Classic Pension in the manner and form permitted under the Group Annuity Policy provided that the commutation complies with Superannuation Law.

### **D.3.4 Death of Classic Pensioner**

A benefit is payable on the death of a Classic Pensioner in accordance with the Group Annuity Policy and the terms of the Classic Pension.

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#### **D.4. DEFINITIONS AND GENERAL PROVISIONS FOR APPENDIX D**

##### **D.4.1 Definitions for Appendix D**

**“Classic Pension”** means a pension governed by Division 13 Pension Sub-Division of SMT Trust Deed immediately before the SMT Merger Date, and paid under the Group Annuity Policy.

**“Classic Pension Disclosure Document”** means at any time the document which at that time was most recently provided to Members and Beneficiaries describing Classic Pension Benefits, that:-

- (a) is issued by the Trustee on or after the SMT Merger Date; or
- (b) was issued by the SMT Trustee, or by a former trustee of SMT, before the SMT Merger Date.

**“Classic Pension Reversionary Beneficiary”** means a Reversionary Beneficiary who was nominated by the Member as a reversionary beneficiary at the time the Member’s Classic Pension commenced in SMT while that person continues to qualify as a Reversionary Beneficiary.

**“Classic Pensioner”** means a person in receipt of a Classic Pension (as a Member or a Classic Pension Reversionary Beneficiary).

##### **D.4.2 Cessation of membership under Appendix D**

A person ceases to be a Beneficiary under this Appendix D:-

- (a) in the circumstances set out in the Group Annuity Policy;
- (b) on their death; or
- (c) when all of the Beneficiary’s benefits are:-
  - (i) paid to the Beneficiary;
  - (ii) paid for the benefit of the Beneficiary (including by being transferred or rolled over to another Superannuation Entity or allocated to an accumulation account or pension account under Chapter 2); or
  - (iii) otherwise satisfied or dealt with in accordance with Superannuation Law or this Deed,

whichever is the earlier.

##### **D.4.3 Fees for Appendix D**

- (a) The Trustee shall be entitled to deduct from a Classic Pension:-

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- (i) any fees, costs or charges as set out in a Classic Pension Disclosure Document; and
  - (ii) any reimbursement or amount required to satisfy a right of indemnity of the Trustee in relation to any Scheme Expenses in the manner set out in a Classic Pension Disclosure Document.
- (b) Where a Classic Pension Disclosure Document does not expressly state the matters set out in clause D.4.3(a), then the Trustee is entitled to:-
  - (i) be remunerated in accordance with this Deed;
  - (ii) pay Scheme Expenses in accordance with this Deed; and
  - (iii) exercise the Trustee's right of indemnity in accordance with this Deed.



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## Appendix E – Special Provisions for Zurich Insurance Only Superannuation Plan

### E.

#### E.1. APPLICATION OF APPENDIX E

This Appendix E for applies to Members admitted to Zurich Insurance Only Superannuation Plan whose benefit consists solely of a Zurich Policy (**Zurich Insurance Only Members**), in respect of that membership.

#### E.2. DEATH BENEFITS FOR ZURICH INSURANCE ONLY SUPERANNUATION PLAN

##### E.2.1 Payment of death benefits for Zurich Insurance Only Members

The Trustee must pay a benefit payable in respect of the death of a Zurich Insurance Only Member in accordance with this clause E.2 instead of clauses 14.11, 14.12 and 14.13.

##### E.2.2 Death Benefit Instructions for Zurich Insurance Only Members

- (a) A Zurich Insurance Only 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 in respect of that benefit.
- (b) A Death Benefit Instruction in respect of a benefit is revoked if the Member:-
  - (i) gives the Trustee notice in writing, in a form prescribed or accepted by the Trustee, that the Death Benefit Instruction is revoked; or
  - (ii) gives the Trustee another Death Benefit Instruction.
- (c) On receipt of a notice in the form of a Death Benefit Instruction, the Trustee must:
  - (i) consider whether to consent to the Death Benefit Instruction; and
  - (ii) notify the Member if the Trustee does not consent.
- (d) A Death Benefit Instruction becomes invalid:-
  - (i) if the Member marries, enters a de facto relationship, divorces, or ends a de facto relationship;
  - (ii) for each nominated beneficiary, if the beneficiary is no longer a Dependant or the legal personal representative of the Member.
- (e) On the death of a Member, where there is a 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, except to the extent that the Death Benefit Instruction has become invalid (wholly or partly) under clause E.2.2(d).

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### **E.2.3 Death benefits where no Death Benefit Instruction for Zurich Insurance Only Member**

- (a) If the Member does not have a Death Benefit Instruction at death, or a Death Benefit Instruction has become invalid (wholly or partly), the Trustee must pay the Member's death benefit, or that part of the death benefit that cannot be paid in accordance with the Death Benefit Instruction, to the Member's legal personal representative unless:-
- (i) the Trustee has not identified the Member's legal personal representative, or a person who has filed an application in court for a grant of probate or letters of administration, within 6 months of the Trustee being notified of the Member's death; or
  - (ii) the Trustee is notified, by a person that the Trustee considers is reasonably qualified to form the view, that the Member's estate is insolvent because the estate's assets (excluding, for this purpose, the death benefit payable from the Scheme) will be exhausted in meeting the estate's liabilities.
- (b) A death benefit payable to a legal personal representative may be paid to an executor named in the deceased Member's will without a grant of probate where the death benefit is less than the probate limit, being \$100,000 or such other amount determined by the Trustee from time to time and notified to Zurich Insurance Only Members.
- (c) If a death benefit is not payable in accordance with a Death Benefit Instruction or under clause E.2.3(a), the Trustee must pay the Member's death benefit to:-
- (i) the Member's Spouse at the date of death or, if the Member had more than one Spouse at the date of death, to them in equal shares; and
  - (ii) if the benefit is not paid under clause E.2.3(c)(i), the Member's Child (including an unborn child) at the date of death, or if the Member had more than one Child (including an unborn child) at the date of death, to them in equal shares,

and for the purposes of this clause E.2.3(c) the terms "**Spouse**" and "**Child**" have the meaning given to them by Superannuation Law, except that a person is only a Spouse or Child for the purposes of this clause E.2.3(c) if the Trustee is aware of the person's existence and is otherwise reasonably satisfied of their status as such.

- (d) If a death benefit is not payable in accordance with a Death Benefit Instruction or under clause E.2.3(a) or clause E.2.3(c), the Trustee must:-
- (i) even if the Member's estate is insolvent, pay the death benefit to the Member's legal personal representative; and
  - (ii) if the benefit is not paid under clause E.2.3(d)(i), deal with the benefit in accordance with applicable unclaimed money legislation.

### **E.3. DEFINITIONS AND GENERAL PROVISIONS FOR APPENDIX E**

**Zurich** means Zurich Australia Limited (ABN 92 000 010 195).

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**Zurich Policy** means a policy of insurance issued to the Trustee covering a Zurich Insurance Only Member.