

**Australian Securities and Investments Commission  
Corporations Act 2001 – Subsection 340(1) - Order**

**Enabling legislation**

1. The Australian Securities and Investments Commission (ASIC) makes this instrument under subsection 340(1) of the *Corporations Act 2001* (the Act).

**Title**

2. This order is ASIC Instrument [15-0577].

**Commencement**

3. This instrument commences on the day it is signed.

**Order**

4. ASIC relieves Momentum Energy Pty Ltd ACN 100 569 159 (“**the Entity**”) from the following obligations in Part 2M.3 of the Act in relation to a financial year (“**the Relevant Financial Year**”):
  - (a) the requirement to prepare a financial report and directors’ report under paragraph 292(1)(c);
  - (b) the requirement to have the financial report audited under subsection 301(1);
  - (c) the requirements concerning distribution of the financial report, directors’ report and auditors’ report and any concise financial report (“the reports”) to members under subsections 314(1), 315(4) and section 316; and
  - (d) the requirement to lodge reports with ASIC under subsection 319(1).

**Conditions**

5. The Entity must ensure that:

*Relevant Financial Year*

- (a) The financial year of the Holding Entity ends on the same date as the end of the Relevant Financial Year;

*Restrictions on the Entity, Holding Entity and Trustee*

- (b) The Entity is one of the Wholly-owned Entities of the Holding Entity at the end of the Relevant Financial Year and is a large proprietary company;
- (c) The Entity is not a borrower in relation to debentures, a disclosing entity, or a financial services licensee;
- (d) The Holding Entity is not a small proprietary company;
- (e) A company holds office as trustee under the Deed of Cross Guarantee;
- (f) If the person holding office as trustee under the Deed of Cross Guarantee is a Group Entity within the meaning of that Deed, another person that is a company holds office as alternative trustee under that Deed;

*Consolidated financial statements*

- (g) The Holding Entity has prepared consolidated financial statements which include a consolidated statement of cash flows together with notes thereto for the Relevant Financial Year (“the **Consolidated Financial Statements**”) and makes the Consolidated Financial Statements publically available within 4 months after the end of the Relevant Financial Year by:
  - (i) tabling the Consolidated Financial Statements in one or more houses of the Parliament of the State of Tasmania;
  - (ii) arranging for a copy of the Consolidated Financial Statements to be published in a prominent place on the Entity’s website; and
  - (iii) arranging for a copy of the Consolidated Financial Statements to be published in a prominent place on the Holding Entity’s website.
- (h) If the Holding Entity is not a registered foreign company:
  - (i) where the economic entity comprising the Holding Entity and its controlled entities was not a reporting entity (as defined in accounting standards):
    - (A) the Consolidated Financial Statements covered at least those controlled entities which were part of the Extended Closed Group and included no entities which were not controlled entities;
    - (B) where the Consolidated Financial Statements did not cover the entire economic entity, the notes thereto made it clear which entities were covered by those Consolidated Financial Statements;
    - (C) accounting standard AASB 1024 “Consolidated Accounts” (except paragraph 39) (for reporting periods commencing before 1 January 2005) or AASB 127 “Consolidated and Separate Financial Statements” (except paragraphs 40 and Aus40.1) (for reporting periods commencing on or after 1 January 2005) was applied as if the entities to which the Consolidated Financial Statements relate were a reporting entity; and

- (D) the Holding Entity complied with all of the other requirements of Chapter 2M as if the Consolidated Financial Statements were part of its financial report; and
- (ii) no entities in the Closed Group are Exempt Entities.
- (i) The Consolidated Financial Statements include adequate provision in relation to the liabilities of any parties to the Deed of Cross Guarantee which are not consolidated where it is probable that those liabilities will not be fully met by those parties;
- (j) The notes to the Consolidated Financial Statements:
- (i) include a short statement of the nature of the Deed of Cross Guarantee;
- (ii) list the parties to the Deed of Cross Guarantee, separately identifying:
- (A) the members of the Closed Group; and
- (B) the other members of the Extended Closed Group;
- (iii) give details (including dates) of parties which, during or since the Relevant Financial Year, have been:
- (A) removed by a Revocation Deed contemplated by the Deed of Cross Guarantee; or
- (B) the subject of a Notice of Disposal contemplated by the Deed of Cross Guarantee;
- (iv) give details (including dates and reasons) of any entities which obtained relief under this instrument at the end of the immediately preceding financial year but which were ineligible for relief in respect of the Relevant Financial Year;
- (v) if the Consolidated Financial Statements cover entities which are not members of the Closed Group, set out the information specified in the Schedule 1 in respect of the consolidation of the entities which are members of the Closed Group (after eliminating all transactions between members of the Closed Group);
- (vi) if the Consolidated Financial Statements cover entities which are not parties to the Deed of Cross Guarantee, set out the information specified in the Schedule 1 in respect of the consolidation of the Holding Entity and those entities which are parties to the Deed of Cross Guarantee and controlled by the Holding Entity (after eliminating all transactions between parties to the Deed of Cross Guarantee); and
- (vii) if there are any parties to the Deed of Cross Guarantee which are not controlled by the Holding Entity, set out the information specified in the Schedule 1 in respect of those parties (either individually or in aggregate);
- (k) A statement as to whether, as at the date of the relevant document, there are reasonable grounds to believe that the members of the Extended Closed Group (identified in the note required by paragraph (j)(ii)) will be able to meet any obligations or liabilities to which they are, or may become, subject by virtue of the

Deed of Cross Guarantee is included in the directors' declaration of the Holding Entity for the Relevant Financial Year;

*Opt-out notices by the Entity*

- (l) If the relief available under this instrument is not taken advantage of in respect of a financial year (the **first non-reliance year**) immediately following a financial year in which relief was taken advantage of then, unless the Entity lodges an annual financial report prepared under Chapter 2M of the Act for the first non-reliance year, a notice that the Entity has ceased to take advantage of the relief signed by a director or secretary is given to ASIC:
- (i) within 4 months after the end of the first non-reliance year; or
  - (ii) such other time as is approved in writing by ASIC;

*Annual resolution*

- (m) At or about the time of the Entity's balance date for the Relevant Financial Year the directors reassess the advantages and disadvantages associated with the Entity remaining a party to the Deed of Cross Guarantee and taking advantage of the relief afforded by this instrument and the directors resolve either that the Entity should continue to remain a party to the Deed of Cross Guarantee, or seek to revoke the Deed of Cross Guarantee, as the case may be;

*Timing requirements in relation to membership of Closed Group and being party to the Deed of Cross Guarantee*

- (n) Before the end of the Relevant Financial Year:
- (i) the Entity and every other entity in the Closed Group became parties to the Deed of Cross Guarantee; and
  - (ii) an original of that Deed of Cross Guarantee has been lodged with ASIC; and
  - (ii) an original of a certificate relating to that Deed is also lodged with ASIC, where that certificate conforms with the definition of Certificate as it appeared in this instrument at the time that the Deed was lodged;
- (o) The Entity and the Holding Entity were members of the Closed Group and parties to the Deed of Cross Guarantee at the end of the Relevant Financial Year and:
- (i) remain members of the Closed Group and parties to that Deed at all times up to, and including, the date on which the Consolidated Financial Statements are made publically available in accordance with paragraph (g); or
  - (ii) if the Entity ceased to be a member of the Closed Group or a party to the Deed prior to the date on which the directors of the Holding Entity made the Consolidated Financial Statements publically available in accordance with paragraph (g), within one month of that cessation the Entity became party to another Deed of Cross Guarantee with another holding entity, an original of which has been lodged with ASIC, and (after making reasonable and diligent

enquiries) the Entity's directors have no reason to believe that the Entity may not be able to obtain relief under this instrument in respect of its next financial year;

*Initial procedures in applying for relief*

- (p) Before the end of the first financial year in respect of which the Entity took advantage of relief under this instrument (being a financial year at the end of which the Entity was one of the Wholly-owned Entities of the Holding Entity):
- (i) The directors of the Entity have made a statement, signed by at least 1 director, stating that in the directors' opinion immediately prior to the execution of the Deed of Cross Guarantee by the Entity there were reasonable grounds to believe that the Entity would be able to pay its debts as and when they become due and payable;
  - (ii) The directors of the Entity have resolved that the Entity should obtain the benefit of this instrument and the directors have not revoked that resolution or resolved to the contrary;
  - (iii) In respect of every other entity (the "Other Entity") which has become a party to the Deed of Cross Guarantee after the date of this instrument (irrespective of whether the Other Entity has taken advantage of relief under this instrument) the directors of that Other Entity have made a statement, signed by at least 1 director, and made before the end of the financial year in which it became a party to the Deed of Cross Guarantee, stating that in the directors' opinion immediately prior to the execution of the Deed of Cross Guarantee by the Other Entity there were reasonable grounds to believe that the Other Entity would be able to pay its debts as and when they become due and payable;

*Foreign entities*

- (q) No entity was a member of the Closed Group unless it:
- (i) was a company;
  - (ii) was a body corporate incorporated or formed in Australia, the United Kingdom, New Zealand, Singapore or Hong Kong; or
  - (iii) was the Holding Entity;
- (r) So long as any entity (including the Holding Entity, where applicable) which is not a body corporate incorporated or formed in Australia or a company ("the foreign entity") is a party to the Deed of Cross Guarantee the directors of the Entity and the Holding Entity are satisfied (as evidenced by resolutions of the directors of those two entities), before the Holding Entity lodges the Consolidated Financial Statements, that, on the basis of appropriate recent advice, the Deed of Cross Guarantee is in a class of documents generally enforceable in the foreign entity's place of incorporation or formation as against the foreign entity;

*Variations to Deed of Cross Guarantee*

- (s) Neither the Entity nor the Holding Entity have terminated, repudiated or attempted to repudiate or terminate or agreed to any variation of the Deed of Cross Guarantee except by:
- (ii) a Revocation Deed contemplated by the Deed of Cross Guarantee pursuant to which the Deed of Cross Guarantee ceases to apply to one or more entities other than the Entity;
  - (iii) subject to ASIC consent in writing, the substitution of a trustee, or addition or substitution of an alternative trustee, contemplated by the Deed of Cross Guarantee; or
  - (iv) subject to ASIC consent in writing, any variation to reflect any amendment of the ASIC Pro Forma *Deed of Cross Guarantee* (ASIC Pro Forma 24) that may be made by ASIC from time to time;

*Companies which cease to be members of the Closed Group*

- (t) Within 2 months of ceasing to be a Wholly-owned Entity, the Entity prepares a financial report and directors' report for the Relevant Financial Year and lodges those documents with ASIC, except where:
- (i) within one month, the Entity becomes a party to another Deed of Cross Guarantee and (after making reasonable and diligent enquiries) the directors of the Entity have no reason to believe that it will not be relieved from preparing a financial report under this instrument in respect of its next financial year;
  - (ii) the Entity was also subject to relief from the requirement to prepare a financial report pursuant to a provision of the Act or another ASIC instrument in respect of the Relevant Financial Year;
  - (iii) at the time the Entity ceases to be a member of the Closed Group it is less than 1 month until, or is after, the end of the first financial year immediately after the Relevant Financial Year; or
  - (iv) the Entity was a small proprietary company for the Relevant Financial Year;

*Auditor of the Holding Entity*

- (u) If the Holding Entity's financial report is required to be audited, the auditor of the Holding Entity is satisfied that paragraphs (g), (h)(i), (i), (j) and (k) (as applicable) have been complied with; and

*Entities excluded from relying on this instrument*

- (v) ASIC has:
- (i) not notified the Entity in writing that it may not rely on this instrument or may not rely on this instrument for the Relevant Financial Year; or

- (ii) notified the Entity in writing that it may not rely on this instrument or may not rely on this instrument for the Relevant Financial Year but has subsequently revoked or varied that notice so that it does not cover the Relevant Financial Year.

*Publication of this instrument*

- (w) A copy of this instrument is published in a prominent place on the Entity's website and on the Holding Entity's website.

**Interpretation**

6. In this instrument:

**"borrower in relation to debentures"** means a body that is or will be liable to repay money under a debenture, but does not include a body that only has debentures on issue that were issued or allotted:

- (i) by excluded issues to which paragraph 66(2)(d) of the Corporations Law applied as that Law stood prior to 13 March 2000; or
- (ii) pursuant to offers which did not need disclosure to investors under Part 6D.2 of the Act because of subsection 708(1) of the Act.

**"Certificate"** in relation to a Deed of Cross Guarantee to which an Entity is a party, means one or more certificates in writing addressed to the Entity, the trustee and any alternative trustee under the Deed of Cross Guarantee and to ASIC which together include statements to the following effect:

- (a) that the Deed is in exactly the same terms as the deed in Schedule 2 as the case requires except for the following:
  - (i) all instructions for the inclusion of specified information have been replaced by that information in a complete and accurate manner and any consequential changes of a minor or editorial nature that are necessary for the effective operation of the Deed have been made;
  - (ii) execution clauses have been added, deleted, modified or varied as required in order to facilitate the proper execution of the Deed;
  - (iii) the date has been completed;
  - (iv) the headnote, the headings before the headnote and any editorial notes have been omitted.
- (b) that, in relation to the execution of the Deed by each party to it that is a company, either:
  - (i) the Deed appears to be signed in accordance with subsection 127(1) of the Act; or

- (ii) the company's common seal appears to have been fixed to the Deed, and the fixing of the seal appears to have been witnessed, in accordance with subsection 127(2) of the Act;

and the provider of the certificate does not know and has no reason to suspect that the Deed has not been duly executed by the company; and

- (ba) that the provider of the certificate, after having made such inquiries as were reasonable in the circumstances, is of the opinion that the Deed has been duly executed by each party to it that is not a company;

where:

- (e) the certificates referred to in paragraphs (a), (b) and (ba) are given by a lawyer who holds a practising certificate.

**“Closed Group”** means the Holding Entity and the Wholly-owned Entities;

**“Control”** has the same meaning as in accounting standard AASB 127 “Consolidated and Separate Statements” (for reporting periods commencing before 1 January 2013) or accounting standard AASB 10 “Consolidated Financial Statements” (for reporting periods commencing on or after 1 January 2013).

**“Deed of Cross Guarantee”** means the deed to which the Entity is a party which:

- (i) is in exactly the same terms as the deed in Schedule 2 except for the following:
  - (A) all instructions for the inclusion of specified information have been replaced by that information in a complete and accurate manner and any consequential changes of a minor or editorial nature that are necessary for the effective operation of the deed have been made;
  - (B) execution clauses have been added as required in order to facilitate the proper execution of the deed;
  - (C) the date has been completed;
  - (D) the headnote, the headings before the headnote and any editorial note have been omitted; and
  - (E) any variation to reflect any amendment of the ASIC Pro Forma *Deed of Cross Guarantee* (ASIC Pro Forma 24) that may be made by ASIC from time to time under paragraph (5)(s)(iv);

and includes such a deed as varied by a Revocation Deed contemplated by the Deed of Cross Guarantee;

**“Exempt Entity”** means a company which is not controlled by a foreign company and which is:

- (a) a small proprietary company; or
- (b) a large proprietary company which:



- (i) satisfied all of the requirements of s319(4) of the Corporations Law (as taken to be included in the Act by s1408(2) of the Act), or would have satisfied all of those requirements except that its financial statements or financial reports during 1993 or a later financial year were not audited before the deadline for reporting to members for that year pursuant to relief obtained under Class Order [CO 98/1418], Class Order [CO 95/1530] or Class Order [CO 96/1579]; and
- (ii) has not at any time during 1993 or a later financial year been a member of a Closed Group for the purposes of this Class Order [CO 98/1418] or Class Order [CO 95/1530] where that Closed Group included a company which was not an Exempt Entity;

**“Extended Closed Group”** means the Closed Group and any other entities which are parties to the Deed of Cross Guarantee and which are controlled by the Holding Entity;

**“Holding Entity”** means Hydro-Electric Corporation ARBN 072 377 158:

- (i) of which the Entity is one of the Wholly-owned Entities;
- (ii) which is not controlled by another member of the Closed Group; and
- (iii) which is a party to the Deed of Cross Guarantee;

**“Wholly-owned Entities”** collectively mean companies and foreign companies:

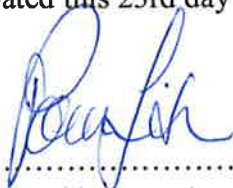
- (i) all of which are controlled by the Holding Entity;
- (ii) no member of any of which is a person other than the Holding Entity, another one of the Wholly-owned Entities, a nominee for the Holding Entity or a nominee for another one of the Wholly-owned Entities; and
- (iii) all of which are parties to the Deed of Cross Guarantee.

In this instrument, for the purposes of determining whether a person has complied with a requirement of Chapter 2M, ignore any non-compliance with the requirement that results merely from any or all of the following:

- (a) a person being an affected auditor (as defined in ASIC Class Order [CO 14/757]) rather than a registered company auditor;
- (b) an act, matter or thing being done by an affected auditor rather than a registered company auditor;
- (c) a company being an affected audit company (as defined in ASIC Class Order [CO 14/757]) rather than an authorised audit company;

- (d) an act, matter or thing being done by an affected audit company rather than an authorised audit company.

Dated this 23rd day of June 2015



.....  
Signed by Pamela Smith

as a delegate of the Australian Securities and Investments Commission

**SCHEDULE 1**

The following information for the Relevant Financial Year with comparative information for the immediately preceding financial year:

- (i) A Statement of Comprehensive Income setting out the information specified by paragraphs 82 to 87 of AASB 101 and, where paragraph 84 of AASB 101 is applied, an Income Statement;
- (ii) Opening and closing retained earnings, dividends provided for or paid, and transfers to and from reserves; and
- (iii) A Statement of Financial Position complying with paragraphs 54 to 59 of AASB 101.

Comparative information is only required where the Holding Entity was a holding entity in a deed of cross guarantee for the purposes of this instrument at any time during the immediately preceding financial year.

## SCHEDULE 2

### Deed of cross guarantee

This Deed of Cross Guarantee is made on [*date*] between:

- (1) The Group Entities (which are listed in Part 1 of the Schedule);
- (2) The Trustee (which is named in Part 2 of the Schedule); and
- (3) The Alternative Trustee (which is named in Part 3 of the Schedule) (if applicable),

for the purpose of the Group Entities (except those indicated in Part 1 of the Schedule as being ineligible) obtaining the benefit of ASIC Instrument [15-0576] and [15-0577] and witnesses as follows:

#### 1 Interpretation

##### 1.1 In this Deed:

“Act” means the *Corporations Act 2001*;

“ASIC” means the Australian Securities and Investments Commission;

“Associate” has the meaning given by Division 2 of Part 1.2 of the Act;

“Certificate” in relation to a Deed of Cross Guarantee, means one or more certificates in writing addressed to each Group Entity or proposed Group Entity covered by the Deed, the Trustee named in Part 2 of the Schedule and any Alternative Trustee named in Part 3 of the Schedule and to ASIC which together include statements to the following effect:

(a) that the Deed:

- (i) is in exactly the same terms as the deed in Schedule 2 of ASIC Instrument [15-0576] and [15-0577] as the case requires except for the following:
  - (A) all instructions for the inclusion of specified information have been replaced by that information in a complete and accurate manner and any consequential changes of a minor or editorial nature that are necessary for the effective operation of the deed have been made;
  - (B) execution clauses have been added, deleted, modified or varied as required in order to facilitate the proper execution of the deed;
  - (C) the date has been completed;
  - (D) the headnote, the headings before the headnote and any editorial notes have been omitted;

- (b) that, in relation to the execution of the Deed by each party to it that is a company, either:
- (i) the Deed appears to be signed in accordance with subsection 127(1) of the Act; or
  - (ii) the company's common seal appears to have been fixed to the Deed, and the fixing of the seal appears to have been witnessed, in accordance with subsection 127(2) of the Act;

and the provider of the certificate does not know and has no reason to suspect that the Deed has not been duly executed by the company;

- (ba) that the provider of the certificate, after having made such inquiries as were reasonable in the circumstances, is of the opinion that the Deed has been duly executed by each party to it that is not a company;

where:

- (c) the certificates referred to in paragraphs (a), (b) and (ba) are given by a lawyer who holds a practising certificate;

“Closed Group” means the Holding Entity and its Wholly-owned Entities;

“company” has the same meaning as in section 9 of the Act;

“Control” has the same meaning as that term has in accounting standard AASB 127 “Consolidated and Separate Financial Statements”;

“Creditor” means a person (whether now ascertained or ascertainable or not) who is not a Group Entity and to whom now or at any future time a Debt (whether now existing or not) is or may at any future time be or become payable;

“Debt” means any debt or claim which is now or at any future time admissible to proof in the winding up of a Group Entity and no other claim;

“Group Entity” means (until this Deed of Cross Guarantee ceases to apply to that entity by virtue of a disposal under clause 4.2 or until that entity is released from this Deed of Cross Guarantee by a Revocation Deed under clause 4.5) any one of the entities listed in Part 1 of the Schedule;

“Holding Entity” means the Group Entity which controls each of the other Group Entities and which is not controlled by another Group Entity;

“lawyer” has the same meaning as in section 9 of the Act;

“Revocation Deed” means a Deed executed pursuant to clause 4.5 by virtue of which this Deed of Cross Guarantee ceases to apply to one or more of the Group Entities; and

“Wholly-owned Entities” collectively mean companies and foreign companies:

- (a) all of which are controlled by the Holding Entity;
- (b) no member of any of which is a person other than the Holding Entity, another one of the Wholly-owned Entities, a nominee for the Holding Entity or a nominee for another one of the Wholly-owned Entities; and
- (c) all of which are parties to the Deed of Cross Guarantee,

except that, when used in reference to a "Group Entity sold", "Wholly-owned Entities" collectively mean companies and foreign companies:

- (a) all of which are controlled by the Group Entity sold;
- (b) no member of any of which is a person other than the Group Entity sold, another one of the Wholly-owned Entities, a nominee for the Group Entity sold or a nominee for another one of the Wholly-owned Entities; and
- (c) all of which are parties to the Deed of Cross Guarantee.

## **2 Operation of deed**

- 2.1 This Deed of Cross Guarantee will be of no force and effect until the Holding Entity has submitted an original of this Deed of Cross Guarantee for lodgement at ASIC together with an original of a Certificate relating to this Deed.

## **3 Cross guarantee**

- 3.1 Subject to clause 3.4, each Group Entity covenants with the Trustee for the benefit of each Creditor that the Group Entity guarantees to each Creditor payment in full of any Debt in accordance with this Deed of Cross Guarantee.
- 3.2 Each Group Entity agrees with the Trustee that this Deed of Cross Guarantee becomes enforceable in respect of the Debt of a Group Entity ("the Group Entity"):
- (a) upon the winding up of the Group Entity under subsection 459A or paragraphs 461(1)(a), (h) or (j) of the Act or as a creditors' voluntary winding up under Part 5.5 Division 3 of the Act; or
  - (b) in any other case — if six months after a resolution or order for the winding up of the Group Entity any Debt of a Creditor of the Group Entity has not been paid in full.
- 3.3 Subject to clause 3.4, the Trustee and each Group Entity acknowledge that the Trustee holds the benefit of the covenants and commitments of each Group Entity made pursuant to this Deed upon trust for each Creditor.
- 3.4 If an Alternative Trustee is named in Part 3 of the Schedule, then:
- (a) the Trustee covenants with the Alternative Trustee as trustee for the benefit of each Creditor that the Trustee guarantees to each Creditor payment in full of any Debt in accordance with this Deed of Cross Guarantee; and

- (b) for the purposes of this covenant the provisions of this Deed of Cross Guarantee will apply to the Trustee as if it was a Group Entity and was not the Trustee and to the Alternative Trustee as if it was the Trustee.

#### 4 Revocation and release

4.1 This Deed of Cross Guarantee and the trusts constituted by it may not be revoked or released except as expressly permitted by this Deed.

4.2 If:

- (a) a liquidator, receiver, receiver and manager, controller, or scheme manager or administrator of a company under administration or of a deed of company arrangement is appointed to or to the property of the Group Entity or each of the Group Entities owning shares in a Group Entity (the "Group Entity sold") and that Group Entity or those Group Entities disposes (or dispose) of all issued shares in the Group Entity sold and the Group Entity sold lodges notice of that disposal with ASIC (including details of any Group Entity which is a Wholly-owned Entity of the Group Entity sold); or
- (b) a mortgagee or mortgagees (other than a Group Entity or an Associate of any Group Entity) of shares owned by a Group Entity or by Group Entities in another Group Entity (the "Group Entity sold") disposes (or dispose) of all issued shares in the Group Entity sold and the Group Entity sold lodges notice of that disposal with ASIC (including details of any Group Entity which is a Wholly-owned Entity of the Group Entity sold); or
- (c) the Group Entity or Group Entities owning shares in a Group Entity (the "Group Entity sold") disposes (or dispose) of all issued shares in the Group Entity sold and:
  - (i) the directors of the Holding Entity upon disposal certify in writing that the disposal is a bona fide sale and that the consideration for the sale is fair and reasonable; and
  - (ii) a copy of that certificate is lodged by the Holding Entity, and by the Group Entity sold, with ASIC; and
  - (iii) the Group Entity sold lodges notice of that disposal with ASIC (including details of any Group Entity which is a Wholly-owned Entity of the Group Entity sold),

then provided that the disposal is not to an Associate of any Group Entity:

- (d) this Deed of Cross Guarantee shall cease to apply to the Group Entity sold and to any Group Entity which is a Wholly-owned Entity of the Group Entity sold; and
- (e) the Group Entity sold and every Group Entity which is a Wholly-owned Entity of the Group Entity sold will be released from all liability under this Deed of Cross Guarantee including liability:
  - (i) arising or accruing prior to or after such disposal; or

- (ii) due to this Deed of Cross Guarantee becoming enforceable prior to or after such disposal against the Group Entity sold or against a Group Entity which is a Wholly-owned Entity of the Group Entity sold; and
- (f) each other Group Entity will be released from all liability whatever under this Deed of Cross Guarantee in respect of any Debt of the Group Entity sold or in respect of any Debt of a Group Entity which is a Wholly-owned Entity of the Group Entity sold including liability:
  - (i) in respect of any Debt arising or accruing before or after such disposal; or
  - (ii) due to this Deed of Cross Guarantee becoming enforceable before or after such disposal against the Group Entity or any Group Entity which is a Wholly-owned Entity of the Group Entity sold; and
- (g) the trust constituted by this Deed shall be revoked in respect of the covenants made pursuant to this Deed of Cross Guarantee:
  - (i) by the Group Entity sold; and
  - (ii) by any Group Entity which is a Wholly-owned Entity of the Group Entity sold.

4.3 A disposal under clause 4.2 may be effected even if:

- (a) this Deed of Cross Guarantee has become enforceable in respect of a Group Entity; or
- (b) the winding up as mentioned in clause 3.2 of any Group Entity has commenced.

4.4 Any of the Group Entities or the Group Entity sold may upon payment of the reasonable costs of the Trustee require the Trustee to execute a Deed containing a release by the Trustee:

- (a) of the Group Entity sold and every Group Entity which is a Wholly-owned Entity of the Group Entity sold in terms similar to paragraph 4.2(e) of this Deed of Cross Guarantee; and
- (b) of each other Group Entity in terms similar to paragraph 4.2(f) of this Deed of Cross Guarantee.

4.5 The Group Entities which are from time to time parties to this Deed of Cross Guarantee may revoke this Deed of Cross Guarantee in respect of any Group Entity or all Group Entities by all executing a Revocation Deed the effect of which will be conditional upon:

- (a) the Holding Entity lodging an original of that Revocation Deed with ASIC; and
- (b) each Group Entity giving notice to its Creditors of the Revocation Deed by public advertisement (which may be a joint advertisement by two or more Group Entities) made at any time before or within one month after the date on which the original of the Revocation Deed is lodged with ASIC in a daily newspaper



circulating in each state and territory in which any Creditor of the Group Entity is located; and

- (c) there being no winding up as mentioned in paragraph 3.2(a) of any Group Entity being either:
  - (i) a winding up within six months after the original of the Revocation Deed is lodged with ASIC; or
  - (ii) a winding up the commencement of which occurs within six months after the original of the Revocation Deed is lodged with ASIC; and

upon satisfaction of those conditions:

- (d) any Group Entity in respect of which this Deed of Cross Guarantee is revoked by that Revocation Deed (the "Group Entity released") will be released from all liability whatever under this Deed of Cross Guarantee including liability:
  - (i) arising or accruing before or after:
    - (A) execution of the Revocation Deed; or
    - (B) those conditions being satisfied; or
  - (ii) due to this Deed of Cross Guarantee becoming enforceable against the Group Entity released before or after:
    - (A) execution of the Revocation Deed; or
    - (B) those conditions being satisfied; and
- (e) each other Group Entity will be released from all liability under this Deed of Cross Guarantee in respect of any Debt of the Group Entity released including liability:
  - (i) in respect of any Debt arising or accruing before or after:
    - (A) execution of the Revocation Deed; or
    - (B) those conditions being satisfied; or
  - (ii) due to this Deed of Cross Guarantee becoming enforceable against the Group Entity before or after:
    - (A) execution of the Revocation Deed; or
    - (B) those conditions being satisfied; and
- (f) the trust constituted by this Deed of Cross Guarantee shall be revoked in respect of the covenants of each Group Entity released.

4.6 A Revocation Deed under clause 4.5 may be executed even if:

- (a) this Deed of Cross Guarantee has become enforceable in respect of a Group Entity; or
- (b) the winding up of a Group Entity has commenced.

4.7 The Group Entities may upon payment of the reasonable costs of the Trustee require the Trustee to be a party to a Revocation Deed and if so required the Trustee must execute the Revocation Deed which shall contain a release by the Trustee:

- (a) of the Group Entity released in terms similar to paragraph 4.5(d) of this Deed of Cross Guarantee; and
- (b) of the other Group Entities in terms similar to paragraph 4.5(e) of this Deed of Cross Guarantee.

## **5 Deed poll**

5.1 As a separate covenant by way of Deed Poll each Group Entity agrees with each Creditor that the Group Entity will guarantee to each Creditor payment of any Debt due to the Creditor from any other Group Entity in accordance with this Deed of Cross Guarantee.

## **6 Trustee and alternative trustee**

6.1 The only obligations of the trustee (including the Alternative Trustee if applicable in respect of the Trustee where the Trustee is the Holding Entity or a Group Entity) are:

- (a) to act as bare Trustee for the benefit of each Creditor of the Covenants of each Group Entity contained in this Deed of Cross Guarantee;
- (b) upon request to assign to any Creditor the benefit of this Deed of Cross Guarantee in so far as it benefits that Creditor (such assignment to be at the cost of the Creditor who must fully indemnify the Trustee);
- (c) to permit its name to be used in any demand or notice made or given by or legal proceedings brought by any Creditor seeking to enforce the benefit of this Deed of Cross Guarantee (but the Creditor must fully indemnify the Trustee and provide the Trustee with any reasonable security for costs which the Trustee may require);
- (d) upon request to lodge in its name on behalf of any Creditor or Creditors a proof of debt in the winding up of a Group Entity of a claim under this Deed of Cross Guarantee (such proof to be at the cost of the Creditor or Creditors who must fully indemnify the Trustee); and
- (e) to execute a release pursuant to clause 4.4 or 4.7 when required to do so.

6.2 The Trustee has no duty to supervise or monitor any Group Entity or to claim or pursue any Debt or (except as provided in clause 6.1) to enforce this Deed of Cross Guarantee.

6.3 The Trustee must execute a release pursuant to clause 4.4 or clause 4.7 when required to do so and the Trustee has no duty to inquire as to the propriety of any Deed of Revocation or of any disposal of shares in a Group Entity.

6.4 The Trustee is entitled to full indemnity from any Creditor for anything done by the Trustee at the request of the Creditor.

6.5 The Trustee may retire and appoint a new Trustee.

## 7 General

7.1 Execution of this Deed of Cross Guarantee is not to bar any person or company from disposing of any share in a Group Entity and is not to bar any Group Entity from executing a Revocation Deed at any time and does not amount to a representation by or agreement of any person or any Group Entity to or with any Creditor or other person that this Deed of Cross Guarantee may not be revoked as provided for in its terms.

7.2 This Deed of Cross Guarantee shall be governed by and construed in accordance with the laws of *[insert name of state or territory]* and each party to this Deed of Cross Guarantee agrees to submit to the non-exclusive jurisdiction of the Courts of *[insert name of state or territory]*.

## 8 Waiver

8.1 Each Group Entity agrees with the Trustee for the benefit of each Creditor that:

- (a) no Group Entity shall be entitled to:
  - (i) the benefit of any security or securities now or in future held or taken or otherwise acquired by a Creditor from a Group Entity;
  - (ii) the benefit of any dividend, composition or payment received by any Creditor from any Group Entity under any such security or securities; or
  - (iii) prove for or claim, demand or receive any such dividend, composition or payment.
- (b) If any security given or payment made to a Creditor by a Group Entity or by any other person is avoided or reduced by virtue of any law relating to liquidation, the Creditor shall then be entitled to recover the value or amount of any such security or payment from each Group Entity despite any prior settlement, discharge or release between the Creditor and any Group Entity.

8.2 Each Group Entity agrees with the Trustee for the benefit of each Creditor that no Creditor is under any obligation to:

- (a) give notice to any Group Entity of any amendment of any agreement giving rise to a Debt or of any breach of any such agreement; or
- (b) enforce this Guarantee against all of the Group Entities but may in its absolute discretion at any time and from time to time proceed against any or all of them.

8.3 Each Group Entity agrees with the Trustee for the benefit of each Creditor that the liability of each Group Entity shall not be affected by any one or more of the following (whether or not done or occurring by or with the consent of the Creditor or with the knowledge or consent of any Group Entity):

- (a) any collateral rights or obligations which may exist between any Group Entities;

- (b) any variation or avoidance of any such collateral rights or obligations;
- (c) any other person becoming a guarantor of a Group Entity's obligations and liabilities;
- (d) any other person intended to be bound as a surety in respect of a Group Entity's obligations and liabilities not being or becoming so bound;
- (e) any other Group Entity being released from or ceasing to be bound by this Deed of Cross Guarantee;
- (f) the giving of any release or waiver by any Creditor to any Group Entity;
- (g) the making of any arrangement or compromise by any Creditor with any of the Group Entities;
- (h) delay or failure by any Creditor to enforce this Deed of Cross Guarantee;
- (i) liquidation of any Group Entity or of any surety of a Group Entity;
- (j) the giving of any security by any Group Entity; or
- (k) where a Group Entity is a member of any partnership, any change in the membership of such partnership.

8.4 Each Group Entity agrees with the Trustee for the benefit of each Creditor that without the consent of any Group Entity each Creditor may at any time and from time to time without affecting the liability of any Group Entity under this Deed of Cross Guarantee:

- (a) grant to the Group Entity which is the principal debtor any indulgence or consideration;
- (b) compound with or release the Group Entity which is the principal debtor;
- (c) assent to any assignment to trustees for the benefit of Creditors under any scheme or deed of arrangement of the Group Entity which is the principal debtor whether with or without the winding up of the Group Entity which is the principal debtor;
- (d) assent to the appointment of a receiver, controller or administrator of a company under administration or a deed of company arrangement of the Group Entity which is the principal debtor; or
- (e) release or discharge or otherwise deal with any property whether real or personal comprised in any security held from the Group Entity which is the principal debtor.

8.5 Each Group Entity agrees with the Trustee for the benefit of each Creditor that:

- (a) no failure or delay of a Creditor to exercise any right given to it under this Deed of Cross Guarantee, or to insist on strict compliance by the Group Entity which is the principal debtor or any other Group Entity with any obligation in respect of

any Debt or under this Deed of Cross Guarantee, and no custom or practice of the Creditor or the Group Entities at variance with the terms of this Deed of Cross Guarantee, will constitute a waiver or variation of each Creditor's right to demand exact compliance with the terms of this Deed of Cross Guarantee;

- (b) any delay or omission of any Creditor to exercise any right arising from a breach of any obligation by a Group Entity will not affect or prejudice any Creditor's rights arising from such breach, or any subsequent breach, or the continuance of any breach; and
- (c) waiver by any Creditor of any particular breach by any Group Entity will not affect or prejudice any Creditor's rights in respect of any subsequent breach of the same or of a different nature.

8.6 Each Group Entity agrees with the Trustee for the benefit of each Creditor that:

- (a) all benefits, compositions and payments received by any Creditor from or on account of any Group Entity, including any dividends upon the liquidation of the Group Entity which is the principal debtor or of any Group Entity, or from any other person or from the realisation or enforcement of any security, guarantee or indemnity capable of being applied by any Creditor in or towards satisfaction of a Debt, will be applied as payments in gross;
- (b) no dividend or payment received by any Creditor in a liquidation of the Group Entity which is the principal debtor shall prejudice or affect the right of the Creditor to recover the Debt from each Group Entity to the full extent of this Deed of Cross Guarantee.

## 9 Variations

9.1 Subject to ASIC consent, the Group Entities and the Trustee may by executing another deed vary this Deed of Cross Guarantee to reflect any amendments of ASIC Pro Forma *Deed of Cross Guarantee* (ASIC Pro Forma 24) that may be made by ASIC from time to time.

### SCHEDULE

#### Parties to this Deed of Cross Guarantee

##### PART 1 — GROUP ENTITIES

(1) Holding Entity:

Hydro-Electric Corporation                      ARBN 072 377 158

(2) Group Entities (other than the Holding Entity) which are as at the date of execution of the Deed eligible for the benefit of ASIC Instrument [15-0576] and [15-0577]:

AETV Pty Ltd    ACN 123 391 613

Momentum Energy Pty Ltd

ACN 100 569 159

- (3) Group Entities (other than the Holding Entity) which are as at the date of execution of the Deed ineligible for the benefit of ASIC Instrument [15-0576] and [15-0577]:

[*name(s)*]      [*Australian Company Number(s), Australian Registered Body Number(s)*]

PART 2 — TRUSTEE

Trustee:

[*name*]      [*Australian Company Number*]

PART 3 — ALTERNATIVE TRUSTEE

Alternative trustee:

[If the Trustee is a Group Entity:]

[*name*]      [*Australian Company Number*]

[Otherwise state "NOT APPLICABLE"]

EXECUTED AS A DEED