

# **Pension Payment Agreement**

## **Market-Linked Pension**

for

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### **Robyn Ottey Superannuation Fund**

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The Robyn Ottey Superannuation Fund

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## Table of contents

<b>Pension Payment Agreement</b> .....	<b>1</b>
<b>A Introduction</b> .....	<b>1</b>
Purpose and start of this agreement.....	1
<b>B Information about the member and the pension</b> .....	<b>1</b>
The type of pension the member will be paid .....	1
When the trustee will pay the pension .....	1
Member's date of birth and life expectancy .....	2
How long the pension will be paid for .....	2
<b>C What the trustee and the member can and can't do</b> .....	<b>2</b>
Parties must not use pension as security .....	2
Trustee's rights and obligations .....	2
<b>D Information about the pension</b> .....	<b>3</b>
<b>E Procedure for member to change the amount, frequency or method of paying pension</b> .....	<b>3</b>
What may change about the pension? .....	3
Trustee to decide whether to approve a variation request.....	3
Trustee will notify the member of decision about the variation .....	3
When the variation will start .....	4
<b>F When and how may the trustee commute the pension to pay a lump sum</b> .....	<b>4</b>
When the trustee may commute the pension to pay a lump sum.....	4
<b>G Member may nominate a person to receive pension after member dies</b> .....	<b>6</b>
Reversionary beneficiary .....	6
What the member may ask the trustee to do when the member dies .....	6
When may the member give a death benefit notice? .....	6
When may the member revoke a death benefit notice? .....	6
When does the trustee follow the instructions in the benefit notice? .....	7
<b>H What happens when the member dies?</b> .....	<b>7</b>
The trustee will continue to pay the pension to the reversionary beneficiary but only in certain circumstances .....	7
What the trustee must do if the member dies and the trustee holds a death benefit notice..	7
The trustee may only pay the pension to a reversionary beneficiary who is a pension dependant .....	7
What the trustee must do if the member dies and the trustee does not hold a death benefit notice.....	7
A reversionary beneficiary may give a death benefit notice if trustee agrees .....	7
Compulsory cashing to a lump sum where reversionary beneficiary, who is the member's child, is receiving pension .....	8
What happens when a person who is receiving the pension (other than the member) dies?	8
<b>I When will the pension end?</b> .....	<b>8</b>
The pension will end on the first to occur of a range of events .....	8
<b>J Interpretation</b> .....	<b>9</b>
Assignment etc.....	9
Counterparts .....	9
Time for action .....	9
Amendment of agreement .....	9
Further assurance.....	9
Legal costs, stamp duty .....	9
Waiver .....	10
Notices .....	10
Time of giving notice .....	10
The law that governs this agreement.....	10
Specific rules of interpretation.....	10

K	Definitions.....	11
	Schedule.....	13

# Pension Payment Agreement

## Parties

### Trustee

Flexile Holdings ACN 009250515  
Floor 1, Unit 1A, 152 Balcatta Road  
Balcatta, WA 6021 Australia

### Member

Neil Warren Ottey  
7 Fawcett Way  
Warwick, WA 6024 Australia

## Background

- 1 The trustees are the trustees of the fund. The member is a member of the fund.
- 2 The trust deed allows the trustees to pay a pension to the member.
- 3 The member has satisfied a release condition and has applied to the trustees to be paid the pension.
- 4 The trustees have accepted the member's application and decided to pay the pension under this agreement.
- 5 The pension may be paid in up to 52 instalments in any year. Each instalment will have a payment period to which it will relate.

## A Introduction

### Purpose and start of this agreement

- 1 This agreement contains the rules governing, among other things:
  - the payment, duration and commutation of the pension to the member; and
  - what is to happen when the member dies.
- 2 This agreement commences on the commencement day in Item 1 of the schedule.

## B Information about the member and the pension

### The type of pension the member will be paid

- 3 The member (or any later reversionary beneficiary) will be paid a market-linked pension.

### When the trustee will pay the pension

- 4 The trustee (which includes "trustees") will pay all pension payments in advance starting on the commencement day.
- 5 The pension payments will be paid quarterly.

### **Member's date of birth and life expectancy**

- 6 The member's date of birth and life expectancy appear in Item 2 of the schedule. The member warrants that information is correct.

### **How long the pension will be paid for**

- 7 The trustee will pay the pension from the commencement day and for the number of years in Item 3 of the schedule, until the end date in Item 4 of the schedule – unless the pension ends earlier under clause 39.
- 8 The basis on which the member chose how long they would be paid the pension is set out in Item 5 of the schedule.

## **C What the trustee and the member can and can't do**

### **Parties must not use pension as security**

- 9 Neither the trustee nor the member (nor any later reversionary beneficiary) may use the capital value of the pension or the income from the pension, as security for a borrowing.

### **Trustee's rights and obligations**

#### **Comply with the law**

- 10 When the trustee is carrying out its duties under this agreement, the trustee must:
- 10.1 comply with the law, including superannuation law; and
  - 10.2 ensure the fund maintains its status as a self managed superannuation fund under superannuation law.

#### **Determine total payments**

- 11 The trustee will calculate, under the SIS Regulations, the total amount of the pension payments the trustee will pay each year (specifically, on the commencement day, this refers to schedule 6 of the SIS Regulations). When the trustee calculates the amount of payments they will make in a year, the trustee will:
- 11.1.1 include payments made under a payment split; and
  - 11.1.2 exclude payments by way of commutation.

#### **Limit reversionary component on reversion**

- 12 The trustee will ensure that if the pension reverts to a reversionary beneficiary, then the pension will not have a reversionary component greater than 100% of the account balance immediately before reversion.

#### **Trustee may segregate assets used to fund pension**

- 13 If the trust deed allows, then the trustee may segregate those assets which are to fund the pension, from other assets of the fund.

#### **Pension is not transferable**

- 14 After the member has died, the trustee must not pay the pension to any other person except under clauses 30 to 38.

**There must be no residual capital value**

- 15 The trustee must ensure that the pension does not have a residual capital value.

**D Information about the pension**

**Trustee to give the member an annual pension statement**

- 16 The trustee is to give the member (or any later reversionary beneficiary) a document with the following information:

- 16.1 the account balance;
- 16.2 the total amount of the pension to be paid to that person in that year; and
- 16.3 any other information the trustee considers appropriate.

This document is known as the **pension statement**.

**When the trustee will give the pension statement**

- 17 The trustee will give the pension statement to the member (or any later reversionary beneficiary):

- 17.1 each year, as soon as practicable after the end of the previous year; and
- 17.2 at any other time that person requests in writing and the trustee agrees.

**What the trustee will do after they receive a request for a pension statement**

- 18 As soon as practicable after the trustee receives a request from the member (or any later reversionary beneficiary) for a pension statement, the trustee will:

- 18.1 give a pension statement to that person; or
- 18.2 tell that person that the trustee will not give a pension statement.

**E Procedure for member to change the amount, frequency or method of paying pension**

**What may change about the pension?**

- 19 At any time, the member (or any later reversionary beneficiary) may request in writing, for the trustee to change:

- 19.1 the total amount of the pension to be paid in a year;
- 19.2 the frequency of payments, to a maximum of 52 in a year;
- 19.3 when the pension payments are made and whether in advance or in arrears; or
- 19.4 the method of paying the pension.

Any of these changes is referred to in this agreement as a **variation**.

**Trustee to decide whether to approve a variation request**

- 20 It is up to the trustee to decide whether or not to approve a request for a variation.

**Trustee will notify the member of decision about the variation**

- 21 As soon as practicable after receiving the request for a variation, the trustee will notify the member (or any later reversionary beneficiary) in writing:

- 21.1 if the trustee has decided to change the pension or not; and

21.2 if the trustee has decided to change the pension, the details of the variation.

**When the variation will start**

22 If the trustee decides to change the pension, then the trustee will change the pension from the date of the notice in clause 21 (or another date agreed with the member or any later reversionary beneficiary).

**F When and how may the trustee commute the pension to pay a lump sum**

**When the trustee may commute the pension to pay a lump sum**

23 At any time, the trustee may commute the pension (that is, arrange for the member – or any later reversionary beneficiary – to receive a lump sum) in whole or in part, if the amount commuted does not exceed the account balance immediately before the commutation; and

23.1 one or more of the situations in Commutation Condition A is the case; and

23.2 one or more of Commutation Conditions B, C, D, E or F is the case.

<b>Commutation Condition A</b>	1	The commutation results from the death of the member or a reversionary beneficiary; or
	2	The sole purpose of the commutation is:
	2.1	to pay a superannuation contributions surcharge; or
	2.2	to give effect to an entitlement of a non-member spouse under a payment split; or
	2.3	to meet the rights of a client to return a financial product under Division 5 of Part 7.9 of the <i>Corporations Act 2001</i> ; or
	3	In the financial year in which the commutation is to take place, the member (or any later reversionary beneficiary) has been paid (through the pension) at least the minimum amount prescribed under the SIS Regulations (specifically, on the commencement day, this refers to SIS Regulation 1.07A(3)); or
	4	If the commutation is for only part of the amount that could be commuted, then the account balance of the pension immediately after the partial commutation, would be:
	4.1	at least the minimum limit prescribed under the SIS Regulations (specifically, on the commencement day, this refers to Schedule 6 of the SIS Regulations); as reduced by
	4.2	the amount of payments to the member (or any later reversionary beneficiary) already made in the financial year in which the

	partial commutation would occur.
<b>Commutation Condition B</b>	<p>The commutation takes place within 6 months after the commencement day and is <b>not</b> funded by commuting:</p> <ol style="list-style-type: none"> <li>1 an annuity that is provided under a contract that meets the relevant standards of the SIS Regulations (specifically, on the commencement day, this refers to SIS Regulations 1.05(2), (3), (9) or (10)); or</li> <li>2 another pension that is provided under rules that meet the standards of the SIS Regulations under the SIS Regulations (specifically, on the commencement day, this refers to SIS Regulations 1.06(2), (3), (7) or (8)); or</li> <li>3 another pension that is provided under terms and conditions that meet the standards of the <i>Retirement Savings Accounts Regulations 1997</i> (specifically, on the commencement day, this refers to regulation 1.07(3A) of the <i>Retirement Savings Accounts Regulations 1997</i>).</li> </ol>
<b>Commutation Condition C</b>	<p>The pension is commuted by payment of:</p> <ol style="list-style-type: none"> <li>1 a lump sum or a new pension to one or more dependants of either the member or reversionary beneficiary; or</li> <li>2 a lump sum to the legal personal representative of either the member or reversionary beneficiary; or</li> <li>3 a lump sum to another individual — if (after making reasonable enquiries) the trustee is unable to find one or more dependants of either the member or reversionary beneficiary.</li> </ol> <p>But the pension is not commuted until both the member and the reversionary beneficiary die.</p>
<b>Commutation Condition D</b>	<p>The superannuation lump sum resulting from the commutation is transferred directly to the purchase of another benefit that is:</p> <ol style="list-style-type: none"> <li>1 an annuity provided under a contract that meets the standards of the SIS Regulations (specifically, on the commencement day, this refers to SIS Regulations 1.05 (2), (3), (9) or (10)); or</li> <li>2 a pension that is provided under rules that meet the standards of the SIS Regulations (specifically, on the commencement day, this refers to SIS Regulations 1.06(2), (3), (7) or (8)); or</li> <li>3 another pension that is provided under terms and conditions that meet the standards of the <i>Retirement Savings Accounts Regulations 1997</i> (specifically, on the commencement day, this refers to regulation 1.07(3A) of the <i>Retirement Savings Accounts Regulations 1997</i>).</li> </ol>
<b>Commutation Condition E</b>	The commutation is made for the purpose of paying an amount in respect of the member (or any later reversionary beneficiary) to give



	<p>effect to a release authority under:</p> <p>1 section 292-415 of the <i>Income Tax Assessment Act</i> 1997; or</p> <p>2 section 292-80C of the <i>Income Tax (Transitional Provisions) Act</i> 1997.</p>
<b>Commutation Condition F</b>	<p>None of Commutation Conditions B, C, D or E are the case and the sole purpose of the commutation is to:</p> <p>1 pay a superannuation contributions surcharge; or</p> <p>2 give effect to an entitlement of a non-member spouse under a payment split.</p>

**G Member may nominate a person to receive pension after member dies**

**Reversionary beneficiary**

- 24 The member nominates their spouse (set out in Item 6 of the schedule) as their reversionary beneficiary.
- 25 The spouse's date of birth and life expectancy are set out in Item 7 of the schedule. The member warrants that that information is correct.

**What the member may ask the trustee to do when the member dies**

- 26 The member may in writing:
- 26.1 provide the trustee with the name of one of the member's dependants;
- 26.2 specify that that dependant is to receive the member's account balance when the member dies; and
- 26.3 specify the way in which the member's account is to be paid to that dependant.
- Provided that it complies with the SIS Regulations (specifically, on the commencement day, this refers to SIS Regulation 6.17A), the document containing this information is to be called a **death benefit notice**.

**When may the member give a death benefit notice?**

- 27 The member may give a death benefit notice to the trustee only if this is permitted under the trust deed. If this is permitted, then the member may give the trustee a death benefit notice at any time.

**When may the member revoke a death benefit notice?**

- 28 Whether or not the member may revoke a death benefit notice is governed by the trust deed. (This agreement cannot override the trust deed.)

### **When does the trustee follow the instructions in the benefit notice?**

- 29 The trustee may only follow the instructions in a death benefit notice as explained in clauses 30 to 38.

### **H What happens when the member dies?**

#### **The trustee will continue to pay the pension to the reversionary beneficiary but only in certain circumstances**

- 30 When the member dies, the trustee will continue to pay the pension to the reversionary beneficiary named in Item 6 of the schedule. However, the trustee may only do this if that reversionary beneficiary is a pension dependant of the member at the time of the member's death.
- 31 If that reversionary beneficiary does not satisfy clause 30, then the trustee must pay the pension under clauses 33 to 35.
- 32 If that reversionary beneficiary does satisfy clause 30, then clauses 33 to 35 do not apply.

#### **What the trustee must do if the member dies and the trustee holds a death benefit notice**

- 33 If the member dies and the trustee holds a death benefit notice, then the trustee must:
- 33.1 carry out the member's instructions in the death benefit notice; and
  - 33.2 comply with the trust deed in doing so.

#### **The trustee may only pay the pension to a reversionary beneficiary who is a pension dependant**

- 34 When the member dies, the trustee may only pay the pension to a reversionary beneficiary who is a pension dependant of the member at the time of the member's death.

#### **What the trustee must do if the member dies and the trustee does not hold a death benefit notice**

- 35 If the member dies and the trustee does not hold a death benefit notice, then the trustee must:
- 35.1 do anything the trust deed says the trustee is to do with the member's account balance in these circumstances; and
  - 35.2 deal with the member's account balance under superannuation law.

#### **A reversionary beneficiary may give a death benefit notice if trustee agrees**

- 36 If the trustee agrees, then a reversionary beneficiary who receives the pension, may in writing:
- 36.1 provide the trustee with the name of one of the reversionary beneficiary's dependants;
  - 36.2 specify that that dependant is to receive the reversionary beneficiary's account balance when the reversionary beneficiary dies; and
  - 36.3 specify the way in which the reversionary beneficiary's account is to be paid to that dependant.

The document containing this information – as long as it complies with the SIS Regulations (specifically, on the commencement day, this refers to SIS Regulation 6.17A) – is to be called a **death benefit notice**.

### **Compulsory cashing to a lump sum where reversionary beneficiary, who is the member's child, is receiving pension**

- 37 If as a result of the member's (or later reversionary beneficiary's) death, the pension is being paid to a reversionary beneficiary who is a child of the member (or later reversionary beneficiary), then the pension must be cashed to a lump sum. Normally, it must be cashed to a lump sum on the earlier of:
- 37.1 when the pension is commuted (unless the benefit is rolled over to commence a new pension); and
  - 37.2 the day on which the reversionary beneficiary attains age 25.
- However, the pension does not have to be cashed to a lump sum if the reversionary beneficiary has a disability of the kind described in section 8(1) of the Disability Services Act 1986 on the day that would otherwise apply under clauses 37.1 or 37.2.

### **What happens when a person who is receiving the pension (other than the member) dies?**

- 38 If the pension is being paid to a reversionary beneficiary and that person dies, then the trustee must pay the account balance as follows:
- 38.1 if the trustee has agreed under clause 36 to the reversionary beneficiary giving a death benefit notice, then the trustee:
    - 38.1.1 must carry out the reversionary beneficiary's instructions in the death benefit notice; and
    - 38.1.2 in doing so must apply the rules in clauses 33 to 35 by assuming that references to the member in those clauses, is a reference to the reversionary beneficiary; or
  - 38.2 if the trustee has not agreed to the reversionary beneficiary giving a death benefit notice, then the trustee must:
    - 38.2.1 do anything the trust deed says the trustee is to do with the member's account balance in these circumstances; and
    - 38.2.2 deal with the member's account balance under superannuation law.

## **I When will the pension end?**

### **The pension will end on the first to occur of a range of events**

- 39 The pension will end on the first to occur of:
- 39.1 when the amount standing to the credit of the member's account is insufficient to permit further payment;
  - 39.2 on the end date in Item 4 of the schedule;
  - 39.3 when the account balance is zero;
  - 39.4 when the member dies – unless the pension is to be paid to a reversionary beneficiary, in which case the pension ends:
    - 39.4.1 under clause 37;

- 39.4.2 when the reversionary beneficiary dies (subject to clause 38);
- 39.4.3 under clause 39.5; or
- 39.4.4 under clause 39.6;
- 39.5 when the reversionary beneficiary dies and there is no other person to whom the pension may be paid; and
- 39.6 when:
  - 39.6.1 the reversionary beneficiary dies;
  - 39.6.2 the trustee is not required to pay the pension to any person; and
  - 39.6.3 the trustee decides the pension will end.

## **J Interpretation**

### **Assignment etc**

- 40 Neither party may sell, assign, sub-licence or encumber in any way any right under this agreement without the written consent of the other party. A party may not refuse consent unreasonably. However, it may require financial and any other information concerning a proposed purchaser, assignee etc, and may give consent subject to conditions. These may include the payment of any costs incurred in relation to the proposed sale, assignment etc and the provision of performance guarantees by the party or by other persons that are acceptable to it.

### **Counterparts**

- 41 This agreement may be executed in any number of counterparts all of which taken together constitute one agreement.

### **Time for action**

- 42 If a payment or other act is required to be made or done on a day that is not a business day, then the payment or act must be made or done on the next following business day.

### **Amendment of agreement**

- 43 This agreement may only be varied or replaced by a document:
- 43.1 if that document is signed by the trustee and the member who signed this agreement; or
  - 43.2 after the member who signed this agreement dies, if that document is signed by the trustee only.

### **Further assurance**

- 44 Each party must promptly execute and deliver all documents and take all other action necessary or desirable to complete the transactions contemplated by this agreement.

### **Legal costs, stamp duty**

- 45 Each party must pay its own legal costs and expenses in relation to the negotiation, preparation and execution of this agreement and other documents referred to in it. The parties must equally pay all stamp duty (including all fines and penalties except those

arising from the default of another party) on this agreement and any document executed under it.

### **Waiver**

- 46 A right under this agreement can only be waived in writing. A waiver by a party of a right under this agreement does not prevent any other exercise of that right or any other right. A party is not liable for any loss incurred by the other that results directly or indirectly from a failure to exercise a right under this agreement.

### **Notices**

- 47 Notice that must or may be given under this agreement must be given in writing. It may be delivered to the person's last notified business address or registered office, or by pre-paid post to that address or office, or by fax or email to the relevant fax number or email address.

### **Time of giving notice**

- 48 A notice by post is given 2 business days after it is posted. A notice by fax is given on the date and at the time indicated on the transmission report produced by the sender's facsimile machine indicating that the facsimile was sent in its entirety to the addressee's facsimile. A notice by email is delivered the day it is sent.

### **The law that governs this agreement**

- 49 This agreement is governed by and is to be construed in accordance with the law applying in Western Australia.

### **Specific rules of interpretation**

- 50 This agreement is to be interpreted in a manner that ensures it complies with superannuation law. In particular, it is to be construed so that, under superannuation law:
- 50.1 the fund qualifies as a self managed superannuation fund; and
  - 50.2 qualifies for concessional tax treatment.
- 51 To the extent that anything in this agreement is inconsistent with superannuation law, it is to be severed from the agreement. Any obligation imposed by superannuation law in respect of the fund that is not expressed in this agreement is, even so, to be regarded as incorporated in it by reference.
- 52 Any provision in this agreement that is held to be illegal, invalid, void, voidable or unenforceable must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable. If it is not possible to read down the provision, then that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this agreement;
- 53 If a party is a trustee and the party makes a covenant, agreement, undertaking representation or warranty, then it will be construed to be a covenant, agreement, undertaking, representation or warranty made in the same capacity and as trustee of the relevant trust.
- 54 Unless expressed or implied to the contrary in this agreement:
- if a party consists of more than one person, this agreement binds them jointly

and each of them severally;

- headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this agreement;
- this agreement may be executed in any number of counterparts all of which taken together constitute one instrument;
- if a payment or other act is required to be made or done on a day which is not a business day, then the payment or act must be made or done on the next following business day.

55 A reference in this agreement to:

- a statute includes regulations under it (and vice versa) and consolidations, amendments, re-enactments or replacements of any of them;
- a person includes a firm, partnership, joint venture, association, corporation or other corporate body;
- a person includes the legal personal representatives, successors and assigns of that person;
- any body which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the first-mentioned body;
- a clause, schedule or appendix is a reference to a clause, schedule or appendix in or to this agreement;
- this or other document includes the document as varied or replaced regardless of any change in the identity of the parties;
- writing includes all modes of representing or reproducing words in a legible, permanent and visible form;
- '\$' or 'dollars' is a reference to Australian dollars;
- the singular includes the plural and vice versa; and
- a gender includes the other genders.

## K Definitions

**Agreement** means this Pension Payment Agreement, which is executed by the parties as a deed.

**Commute and commutation** mean to convert the capital that funds the pension, into a lump sum.

**Commencement day** means the date in Item 1 of the schedule.

**Death benefit notice** means a notice:

- that is given by the member under clause 26 or by a reversionary beneficiary under clause 36; and
- that complies with the SIS Regulations (specifically, on the commencement day, this refers to SIS Regulation 6.17A).

**Dependant** has the meaning given to that term in section 10 of the SIS Act.

**End date** means the date in Item 4 of the schedule.

**Fund** means the Robyn Ottey Superannuation Fund.

**Member** means the original member identified at the start of this agreement.

**Life expectancy** has the meaning given to that term in the SIS Regulations.

**PDS** means a product disclosure statement as defined in Chapter 7 of the *Corporations Act 2001*.

**Payment split** has the meaning given to that term in the SIS Regulations.

**Pension** means the pension specified in clause 3.

**Pension dependant** means a person who satisfies the requirements of r6.21(2A) of the SIS Regulations.

**Pension statement** means a statement provided under clause 16.

**Release conditions** means a condition which, when satisfied by the member, enables the trustee to pay the pension to the member (and which conditions must also be a 'condition of release' as defined in the SIS Regulations).

**Reversionary beneficiary** means:

- the person to whom the pension must be paid after the member dies; or
- any person to whom the pension must be paid on the death of another, under this agreement.

**Self managed superannuation fund** has the meaning given to that term in the SIS Act.

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

**SIS Regulations** means the *Superannuation Industry (Supervision) Regulations 1994*.

**Superannuation law** means:

- any law of the Commonwealth of Australia (including the *Corporations Act 2001* and the *Social Security Act 1991*) which deals with any aspect of superannuation or taxation in relation to superannuation; and
- any lawful requirement in relation to the fund, made by the Commissioner of Taxation, the Australian Taxation Office, APRA, ASIC or any other body that has responsibility in connection with the regulation of superannuation.

It includes changes to any superannuation law after the date of this deed. It also includes any proposed law or lawful requirement that the trustee may have retrospective effect.

**Trust deed** means the trust deed governing the operation of the fund as updated from time to time.

**Trustee** means the trustee, or the trustees, of the fund at any particular time.

**Year** means:

- the period from the commencement day to the next 30 June;
- the period from the 1 July after the commencement day to the following 30 June and each 12 month period after that; and
- the period from 1 July to the day the pension ends under clause 39.

## Schedule

Item	Derived from clause	Information	Details
Item 1	Clause 2	<b>Commencement day</b>	15 September, 2007
Item 2	Clause 6	<b>Member's date of birth</b>	10 October, 1943
		<b>Member's life expectancy (derived from the Life Tables)</b>	20 years
Item 3	Clause 7	<b>Number of years the pension will be paid for</b>	26 years
Item 4	Clause 7	<b>End date</b>	15 September, 2033
Item 5	Clause 8	<b>Basis on which the member chose how long they wanted to be paid the pension</b>	<p>The end date is based on the period of 26 years, nominated by the member, being a period equal to or greater than the member's spouse's life expectancy on the commencement day, and not more than:</p> <ol style="list-style-type: none"> <li>1 a term equal to the member's spouse's life expectancy on the commencement day calculated as if the member's spouse had a date of birth up to 5 years earlier than their actual date of birth; and</li> <li>2 a term equal to the number of years that is the difference between the member's spouse's age prior to the commencement day, and 100.</li> </ol>

### Details of spouse

Item 6	Clause 24	<b>Name</b>	Robyn Elizabeth Elsie Ottey
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Item 7	Clause 25	Date of birth	22 April, 1943
		Life expectancy (derived from Life Tables)	22 years

**Execution**

Executed by the parties as a deed.

Date: AUGUST 13<sup>TH</sup> 2007



**EXECUTED** by Flexile Holdings ACN 009250515 as trustee by being signed by those persons who are authorised to sign for the company:

Director: [Signature]  
Full Name NEIL WARREN OTTEY  
Director (or Company Secretary)  
[Signature]  
Full Name ROBYN ELIZABETH ELSIE OTTEY

**Member's execution and acknowledgement:**

I acknowledge that:

- I have read and understood the PDS for the pension;
- the trustee is to provide me with a fully executed copy of this agreement as soon as practicable after the commencement day; and
- my decision to apply for and be paid the pension is important and the trustee recommends that I consider obtaining legal, accounting and financial advice.

**SIGNED, SEALED AND DELIVERED** by Neil Warren Ottey as member

Signature: [Signature]

Signature of witness [Signature]

Full Name of witness BRIAN GEORGE COBB