

**SUPERANNUATION INDUSTRY (SUPERVISION) ACT 1993**

**SELF MANAGED SUPERANNUATION FUND  
GOVERNING RULES FOR**

**THE MERCER SUPERANNUATION FUND**

**Carter Woodgate  
Unit 4  
4-10 Farrall Road  
Midvale WA 6056**

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## REFERENCE SCHEDULE

- (i) "Including" and similar expressions are not words of limitation.
- (j) Any word or expression which is defined in the Act has in this Deed the meaning given to it by the Act. To the extent that a meaning given to a word or expression in this Deed is inconsistent with the meaning given to it by the Act the meaning given by the Act prevails unless the contrary intention appears. Where more than one meaning may be given then the Trustee may determine which meaning applies.

## 2.2 Definitions

The following words have the meanings unless the contrary intention appears and subject to this clause 2.

**"Act"** means the SIS Act (and includes the SIS Regulations), the Superannuation Guarantee (Administration) Act 1992 (Cth), the Tax Act, Veterans' Entitlements Act 1986 (Cth), Social Security Act 1991 (Cth), Family Law Act 1975 (Cth), Corporations Act 2001 (Cth), Bankruptcy Act 1966 (Cth) and any other legislation (as may be amended from time to time) that applies to a Self Managed Superannuation Fund and includes any regulations, declarations or orders, exemptions or modifications made under those Acts or any other law, or any requirement of the Regulator, including those which the Fund must satisfy to qualify for the most favourable taxation treatment available to superannuation funds; which the Trustee or the Fund must comply with to avoid any penalty or disadvantage which might be incurred in connection with the operation of the Fund; or which otherwise has or may have application to the Fund.

**"Account based pension"** means a pension first provided on or after 1 July 2007 in accordance with SIS Regulation 1.06(9A)(a) that meets the applicable standards of the SIS Regulation 1.06(9A).

**"Auditor"** means an approved Auditor as defined in Section 10 of the SIS Act.

**"Beneficiary"** means a Member, Dependant or other person entitled to receive a benefit under this Deed or under the SIS Act.

**"Cashing Restrictions"** has the meaning in SIS Regulation 6.01(2).

**"Complying fund"** means a fund that complies with Section 42A SIS Act.

**"Constitutional Corporation"** has the meaning in Section 10(1) of the SIS Act.

**"Condition of Release"** has the meaning in SIS Regulation 6.01(2).

**"Deed"** means this Deed or any alteration to, addition to or variation made to it from time to time except where the context otherwise requires.

**"Dependant"** has the meaning in the SIS Act.

**"Eligible Person"** means any person in respect of whom the Trustee may accept contributions under the SIS Act or who may otherwise become a Member of the Fund under the SIS Act.

**"Eligible Recipient"** means a Member, the Legal Personal Representative of a Member, a Dependant of a Member, a Pensioner, a Reversionary Beneficiary or any other person who becomes entitled (or where the context permits, and unless the Trustee otherwise resolves, and subject to the Superannuation Conditions, may become so entitled) to the payment of a benefit from the Fund, subject to the Act and this Deed.

**"Employee"** has the meaning in Section 10 of the SIS Act.

**"Employer"** has the meaning in Section 10 of the SIS Act.

**"Equalisation Account"** means an account kept in accordance with sub-paragraph 33.3.

**"Reversionary Beneficiary"** means a person who becomes entitled to a Member's Benefit in respect of a superannuation interest of a Member, after the Member dies.

**"Segregated Current Pension Assets"** has the meaning in the Tax Act.

**"Self Managed Superannuation Fund"** has the meaning in the SIS Act.

**"SIS Act"** means the Superannuation Industry (Supervision) Act 1993 (Cth) as amended from time to time and regulations from time to time made in accordance with that Act.

**"SIS Regulations"** mean the regulations made under the SIS Act as amended from time to time and includes any applicable modification declaration.

**"Splittable Contribution"** has the meaning in Part 6 of the SIS Regulation.

**"Spouse"** in relation to a person, includes:

- (a) another person (whether of the same sex or a different sex) with whom the person is in a relationship that is registered under a law of a State or Territory prescribed for the purposes of section 2E of the *Acts Interpretation Act 1901* as a kind of relationship prescribed for the purposes of that section; and
- (b) another person who, although not legally married to the person, lives with the person on a genuine domestic basis in a relationship as a couple.

**"Standard"** means a standard prescribed by the SIS Act.

**"Superannuation Conditions"** subject to -paragraph 2.5 means:

- (a) **any requirement of the Act that applies;**
- (b) any determination or other writing of the Regulator that the Trustee considers is applicable to the Fund;
- (c) any other ruling or requirement relating to superannuation funds in respect of the above matters that in the Trustee's opinion should be complied with; and
- (d) any proposed requirements of the Regulator that may apply to the Fund which the Trustee determines should be complied with to obtain maximum tax concessions for the Fund:

**"Tax Act"** means Income Tax Assessment Act 1936 and Income Tax Assessment Act 1997 as applicable.

**"Temporary incapacity"** has the meaning in the SIS Regulations.

**"Trustee"** means the trustee or the trustees for the time being of the Fund and **"Trustees"** has the same meaning.

### 2.3 Headings & Interpretation

- (a) The headings in this Deed are for convenience and reference only and are not to affect its interpretation.
- (b) Any word or expression which is defined in the Act has in this Deed the meaning given to it by the Act. To the extent that a meaning given to a word or expression in this Deed is inconsistent with the meaning given to it by the Act the meaning given by the Act prevails unless the contrary intention appears. Where more than one meaning may be given then the Trustee may determine which meaning applies.

then subject to the Superannuation Conditions, the Trustee may determine, either generally or in respect of any particular application, in their absolute discretion, which provision or ruling applies and the Deed must be construed accordingly.

## **2.6 Proper Law**

This Deed is governed and construed and takes effect in accordance with the laws of the State or Territory of residence of the Trustee. Any person having or claiming any interest under this Deed must submit to the jurisdiction of the Courts of that State or Territory.

## **2.7 Saving Provision**

To the extent any provision of this deed would be void or invalid, but for this sub-paragraph ("an invalid provision"):

- (a) where a reading down or limitation of the operation of the invalid provision would remove the voidness or invalidity, that must be done in constructing the Deed;
- (b) where it is not possible to apply sub-paragraph (a), the invalid provision is severed from the Deed;
- (c) in any event, an invalid provision does not affect the continued operation of the remainder of the Deed.

## **2.8 Trustee must comply with the Law**

The Trustee is not in breach of this Deed if the breach arises from an act or failure that the Regulator waives or does not enforce.

## **2.9 Power to comply with Family Law**

The Trustee may do anything that it considers necessary to comply with the SIS Act and Part VIIIIB of the Family Law Act 1975 (Cth).

## **3. Sole Purpose Test**

### **3.1 Core Purposes**

The Trustee must ensure that the Fund is maintained solely for one or more of the core purposes or both one or more of the core purposes and for one or more of the ancillary purposes provided in the SIS Act.

### **3.2 Sole Purpose**

Despite any other provision of this Deed, the Trustee must be a Constitutional Corporation unless the Trustees are individuals in which case the sole or primary purpose of the Fund is the provision of Old-Age Pensions.

- to an entity of which it is Trustee and on behalf of the Beneficiaries of which it makes investments;
- (c) to perform the Trustee's duties and exercise the Trustee's powers in the best interests of the Beneficiaries;
- (d) where there is a conflict between the duties of the Trustee to the Beneficiaries, or the interests of the Beneficiaries, and the duties of the Trustee to any other person or the interests of the Trustee or an associate of the Trustee:
  - (i) to give priority to the duties to and interests of the Beneficiaries over the duties to and interests of other persons; and
  - (ii) to ensure that the duties to the Beneficiaries are met despite the conflict; and
  - (iii) to ensure that the interests of the Beneficiaries are not adversely affected by the conflict; and
  - (iv) to comply with the prudential standards in relation to conflicts;
- (e) to act fairly in dealing with classes of Beneficiaries within the entity;
- (f) to act fairly in dealing with Beneficiaries within a class;
- (g) to keep the money and other assets of the entity separate from any money and assets, respectively:
  - (i) that are held by the Trustee personally; or
  - (ii) that are money or assets, as the case may be, of a standard employer-sponsor, or an associate of a standard employer-sponsor, of the entity;
- (h) not to enter into any contract, or do anything else, that would prevent the Trustee from, or hinder the Trustee in, properly performing or exercising the Trustee's functions and powers;
- (i) if there are any reserves of the entity--to formulate, review regularly and give effect to a strategy for their prudential management, consistent with the entity's investment strategies and its capacity to discharge its liabilities (whether actual or contingent) as and when they fall due;
- (j) to allow a Beneficiary of the entity access to any prescribed information or any prescribed documents.

#### **Superannuation Trustee**

- (3) In paragraph (2)(b), a superannuation trustee is a person whose profession, business or employment is or includes acting as a trustee of a superannuation entity and investing money on behalf of beneficiaries of the superannuation entity.

#### **Obligations to Beneficiaries override obligations under certain other Acts**

- (4) The obligations of the Trustee under paragraph (2)(d) override any conflicting obligations an executive officer or employee of the Trustee has under:
  - (a) Part 2D.1 of the Corporations Act 2001 ; or
  - (b) Division 4 of Part 3 of the Commonwealth Authorities and Companies Act 1997.

#### **Trustee not prevented from engaging or authorising persons to act on Trustee's behalf**

- (5) A covenant referred to in paragraph (2)(h) does not prevent the Trustee from engaging or authorising persons to do acts or things on behalf of the Trustee.

- (c) to only offer or acquire insurance of a particular kind, or at a particular level, if the cost of the insurance does not inappropriately erode the retirement income of Beneficiaries;
- (d) to do everything that is reasonable to pursue an insurance claim for the benefit of a Beneficiary, if the claim has a reasonable prospect of success.

**Covenants relating to risk**

- (8) The covenants referred to in subsection (1) include the following covenants by each Trustee of the entity:
  - (a) to formulate, review regularly and give effect to a risk management strategy that relates to:
    - (i) the activities, or proposed activities, of the Trustee, to the extent that they are relevant to the exercise of the Trustee's powers, or the performance of the Trustee's duties and functions, as Trustee of the entity; and
    - (ii) the risks that arise in operating the entity;
  - (b) to maintain and manage in accordance with the prudential standards financial resources (whether capital of the Trustee, a reserve of the entity or both) to cover the operational risk that relates to the entity.

**7. Statutory Requirements**

**7.1 Self Managed Superannuation Fund**

Subject to sub-paragraph 3.2 and despite any other provision of this Deed, the Trustee is empowered to do all things necessary to be done by it to ensure that the Fund satisfies the conditions applicable to Self Managed Superannuation Funds regulated in accordance with the SIS Act.

**8. Alterations to the Deed**

**8.1 Methods to alter Deed**

Subject to this paragraph 8 and the Superannuation Conditions, this Deed may be amended:

- (a) by deed executed by the Trustee and, where the Superannuation Conditions require it, with the consent of the Members; or
- (b) by oral resolution of the Trustee and subject to compliance with the Superannuation Conditions.

**8.2 Effective Date**

An amendment under this paragraph takes effect from the date (prospective or retrospective) specified in the resolution or if not specified on the date of such Deed or the date on which the resolution is made.

**8.3 Prohibition**

If the SIS Act prohibits it, this Deed must not be amended in such a way that:

- (a) a person other than a Constitutional Corporation would be eligible to be appointed as Trustee unless the Deed or any amending deed, provides and will continue to provide



- (d) When the Minor is 18 years the Minor becomes a director of the Trustee of the Fund (or a Trustee) provided that the Trustee has done everything necessary to appoint the Minor as a director of the Trustee (or as a Trustee).

## **10. Trustees**

### **10.1 Who can be Trustee**

Subject to sub-paragraph 3.2,

- (a) if the Trustee is a Constitutional Corporation, each Member of the Fund must be a director of that corporation however this does not apply to a Member under a legal disability or otherwise not permitted to become a director of the Trustee of the Fund and in that case any person permitted by the SIS Act may be a director of the corporate Trustee.
- (b) if the Trustees are individuals, each Member of the Fund must be a Trustee however this does not apply to a Member under a legal disability or otherwise not permitted to become a Trustee of the Fund and in that case any person permitted by the Act may be a Trustee.

### **10.2 Number of Trustees**

The number of Trustees must be such number as does not exceed the maximum number and is not less than the minimum number permitted by the SIS Act necessary for the fund to satisfy the provisions applicable to Self Managed Superannuation Funds:

- (a) If the Fund has individual Trustees, the number of Trustees must be more than one but less than five; or
- (b) If the Fund has a corporate Trustee, the number is one.

### **10.3 Written consent of Trustee required**

A person is not eligible for appointment as a Trustee, or, if the Trustee is a corporate Trustee, as a director of that corporate Trustee, unless the person has consented in writing to the appointment.

### **10.4 Consent of new Members to Trustee**

A person joining the Fund as a Member consents, as a condition of joining the Fund:

- (a) to the Trustee, at the date of the Member so joining, continuing to act as Trustee; and
- (b) to being appointed as a Trustee of the Fund, or if the Trustee is a body corporate, to being appointed as a director of that body corporate;

unless that Member is under a legal disability or otherwise not entitled to become a Trustee under the SIS Act.

### **10.5 Chairperson**

The chairperson of any meeting of the Trustee or of the body corporate Trustee does not have in that capacity any second or casting vote.

be filled by a resolution of a two-thirds majority of Members and may also be effected by a deed signed by or on behalf of the Members and signed by the new Trustee and any continuing Trustees.

- (b) In the event that any vacancy in Trustee or board of a corporate Trustee is not filled within 90 days after it occurred, the Members may fill the vacancy by a resolution made by a two-thirds majority of Members.

#### **10.10 Members may Remove or Replace Trustee**

- (a) Subject to the Superannuation Conditions and if required by them, with the Trustee's consent, the Trustee or, where there is more than one, a Trustee, may be removed by a two-thirds majority of the Members and such removal is effective upon the passing of a resolution to that effect.
- (b) At the time of making a resolution under sub-paragraph (a) the Members may (with the written consent of the appointee or appointees) by resolution made and effected in like manner appoint a Trustee or Trustees to replace the person or persons so removed.

#### **10.11 Self Managed Superannuation Fund- Removal and Appointment of Trustee**

- (a) Any appointment or removal of a Trustee or a director of a body corporate Trustee must be made in such manner as will satisfy the provisions of the SIS Act applicable to Self Managed Superannuation Funds.
- (b) Subject to the SIS Act, in addition to any other method provided in this Deed, a Trustee(s) or an additional Trustee(s) may be appointed or a Trustee(s) removed by a Deed giving effect to such appointment or removal, signed by the Members, the Trustee to be appointed and the Trustee at that time or by their duly appointed attorney, agent, Legal Personal Representative, parent or guardian as may be appropriate. If a Trustee's or a director of a corporate Trustee's office is vacated in any manner described in sub-paragraph 10.8(a), the signing by such Trustee or director is not required.
- (c) A Trustee cannot be appointed as Trustee if they are not eligible to act as Trustee of a Self Managed Superannuation Fund under the Superannuation Conditions.

#### **10.12 Registration**

A document or deed appointing or removing a Trustee does not need to be registered and any law relating to trustees concerning the registration of such documents or deeds does not apply.

#### **10.13 Vesting Fund Assets**

Unless required by law in a manner that cannot be excluded, any appointment or removal of a Trustee effected pursuant to this Deed is sufficient to vest the assets of the Fund in the relevant Trustees without any further action of any kind.

### **11. Limitation of Liability**

#### **11.1 Limitation**

- (a) Subject to sub-paragraph 11.1(b), no Trustee or, where the Trustee is a corporation, none of its directors or officers, will be personally liable for any loss, detriment, expense or damage ("Detriment") whatsoever incurred by any person in connection with the Fund for any reason and without limitation including:-

### **12.3 Notification to Members**

The Trustee must within fourteen (14) days of any meeting held under the provisions of this sub-paragraph or such other period as may be required by the SIS Act notify all Members of the result thereof, if required by the SIS Act.

### **12.4 Strict compliance not essential**

Any resolution made under this sub-paragraph is not invalidated by reason of any or want of strict compliance with these provisions unless it is shown that there has or may be caused thereby some substantial and irremediable injustice.

### **12.5 Written Resolution**

Despite this paragraph 12 the Members may unanimously resolve to give their approval by signing a document or counterpart documents to the requisite effect.

## **13. Trustee not to be Subject to Direction**

### **13.1 Directions**

If the Superannuation Conditions so require, the Trustee, despite anything in this Deed to the contrary, must not be subject, in the exercise of any of the Trustee's powers under the Deed, to direction by any other person.

### **13.2 Direction taken to be a request**

If any provision in this Deed is inconsistent with the preceding sub-paragraph then, despite such provisions, the Trustee must treat the direction as a request and the Trustee is not bound by such provision or request.

## **14. Investments**

### **14.1 Investment Strategy**

The Trustee must formulate and give effect to an investment strategy in accordance with the SIS Act. Subject to the SIS Act, a Reserve Account may have a separate investment strategy.

### **14.2 Loans**

The Trustee may not lend money to Members or others except in accordance with the Superannuation Conditions and this Deed.

### **14.3 Acquisition of assets from Members**

The Trustee must not intentionally acquire an asset from a Related Party unless the SIS Act otherwise permits.

#### **14.7 Power to invest as if natural persons**

- (a) Subject to the SIS Act, the Trustee may make any investment that a natural person may make, whether in Australia or elsewhere.
- (b) The Trustee has power to sell, vary or transpose any investment/asset.
- (c) All investments by the Trustee are subject to compliance with the Superannuation Conditions

#### **14.8 Other investment powers**

Without limiting the preceding sub-paragraph but subject to the limitations in it and subject to the Superannuation Conditions, the Trustee may: -

- (a) invest in any investment authorised by the laws of Australia or of any of its States or Territories for the investment of trust funds;
- (b) invest in the purchase of or subscription for preference or other shares or stock or preference or other share or stock options in any company registered in Australia or in any other country;
- (c) invest in the purchase of units or sub units of property or other investment trusts or other common fund;
- (d) deposits with any bank, life insurance company or building society or on loan to any company, organisation or person not being a Member;
- (e) invest in policies of insurance, assurance, endowment, deposit administration or investment;
- (f) invest in the purchase of annuities and deferred annuities from a life insurance company or other organisation;
- (g) invest in the purchase of any real estate;
- (h) invest in deposits or loans;
- (i) invest in instalment warrants or otherwise acquire instalment warrants;
- (j) in any derivative product or derivative contract;
- (k) sell, transfer, hire, lease or dispose of any real or personal property of the Fund, whether at a profit or not;
- (l) grant or take any put or call option for the purchase of any real or personal property of the Fund, whether the sale occurring on exercise of such an option will be at a profit or not;
- (m) buy, transfer, acquire, hire or lease any property;
- (n) invest in its name or under its control the Fund in any one or more of the investments authorised by this Deed with power in the Trustee's absolute discretion either to retain the investment in that form or to sell or convert into money any of those investments for cash or on terms (so as to allow a purchaser any time for payment of the whole or part of the purchase price with or without interest and with or without security) and power in the Trustee's absolute discretion from time to time to vary or transpose any investments into others authorised by this Deed;
- (o) purchase, take on lease or licence, develop, construct, hold, improve, sell, transfer, convey, surrender, lease, licence or otherwise deal with any real property and, without limiting the generality of this sub-paragraph, to develop any commercial or retail premises and hold or sell, transfer, convey, surrender, lease or licence such premises;
- (p) invest in any property including land even if the property does not earn rent;
- (q) enter into contracts for the purchase of property to be constructed;

#### **15.4 Selection and direction**

- (a) A Member or Beneficiary of the Fund may, where the Trustee has determined to offer investment choice in accordance with sub-paragraph 15.1, select one or more of the investment strategies formulated by the Trustee under sub-paragraph 15.2 and direct the Trustee to invest part or the whole of the monies held in respect of that person in accordance with the strategy or strategies selected by that person under this sub-paragraph.
- (b) Any directions by the Member or Beneficiary must only be given in accordance with the Superannuation Conditions and the Trustee must ensure that the Member or Beneficiary is provided with such information as required by the Superannuation Conditions in order to enable the Member or Beneficiary to make an informed decision.

#### **15.5 Member document**

- (a) A Member or Beneficiary who wishes to select one or more investment strategies pursuant to sub-paragraph 15.2 must give to the Trustee such documents as the Trustee requires and must clearly set out details of the investment strategy or strategies selected by the Member or Beneficiary.
- (b) The Trustee is not bound to act on any such document if it breaches any of the requirements of the Superannuation Conditions.

#### **15.6 Asset specific investments**

- (a) Except to the extent permitted by the Superannuation Conditions, the Trustee is not bound to make a particular investment in respect of a Member or Beneficiary of the Fund.
- (b) Where a Member or Beneficiary wishes to select particular investments, (whether those investments comprise one or more assets), a request to the Trustee must be made for an additional investment strategy or strategies for those particular investments ("asset specified investment strategy") to be formulated by the Trustee and for that strategy or those strategies to be made available to that Member or Beneficiary in accordance with sub-paragraph 15.2.
- (c) The Trustee may in their absolute discretion approve or reject any requests made under this sub-paragraph.
- (d) Pursuant to this provision, the Trustee may make a specific rule or otherwise bind the Trustee to ensure that any such asset or investment forms part of the Member's account to the extent that no other Member shall be entitled to any part of that asset or investment. If an asset is transferred to the Trustee of the Fund on terms that for stamp duty reasons or otherwise require it to be held by the Trustee to the exclusion of any other Member, other than the transferor Member(s) then the Trustee shall do such things and execute such documents as are necessary to ensure that the property is so held. (See also sub-paragraph 8.5)

#### **15.7 Advice to Members**

The Trustee must, if required by the SIS Act, advise Members and Beneficiaries of the investment strategy or strategies which will be adopted by the Trustee in respect of those Members or Beneficiaries or classes of Members or Beneficiaries who decline, or otherwise do not select an investment strategy.

### **16.3 Trustee's interest**

Subject to the Superannuation Conditions, the Trustee has power generally to exercise or concur in exercising all the Trustee's powers and discretions contained in this Deed or otherwise conferred notwithstanding that :-

- (a) any person being a Trustee; or
- (b) any person being a director or shareholder of a Trustee;
- (c) any person being a relative of a Trustee or any person being a relative or a director or shareholder of a Trustee hereof (being a company) has or may have a direct or personal interest, whether;
  - (i) as Trustee of any other settlement; or
  - (ii) in his/her personal capacity; or
  - (iii) as shareholder or director; or
  - (iv) member or partner of any company or partnership; or
  - (v) as a relative of the Trustee or relative of a director or shareholder of a Trustee or relative of a Member or relative of a partner of any company or partnership; or
  - (vi) as a unitholder in any unit trust or beneficiary of any other trust including, without limitation, a discretionary trust or otherwise; or
  - (vii) as a relative of a unitholder in any unit trust or beneficiary of any other trust including, without limitation, a discretionary trust or otherwise;

in the mode or result of exercising such power or discretion or may benefit either directly or indirectly as a result of the exercise of any such power or discretion and even if the Trustee for the time being is the sole Trustee.

### **17. Notification of significant adverse effects**

#### **17.1 Trustee to give notice of significant adverse effect**

If the Trustee becomes aware of the occurrence of an event having a significant adverse effect on the financial position of the Fund, they must give such notice as may be required by the Superannuation Conditions.

### **18. Insurance**

#### **18.1 Life insurance**

The Trustee has power from time to time to effect policies of insurance upon the life of any Member to secure payment upon death of the Member or the happening of any other contingency in respect of that Member of such amount as the Trustee in their absolute discretion thinks fit and to renew any such policies for such period as the Trustee may think fit and the Trustee has power to accept an assignment of any policies of insurance effected in respect of a Member.

#### **18.2 Annuities**

The Trustee has power from time to time to effect annuity or deferred annuity policies upon the life of any Member or any of the Member's Dependants of such amount as the Trustee determines and the Trustee has power to accept an assignment of such annuity or deferred annuity policies effected in respect of a Member.

- (c) other financial accounts and statements as are required by the Superannuation Conditions; and/or
- (d) such other statements as the Trustee thinks fit.

### **19.3 Accounts and statements to be prepared**

The Trustee may prepare such accounts and statements additional to those described in this paragraph as are required by the Superannuation Conditions or otherwise, as they think fit.

### **19.4 Audit**

If required by the Superannuation Conditions, the Trustee must ensure that the accounts and statements of the Fund are audited.

### **19.5 Maintenance of reserves**

- (a) This sub-paragraph is subject to the Superannuation Conditions.
- (b) The Trustee may maintain reserves of the Fund.
- (c) Subject to s52(g) of the SIS Act and the investment strategy applicable to the reserve, a Member is not entitled to any property held in a Reserve Account and the Trustee is not required to allocate such property.
- (d) The Trustee has, in relation to Reserve Accounts, all the powers applicable to the Fund.

## **20. Rollover**

### **20.1 Trustee may pay rollovers**

The Trustee may pay benefits to an eligible rollover fund or other fund as permitted by the Superannuation Conditions.

## **21. Member Accounts**

### **21.1 Trustee to keep Member and Employer accounts**

- (a) Subject to complying with the Superannuation Conditions, the Trustee may keep such Member Accounts in respect of Member and Employer contributions (if any) as they think fit, including accounts and sub-accounts in respect of Segregated Current Pension Assets, containing such particulars as the Trustee determines.
- (b) Sub-accounts or sub-funds or otherwise may be kept in respect of a Member or more than one Member.
- (c) Contributions or other property held by the Trustee in a Member's account must be paid or transferred in accordance with this Deed and the Superannuation Conditions and part of that Fund not required by the Superannuation Conditions to be so paid or transferred may be dealt with as permitted by this Deed and subject to the Superannuation Conditions.

### **21.2 Power to retain prior categories of membership and vesting**

- (a) Where under any Prior Governing Rules of this Fund or under any fund from which a benefit has been transferred, provision was made for categories of membership or for vesting of contributions, the Trustee may, in their absolute discretion, continue to apply

## **22. Segregated Current Pension Assets**

- 22.1 The Trustee may in accordance with the Tax Act, transfer and segregate in the books and records of the Fund any of the assets of the Fund for the sole purpose of discharging the current pension liabilities of the Fund out of those assets or any other purpose permitted by the Superannuation Conditions.
- 22.2 The transfer values and annual valuations of the Segregated Current Pension Assets must be determined as may be required by the Superannuation Conditions.
- 22.3 The Trustee may, in accordance with the Superannuation Conditions, re-transfer assets segregated in order to meet the requirements of the Tax Act applicable to the Segregated Current Pension Assets.
- 22.4 The Trustee may accordingly create separate pension benefit accounts in respect of pensions payable under this Deed as the Trustees determine.
- 22.5 The Trustee may take any action not prohibited by the Superannuation Conditions to revert segregated assets so that they are no longer segregated, with the consent of the relevant Member where required by the Superannuation Conditions.

## **23. Valuation of the Fund and Allocation of Profits or Loss**

### **23.1 Valuation**

The Trustee must at the end of each Financial Year, if required by the Superannuation Conditions and may at any time, value the assets and liabilities of the Fund and any surplus or deficiency including unrealised gains or losses revealed by such valuation must be separately credited or debited to the profit and loss account of the Fund. For the purpose of effecting a valuation, the Trustee has an absolute discretion in selecting the valuation basis for any asset or liability provided that such basis must not be one which causes the Fund to fail to satisfy the Superannuation Conditions.

### **23.2 Profit or loss distribution**

The Trustee may in their absolute discretion determine the amount of profit or loss of the Fund that must be credited or debited to and amongst the Member Accounts and any other accounts that the Trustee nominates in such proportions and such manner as the Trustee decides and may set formulae or interest rates for this purpose provided that the Trustee must in the exercise of their discretions under this sub-paragraph act in a manner that is in accordance with the Superannuation Conditions. If the Trustee maintain reserves the Trustee may first determine what amount of the profit or loss is to be allocated to the Reserve Accounts, and the balance (if any) credited or debited in accordance with this Deed.

### **23.3 Other debits**

Subject to the Tax Act and the Superannuation Conditions, the Trustee may debit any accounts of the Fund in respect of taxation liabilities or any other outgoings in such manner as the Trustee determines.



## **24.9 Allocation of Contributions**

Subject to SIS Regulation 7.08, within 28 days (or within a longer period that is reasonable in the circumstances if within 28 days it is not reasonably practicable to so allocate or such other period as the Regulator or the Superannuation Conditions permits) of the end of the month of receipt of a contribution the Trustee must allocate the contribution to a Member of the fund.

## **25. Spouse contributions - splitting amounts**

### **25.1 Application to roll over, transfer or allot an amount of contributions**

- (a) Subject to the SIS Regulations and in particular Division 6.7, a Member may, in a Financial Year, apply to the Trustee to roll over, transfer or allot an amount of benefits, for the benefit of the Member's Spouse, that is equal to an amount of the Splittable Contributions made by, for, or on behalf of the Member in:
  - (i) the last Financial Year that ended before the application; or
  - (ii) the Financial Year in which the application is made - where the entire Member's Benefit is to be rolled over or transferred in that year.
- (b) The applicant must specify, in the application, the amount of the benefit from the following:
  - (i) the Member's taxed Splittable Contributions;
  - (ii) the Member's untaxed Splittable Contributions;that the Member seeks to split for the benefit of the Member's Spouse.

### **25.2 Decision on application**

- (a) The Trustee may accept an application only if it is made in accordance with the SIS Regulations.
- (b) If the Trustee accepts an application in accordance with this provision the Trustee must, subject to the Regulations, and in any case within the period prescribed by the SIS Regulations, roll over, transfer or allot the amount of benefits for the benefit of the receiving Spouse.
- (c) The Trustee is permitted to do all such things as may be necessary to give effect to these provisions and words in these provisions have the same meaning as contained in Division 6.7 of the SIS Regulations.

## **26. Benefits**

### **26.1 Mode of Payment of Benefits**

Benefits shall be paid in accordance with paragraph 26 of this Deed.

### **26.2 Payments of Benefits Generally**

Subject to this Deed and the Superannuation Conditions, benefits are payable to an Eligible Recipient if:-

- (a) The Member has made a Request to the Trustee to do so; or
- (b) Benefits are otherwise required to be paid;

- (i) the type of benefit;
  - (ii) the proposed date for payment of a lump sum or a proposed date of commencement of payment of a benefit;
  - (iii) the amount of a lump sum;
  - (iv) the amount that is to support a pension payment;
  - (v) the tax characteristics of any amount ;
  - (vi) notification that the Member has satisfied a condition of release;
  - (vii) the frequency of payment of periodical amounts;
  - (viii) the name of one or more Reversionary Beneficiaries;
  - (ix) whether the entitlement of a Reversionary Beneficiary is subject to the terms of any Nomination or whether the entitlement is paramount and any Nomination is subject to any Reversionary Beneficiary's entitlement;
  - (x) the order and/or contingencies in which Reversionary Beneficiaries may become entitled;
  - (xi) whether the Eligible Recipient wishes the Trustee to segregate any specific assets to the pension account; and
  - (xii) any other provision that is not inconsistent with the requirements of the Superannuation Conditions.
- (d) Subject to this provision, the Trustee shall, in relation to a Request consider which parts must be complied with and which parts the Trustee is not bound to comply with (for example, a part that does not comply with the SIS Act) and shall notify the Eligible Recipient accordingly who may accept or withdraw their Request as they wish prior to commencement of any payment. The Trustee may then record the terms of the benefit payment.
- (e) The Trustee may make an additional payment to a former Member's account in the Fund if the Trustee determines that it is just and equitable to do so.
- (f) If a pension is payable, the Trustee may (or must as the case may be) pay a pension or any other type or combination of pensions. Without limitation, these include:-
- (i) Account based Pensions
  - (ii) Transition to Retirement Income Streams;
  - (iii) Non-commutable income stream for Temporary incapacity.
  - (iv) Allocated Pensions (generally must have commenced before 19 September 2007)
  - (v) Market Linked Pension (generally must have commenced before 19 September 2007)
- (g) Subject to this paragraph, if a pension is to be paid, it must be paid in accordance with this Deed (or provisions of its Prior Governing Rules, if an applicable pension commenced before the date of this Deed and payment pursuant to those rules is necessary to comply with the Superannuation Conditions in which case for that purpose only, those provisions remain on foot).
- (h) An annuity may be purchased by the Trustee instead of paying a Pension and if the Eligible Recipient agrees, the annuity may be transferred to the Eligible Recipient.

## 26.6 Minimum Benefit

The Benefits payable to an Eligible Recipient shall be at least the minimum benefit required to be paid by the Superannuation Conditions in respect of that Eligible Recipient.

or other expenses of such transfer as they think fit and make adjustments accordingly, subject to the Superannuation Conditions.

## **27. Benefits payable on Death**

### **27.1 Benefit payable on death**

Subject to the Superannuation Conditions and to paragraphs 26 and 28, if a Member dies:

- (a) the payment of the death benefit or a permitted rollover or transfer of the Benefit shall be made at the time required by the Superannuation Conditions or otherwise within a reasonable time.
- (b) The Trustee may in relation to a death benefit determine any matter referred to in subparagraph 26.5(c)(i) to 26.5(c)(xii) inclusive and having done so shall act accordingly.
- (c) The Trustee shall pay the benefit to such of the deceased Member's Dependants as the Trustee decides and otherwise to the Member's Legal Personal Representative.
- (d) The Trustee is not bound by a non binding death benefit nomination but may consider any such nomination.
- (e) A death benefit shall be paid as a lump sum unless the Trustee determines otherwise.
- (f) If, after making inquiries that the Trustee regards as reasonable, the Trustee is unable to establish that there are any Dependants or a Legal Personal Representative of the deceased Member, the Trustee may, subject to the Superannuation Conditions:
  - (i) pay the benefit to a person or persons selected by the Trustee; or
  - (ii) treat the benefit as a forfeited benefit and apply it in a manner provided by the Superannuation Conditions or by this Deed; or
  - (iii) pay the benefit to a Reserve Account in the Fund.

### **27.2 Deferment of payment of benefit**

Subject to the Superannuation Conditions, the payment of any benefit under this Deed which is not a Preserved benefit may, at the request of the Eligible Recipient and with the consent of the Trustee, be deferred until the Eligible Recipient requests payment of the benefit.

### **27.3 Payment of benefits to Minors**

Subject to the Superannuation Conditions, where a person to whom benefits are payable is a Minor, the Trustee may pay the benefit to any other person for application on behalf of that Minor and the receipt of the person to whom the benefit is so paid will be a complete discharge to the Trustee in respect of that benefit.

### **27.4 Deduction of income tax**

The Trustee may deduct from any benefit payable the amount of any tax that is calculated by the Trustee to be payable in respect of that benefit and will pay any amount deducted as may be required by law.

- (j) A Nomination that is binding on the Trustee is invalid to the extent that if the Trustee complies with it, the Trustee would be liable to a penalty or commit an offence or result in a benefit, or part of it, being payable to a person who is not permitted by the SIS Act to be paid such benefit.

## **29. Pensions**

### **29.1 Payment of pensions**

- (a) The Trustee may, at its discretion, pay a pension if requested by a Member.
- (b) Subject to the Superannuation Conditions and this Deed, a pension may be paid in such amounts and on such conditions as agreed in writing by the Trustee and the Member.
- (c) A benefit may be paid as a pension provided that the pension is taken to be a pension for the purposes of the SIS Act and the payment of the pension does not result in the Fund failing to comply with the Superannuation Conditions.
- (d) Those parts of the SIS Regulations that provide standards for the payment of a pension are incorporated in, and form part of these rules.
- (e) The Trustee may declare in writing a rule specifying the terms of a pension paid or to be paid in accordance with the SIS Regulations and such rule shall apply to that pension and the recipient's consent to that rule must be obtained, if required by the Superannuation Conditions. Without limiting the form of writing such writing may include a document signed by the Trustee and the Eligible Recipient or a resolution of the Trustee and the consent in writing of the relevant Eligible Recipient.
- (f) An Eligible Recipient may cancel a pension by a request in writing to the Trustee at any time, subject to the Superannuation Conditions.
- (g) The Trustee may to the extent required by the Superannuation Conditions create separate pension accounts and may also create sub-funds for pensions.

### **29.2 Pension conditions**

- (a) Any pension paid to a Member must be provided pursuant to any standards contained in the Superannuation Conditions.
- (b) Subject to the Superannuation Conditions, in providing a pension to a Member, the Trustee may in its discretion apply any amount from a Member's account and / or a Reserve Account.

### **29.3 Commutation of pension**

- (a) The Trustee may, at its discretion, commute a part or whole of a pension if requested by a Member.
- (b) The Trustee must not commute a part or whole of a pension if the commutation will cause the Fund to breach the Superannuation Conditions.
- (c) Subject to the Superannuation Conditions, any commutation amount may be applied by the Trustee to:
  - (i) pay a lump sum benefit to the Member;
  - (ii) pay another pension to the Member; or
  - (iii) be allocated to the Member's account.

## **32. Conversion of Pensions**

At the request of an Eligible Recipient, as may be applicable and subject to the Superannuation Conditions, the Trustee may:

- (a) convert any pension (whether an allocated pension or any other type of pension) to an account based pension or any other pension permitted to be commenced under the SIS Act and any such pension may be so converted with or without commuting the pension that is being converted.
- (b) cease payment of a pension;
- (c) return the remainder of any pension account balance or other permissible benefit amounts to the Member's accumulation account for the purposes of commencing a new pension or other permissible benefit or otherwise;
- (d) merge, consolidate or commute one or more pension streams, pension account balances or other permissible benefit amounts into the Member's accumulation account or accounts;
- (e) take such other action as may be necessary or desirable as determined by the Trustee to give full effect to this provision.

## **33. Forfeited Benefits Account**

### **33.1 Forfeited benefits account may be kept**

- (a) The Trustee may keep an account for the receipt of amounts forfeited from Member Accounts and any other credit balances that cannot be otherwise allocated under the provisions of the Deed. The account is to be known as the Forfeited Benefits Account.
- (b) A benefit may not be forfeited if that would result in the Fund failing to comply with the definition of a Self Managed Superannuation Fund in the SIS Act.

### **33.2 Application of forfeited benefits**

The Trustee may in their absolute discretion apply amounts held in the Forfeited Benefits Account in the manner and to the purposes permitted by the Superannuation Conditions and, if permitted, these may include:

- (a) welfare benefits to assist in events of financial hardship, sickness, accident or other misfortune causing hardship;
- (b) supplementary benefits for Retired Members;
- (c) additional benefits for current Members on an equal basis, or on a pro rata basis among all Members or, among Members on the basis of economic needs;
- (d) payment of administrative expenses of the Fund;
- (e) payment of a Member's own contribution to relieve hardship;
- (f) payment to an Employer in recompense for loss or damage as the consequence of Employee misconduct;
- (g) payment to an Employer in the form of assessable income.

### **33.3 Equalisation Account**

- (a) The Trustee may at any time establish an Equalisation Account of the Fund and may transfer to the credit of that account any forfeited benefits or any amounts from an income account in the Fund.

### **34.3 Application of transferred amounts**

On any such payment or transfer of monies or assets –

- (a) the amount of the entitlement of the Member concerned is to be credited to his or her Member Account in the manner resolved between the Member, the Trustee and the Trustee of the Fund from which the Member is transferring;
- (b) any such amount required to be preserved is to be identified and held by the Trustee subject to the preservation requirements of the Superannuation Conditions.
- (c) except to the extent required by the Superannuation Conditions, the money or assets so transferred must not be subject to preservation. Where the Fund holds benefits that were not the subject of preservation in a prior fund then nothing in this Deed is to have the effect of preserving those benefits unless the Superannuation Conditions require it.

### **34.4 Transfers and Rollovers**

Subject to the Superannuation Conditions the money and assets comprising any benefit payable to a Member may with the approval of such Member, where such approval is required by the Superannuation Conditions, be paid or transferred to or invested in or rolled over (as the case may be) or other money or asset which may be dealt with in accordance with this provision:-

- (a) another superannuation fund nominated by the Member of which such Member is or intends to become a Member and which is a complying fund; or
- (b) an Approved Deposit Fund nominated by the Member; or
- (c) an annuity that will comply with the SIS Regulations;
- (d) an eligible roll over fund as defined in the SIS Act;
- (e) such other superannuation entity as the Superannuation Conditions permit.
- (f) internally within the Fund to the credit of any account.

### **34.5 Amount and Assets Remain Preserved**

Any amount or asset dealt with under this paragraph that is required to be preserved remains preserved.

### **34.6 Application of Preserved benefits**

The money and assets comprising any Preserved portion of a benefit payable to a Member at a date after his or her leaving the Fund may be:

- (a) retained in the Fund; or
- (b) transferred to a superannuation entity provided that such transfer is not inconsistent with the Superannuation Conditions.

The receipt of the trustee of that other fund or scheme or the corporation issuing the policy is a complete discharge to the Trustee in respect of any money or assets so paid or transferred.

## **35. Disclosure of Information**

### **35.1 Trustee must provide information**

The Trustee must provide such information, reports or otherwise to such persons, superannuation entities or otherwise as may be necessary to comply with the Superannuation Conditions.

**38. Complaints**

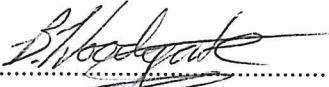
**38.1 Establishment of complaints procedure**

If required by the Superannuation Conditions, the Trustee will establish such reasonable procedures under which enquiries and complaints may be dealt with.

Executed as a deed on the date appearing on page 1.

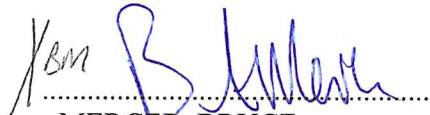
Signed Sealed and Delivered by  
MERCER, RYAN ANDREW  
in their capacity as Trustee  
in the presence of:

XRA   
.....  
MERCER, RYAN ANDREW

  
.....  
Witness (Signature)

BRADLEY ROBERT WOODSWATE  
.....  
Print Name of Witness

Signed Sealed and Delivered by  
MERCER, BRUCE  
in their capacity as Trustee  
in the presence of:


XBM   
.....  
MERCER, BRUCE

  
.....  
Witness (Signature)

BRADLEY ROBERT WOODSWATE  
.....  
Print Name of Witness

Signed Sealed and Delivered by  
MERCER, RYAN ANDREW  
in their capacity as Initial Member  
in the presence of:

XRA   
.....  
MERCER, RYAN ANDREW

  
.....  
Witness (Signature)

BRADLEY ROBERT WOODSWATE  
.....  
Print Name of Witness