

MERCER SUPERANNUATION (AUSTRALIA) LIMITED
ABN 79 004 717 533
('Trustee')

MERCER MASTER FUND

CONSOLIDATED MASTER DEED

**Being Master Deed dated 28 June 1995 as amended by
Amending Deeds dated:**

22 January 1996
28 February 1997
3 May 1998
26 August 1998
30 March 1999
29 September 1999
28 February 2002
23 December 2002
24 May 2004
21 February 2005
21 February 2013
14 June 2013
11 October 2013
19 December 2013
7 May 2014
27 June 2014
19 February 2015
1 July 2016
27 March 2017
5 June 2019
11 June 2021
2 May 2022
1 April 2023
3 March 2024

Mercer Superannuation (Australia) Limited
became trustee of each Fund on 28 May 2002 under a Deed of Retirement and Appointment
of Trustee dated 27 May 2002.

TABLE OF CONTENTS

1.	ESTABLISHMENT	3
2.	TRUSTEE	3
3.	SUPERANNUATION LAW	3
4.	PARTICIPATION AND MEMBERSHIP	12
5.	VESTING	12
6.	ACCOUNTS AND AUDIT	13
7.	PLANS AND MEMBER ACCOUNTS	13
8.	INVESTMENT	13
8A.	TERMINATION OF PORTFOLIOS	14
9.	MEMBERS' RIGHTS AND UNITS	14
10.	CONTRIBUTIONS AND TRANSFERS	15
11.	VALUATIONS	16
12.	UNIT ISSUE	16
13.	BENEFITS AND WITHDRAWALS	17
13A.	NON-LAPSING DEATH BENEFIT NOMINATIONS	17
14.	UNIT REDEMPTION	18
14A.	SPECIAL CIRCUMSTANCES	18
15.	TRANSFERS	18
16.	POWERS OF THE TRUSTEE	19
17.	DISCRETIONS	20
18.	OUTGOINGS	21
19.	RECOVERIES	21
20.	INDEPENDENT RIGHTS	23
21.	INDEMNITY	23
22.	LIMITATION:	24
23.	LIABILITY OF MEMBERS AND EMPLOYERS	24
24.	REMUNERATION	24
25.	RETIREMENT OF TRUSTEE	24
26.	STATUTORY REQUIREMENTS	25
27.	DURATION OF FUND	25
28.	AMENDMENT OF GOVERNING RULES	25
29.	CHANGE OF NAME	25
30.	NOTICES	26
31.	GOVERNING LAW	26
32.	MEANINGS	26

MERCER MASTER FUND

Consolidated Master Deed

- 1. ESTABLISHMENT:** By this Deed the Trustee intends to constitute the Mercer Super Trust ('**MST**'). The MST is intended to be divided into three **Divisions**, the Mercer Corporate Superannuation Division ('**Corporate Division**'), the Mercer Retail Division ("**Retail Division**"), and the Mercer Allocated Pension Division ('**Pension Division**'). The Divisions will not constitute separate trusts. The MST will be known as the **Mercer Master Fund** and referred to as a **Fund**. The Trustee may by deed constitute further Funds, as separately constituted trusts forming part of the Mercer Master Fund, or further Divisions, as divisions of the MST or any other Fund. Each Fund will commence when the Trustee first accepts moneys in respect of that Fund or any Division of that Fund.
- 2. TRUSTEE:** Only a single constitutional corporation that satisfies the requirements of Superannuation Law may be trustee of a Fund. The Trustee is appointed as the trustee of each Fund, effective immediately before the commencement of that Fund, and consents to that appointment. The Trustee will maintain each Fund for the benefit of its Members and, where applicable, their dependants (or other persons entitled to receive Members' benefits).
- 3. SUPERANNUATION LAW:** The MST will be maintained as a regulated superannuation fund as defined in, and for the purposes of, Superannuation Law. The Fund and each Division will be governed by its Rules (including its specific Designated Rules). Despite any other provision of the Rules, if any provisions of Superannuation Law must be included in the Rules from time to time in order for the Fund to be a regulated superannuation fund in any year of income, those provisions are deemed to be included in the Rules, but only for so long as that deemed inclusion is necessary for that purpose or such longer period as the Trustee may determine. The Trustee may comply with the requirements of Superannuation Law and of any prudential standard, circular, guideline, ruling, announcement, advice or approval given by the Responsible Authority ('**Relevant Requirements**') even if the Relevant Requirements are inconsistent with this Deed or any other part of the Rules. A breach of a Relevant Requirement, or of a provision of the Rules which is inconsistent with a Relevant Requirement, will not

constitute a breach of trust. If there is any inconsistency between any part of the Rules and any other part of the Rules, the order of priority to prevail will be: first, this clause; secondly, the Relevant Requirements; thirdly, the relevant Designated Rules; fourthly, the balance of this Deed.

(a) **(Mercer MySuper)**

- (i) This paragraph (a) of this clause 3 applies in respect of, and is limited in its application to, Mercer MySuper and does not apply in respect of any Member who holds an interest in a Corporate Plan MySuper, a Tailored Plan MySuper or a Retail Plan MySuper.
- (ii) The Trustee must take all actions necessary to ensure that the Trustee complies with the MySuper Requirements.
- (iii) Any MySuper Rule must be evidenced in writing (in one or more documents) and may be varied, replaced or revoked as determined by the Trustee subject to the Superannuation Law.
- (iv) (A) The MySuper interest of a Mercer MySuper Member is determined in accordance with the rules of the Plan which apply in respect of that Member as set out in the Designated Rules of the Corporate Division or the Retail Division (as appropriate) and that Plan's Schedule, but is subject to the MySuper Requirements and this paragraph (a) of this clause 3.
- (B) To the extent that a provision of the Designated Rules of the Corporate Division or the Retail Division (as appropriate) or a Plan's Schedule conflicts with the MySuper Requirements or this paragraph (a) of this clause 3, the MySuper Requirements and this paragraph (a) of this clause 3 prevail.
- (v) (A) Any provision in a Plan's Schedule which provides for the investment of the assets of a Plan does not apply in respect of the assets of the Plan attributable to Mercer MySuper.
- (B) All assets of a Plan attributable to Mercer MySuper shall be invested in the Mercer MySuper Investment Portfolio.

(vi) Mercer MySuper shall, at all times, be maintained as a MySuper product and any provision which must be included in this Deed from time to time in order for Mercer MySuper to be a MySuper product is deemed to be included in this Deed for so long as that deemed inclusion is necessary.

(vii) Where:

(A) a Mercer MySuper Member is transferred to another Plan (other than a Tailored Plan); or

(B) a Mercer MySuper Member is for any reason retained in the SmartSuper Plan upon any relevant change in employment or employer participation,

that Member's interest in Mercer MySuper shall continue to be treated as an interest in Mercer MySuper notwithstanding the relevant transfer or change, except to the extent that the Member has given the Trustee a written direction that the Member's interest is to be invested under one or more specified investment options (other than the Mercer MySuper Investment Portfolio).

(viii) In recognition of Mercer MySuper and the Relevant Requirements, the Trustee must comply with this paragraph (a) of this clause 3 and, in recognition of its duties to the Members of the MST as a whole, the Trustee will comply with the MST 2.0 Provision of the Designated Rules of the Corporate Division and will comply with rule 17 of the Designated Rules of the Retail Division.

(b) **Tailored Plans**

(i) This paragraph (b) of this clause 3 applies in respect of, and is limited in its application to, Tailored Plans.

(ii) If the Trustee is authorised to offer a particular class of beneficial interest in a Plan in the Corporate Division as a MySuper product (a Tailored Plan), the Trustee must take all actions necessary to ensure that the Trustee complies with the MySuper Requirements.

- (iii) Each Tailored Plan MySuper shall, at all times, be maintained as a MySuper product and any provision which must be included in this Deed or the Schedule for the relevant Tailored Plan from time to time in order for each Tailored Plan MySuper to be a MySuper product, is deemed to be included in this Deed or the Schedule for the relevant Tailored Plan for so long as that deemed inclusion is necessary.
- (iv) The MySuper interest of a Tailored Plan MySuper Member is determined in accordance with the rules of that Tailored Plan which apply as set out in the Designated Rules of the Corporate Division and the Schedule for the relevant Tailored Plan, but is subject to the MySuper Requirements and this paragraph (b) of this clause 3.
- (v) The MySuper Requirements and this paragraph (b) of this clause 3 prevail over any conflicting provision of the Designated Rules of the Corporate Division or the Schedule for a Tailored Plan to the extent of any inconsistency.
- (vi) In addition to clause 3(b)(v) above:
 - (A) the governing rules for each Tailored Plan must specify that the Participant is a large employer (as that term is defined in s29TB of the SIS Act for their respective Tailored Plan MySuper;
 - (B) a person is not entitled to hold a Tailored Plan MySuper interest unless the person is:
 - (1) an employee or former employee of a Participant in a Tailored Plan, or an associate of such a Participant; or
 - (2) a relative or dependant of a person mentioned in clause 3(b)(vii)(B)(1); and
 - (C) where a Participant in a Tailored Plan or associate of such a Participant contributes to a Tailored Plan (or would, apart from the temporary cessation of contributions, contribute to a Tailored Plan) for a person mentioned in clause 3(b)(vii)(B)(1), any employee of a Participant in a Tailored Plan (or any

employees of an associate of such a Participant) who is not a defined benefit member of a Tailored Plan may hold a Tailored Plan MySuper interest.

- (vii) (A) Any provision in the Schedule for a Tailored Plan which provides for the investment of the assets of the Plan, does not apply in respect of the assets of the Tailored Plan attributable to a Tailored Plan MySuper.
- (B) All assets of each Tailored Plan attributable to a Tailored Plan MySuper shall be invested in a Tailored Plan MySuper Investment Portfolio.

(c) **(Corporate Plan MySuper)**

- (i) This paragraph (c) of this clause 3 applies in respect of, and is limited in its application to, Plans in the Corporate Division with Corporate Plan MySuper products.
- (ii) If the Trustee is authorised to offer a particular class of beneficial interest in a Plan in the Corporate Division as a MySuper product (a Corporate Plan MySuper), the Trustee must take all actions necessary to ensure that the Trustee complies with the MySuper Requirements.
- (iii) Corporate Plan MySuper shall, at all times, be maintained as a MySuper product and any provision which must be included in this Deed from time to time in order for Corporate Plan MySuper to be a MySuper product is deemed to be included in this Deed for so long as that deemed inclusion is necessary.

(d) **[Deleted.]**

(e) Unless otherwise determined by the Trustee, when:

- (i) subject to paragraph (v):
 - (A) an Employer ceases to participate in an Employer Plan (other than a Tailored Plan) and successfully applies to the Trustee to participate in the SmartSuper Plan, all Employees of that

Employer who are Members of that Employer Plan will become Employed Members in the SmartSuper Plan as at the date the relevant Employer ceases to participate in the Employer Plan; and

- (B) an Employer Plan (other than a Tailored Plan) is terminated under the Designated Rules of the Corporate Division and a relevant Employer of that Employer Plan successfully applies to the Trustee to participate in the SmartSuper Plan, all Employees of that Employer who are Members of that Employer Plan will become Employed Members in the SmartSuper Plan as at the date of the Employer Plan's termination;
- (ii) a Member who is employed by an Employer under an Employer Plan (other than a Tailored Plan) ceases to be employed by the Employer or exercises Fund Choice, that Member will become an Individual Member in the SmartSuper Plan as at the date the Member ceases employment with the Employer or the Fund Choice Date, as applicable;
- (iii) a Member who is an Employed Member of the SmartSuper Plan ceases to be employed by the Employer or exercises Fund Choice, that Member will become an Individual Member in the SmartSuper Plan as at the date the Member ceases employment with the Employer or the Fund Choice Date, as applicable;
- (iv) a Member of an Employer Plan (other than a Tailored Plan) who is not employed by the Employer in that Employer Plan may be transferred to the SmartSuper Plan as an Individual Member as at a date determined by the Trustee,

on the basis that:

- (v) the Member's account balance is equal to or greater than the minimum account balance determined by the Trustee at the date of transfer;

- (vi) a Mercer MySuper Member remains a Mercer MySuper Member at all times and each Mercer MySuper Member's interest in a Plan is to be determined in accordance with paragraph (a) of this clause 3; and
 - (vii) terms in this paragraph (e) of this clause 3 have the same meaning as under the rules of the Corporate Division, except as set out in this Deed.
- (f) **(Non-Member Spouse)** Notwithstanding any other provisions of this Deed or the Rules:
- (i) except as provided in sub-paragraph (ii) the Trustee must not create a new interest in a Fund for or in respect of a Non-Member Spouse or make a Non-Member Spouse a Member of a Fund;
 - (ii) subject to sub-paragraphs (iii), (iv), (v) and (vi), the Trustee may create a new interest in the MST for or in respect of a Non-Member Spouse;
 - (iii) the interest created under sub-paragraph (ii) in respect of the Non-Member Spouse shall be in respect to any amount that is determined in accordance with sub-paragraph (g)(iii) of this clause 3;
 - (iv) the Trustee shall determine to which Plan the interest created under sub-paragraph (ii) in respect of the Non-Member Spouse shall be transferred and the Non-Member Spouse shall, if the Non-Member Spouse is not already a Member of that Plan, become a Member of that Plan;
 - (v) the interest created under sub-paragraph (ii) in respect of the Non-Member Spouse shall be transferred to the Non-Member Spouse's Member Account (or such other account of the Non-Member Spouse as the Trustee determines is appropriate) in the Plan determined by the Trustee in accordance with sub-paragraph (iv);
 - (vi) the provisions of this paragraph (f) of this clause 3 apply notwithstanding that the Non-Member Spouse may already be a

Member of the MST, either in the Plan to which the interest created under sub-paragraph (ii) is transferred or another Plan;

(vii) if the Trustee does not create a new interest in the MST in respect of a Non-Member Spouse under this paragraph (f) of this clause 3, the amount determined under sub-paragraph (g)(iii) of this clause 3 in respect of the Non-Member Spouse shall be dealt with as provided in sub-paragraph (g)(iv)(A), (B) or (C) as determined by the Trustee.

(g) **Family Law** Notwithstanding any other provisions of this Deed or the Rules, the Trustee is empowered to do or to procure to be done any acts, matters or things that are necessary or desirable in order to comply with Superannuation Law including (but not limited to):

- (i) providing information related to a Member's Superannuation Interest in the MST in accordance with and as required by Superannuation Law. For this purpose the "accrued benefit multiple" (as that term is defined in the *Family Law (Superannuation) Regulations 2001*) of a Member shall be the multiple that is or could be derived from the Rules to calculate the Member's retirement benefit but only taking into account the Member's Plan Membership up to and including the "appropriate date" (as that term is defined in the *Family Law (Superannuation) Regulations 2001*) and where necessary after obtaining the advice of an actuary;
- (ii) flagging a Member's Superannuation Interest or lifting a flag on a Member's Superannuation Interest where and as required by Superannuation Law;
- (iii) adjusting or reducing any Member's Superannuation Interest (including any insured benefit) or any other amounts in the MST in respect of the Member to take account of any amount the Trustee considers represents the amount to which a Non-Member Spouse is entitled having regard to the requirements of Superannuation Law and any acts, matters or things done pursuant to this paragraph (g) of this clause 3 and this Deed and the Rules;

- (iv) subject to sub-paragraph (iii):
 - (A) transferring the lump sum amount which the Trustee considers represents the Transferable Benefit in respect of the Non-Member Spouse (or such other amount as the Trustee may determine) to Another Fund subject to and in accordance with the requirements of Superannuation Law and with or without the consent of the Non-Member Spouse; or
 - (B) paying to or in respect of the Non-Member Spouse an amount which the Trustee considers represents the lump sum amount to which the Non-Member Spouse is entitled (or such other amount or amounts as the Trustee may determine) subject to and in accordance with Superannuation Law and this Deed and the Rules; or
 - (C) recording (but not creating an interest) in the records of the MST the amount that the Trustee considers represents the interest to which the Non-Member Spouse is entitled having regard to Superannuation Law and adjusting or doing any other act, matter or thing with respect to that record until the Trustee determines to pay or transfer that amount in accordance with sub-paragraph (g)(iv)(A) or (B) of this clause 3; and
- (v) imposing any fees, (including charges, taxes or other costs) in relation to any acts, matters or things done by the Trustee under paragraph (f) of this clause 3 and this paragraph (g) of this clause 3 on such terms and conditions as the Trustee determines (including by deduction from any Member's account, interest or benefit in the MST or from the amount to which a Non-Member Spouse is entitled) subject to Superannuation Law.
- (h) A Non-Member Spouse who is not a Member of the MST and has not had an interest created under paragraph (f) of this clause 3 only has rights to information and other rights as prescribed by Superannuation Law and under paragraph (f) and (g) of this clause 3 and has no other rights, claims

or entitlements against the MST, the Trustee (or any person acting on behalf of the Trustee) under the Deed or the Rules.

- 4. PARTICIPATION AND MEMBERSHIP:** The Trustee may admit as a Participant in the Corporate Division any person who in accordance with the Rules requests the establishment of a separate account ('Plan') in that Division for the purpose of providing superannuation benefits to its employees and to the employees of associated companies. The Trustee may with the consent of a Participant admit to participation in the Participant's Plan as another Employer any other person who, in accordance with the Rules, applies to participate in that Plan for the purpose of providing superannuation benefits to its employees. The Trustee may admit as a Member of a Fund any person who is eligible under Superannuation Law to be a Member of that Fund and who in addition:
- (a) is nominated by an Employer in a Plan in the Corporate Division or the Retail Division; or
 - (b) applies to be a Member; or
 - (c) in any other case the Trustee determines to admit as a Member.

The Trustee may admit a person as a Sponsor in the Retail Division under the Designated Rules of the Retail Division. Each Participant, each Sponsor, each Employer, each Member and each beneficiary or potential beneficiary will be bound by the Rules.

Clauses 4A, 4B, 4C and 4D – Deleted

- 5. VESTING:** All property, rights and income of a Fund (**'Fund Property'**) vest in the Trustee on trust for Members of that Fund. The Trustee must hold:
- (a) all Fund Property as a separate fund which is not available to meet the liabilities of any other Fund, Division, Plan, Member Account or trust;
 - (b) all Fund Property which is referable to a Division as a separate fund which is not available to meet the liabilities of any other Division, Fund, Plan, Member Account or trust;

- (c) all Fund Property which is referable to a Plan as a separate fund which is not available to meet the liabilities of any other Plan, Fund, Division, Member Account or trust; and
- (d) all Fund Property which is referable to a Member Account (other than a Member Account in a defined benefits Plan in the Corporate Division) as a separate fund which is not available to meet the liabilities of any other Member Account, Fund, Division, Plan or trust;

but the Trustee may otherwise mingle Fund Property with other property if permitted under any present or future law.

6. **ACCOUNTS AND AUDIT:** The Trustee will keep accounts for the Funds, and arrange for them to be audited, in accordance with Superannuation Law.
7. **PLANS AND MEMBER ACCOUNTS:** The Trustee will establish a separate Plan for each Participant in the Corporate Division and each Sponsor in the Retail Division, and each person who becomes a Member of the MST as a nominated employee of an Employer is deemed to be a Member of the relevant Plan also. The Trustee will establish a separate Member Account for each Member of a Plan and the Pension Division. Plans and Member Accounts will not constitute separate trusts. Each Division will commence when the Trustee first accepts moneys in respect of that Division or any Plan or Member Account of that Division. Each Plan will commence when the Trustee first accepts moneys in respect of that Plan or any Member Account of that Plan. Each Member Account will commence when the Trustee first accepts moneys in respect of that Member Account. In addition to Member Accounts, the Trustee:
 - (a) must establish and maintain for each Fund, Division and Plan such other accounts as the Designated Rules require; and
 - (b) may establish and maintain for each Fund, Division and Plan such other accounts, including reserving accounts and other Plan Accounts as the Trustee considers appropriate.
8. **INVESTMENT:** The Trustee will from time to time specify in respect of a Fund or a Division one or more **Portfolios**, being investment portfolios (which may consist of specified kinds of assets in specified proportions, investment schemes or products),

each of which corresponds to a particular investment strategy. On admission to membership of a Fund, Members may, subject to Relevant Requirements and consent of the Trustee and, where applicable, their Employer or the Sponsor, select, in accordance with the Designated Rules, the Portfolios by reference to which contributions, Government co-contributions and transfers to their Member Accounts are to be invested. Subject to Relevant Requirements, each Plan Account will be invested by reference to one or more Portfolios selected in accordance with the Designated Rules. Portfolio selections may be varied from time to time in accordance with the Designated Rules.

8A. TERMINATION OF PORTFOLIOS: The Trustee may determine that a Portfolio ('**Terminating Portfolio**') shall terminate with effect from a particular date ('**Termination Date**'), in which event:

- (a) all Members and Participants affected by such determination shall be notified by the Trustee in writing of the determination;
- (b) any Member, Sponsor or Participant who has, in accordance with the relevant Designated Rules, requested the Trustee to invest any part of the assets of a Fund (in respect of which the Member, Sponsor or the Participant (as applicable) is entitled to select a Portfolio) in the Terminating Portfolio shall, following the giving of the notice under paragraph (a), be given the option to elect to transfer, on the Termination Date, the amount invested in the Terminating Portfolio to such other Portfolio or Portfolios as the Trustee may offer to such Member, Sponsor or Participant, and
- (c) any amount in respect of which any Member, Sponsor or Participant fails to sign and return a valid transfer election under paragraph (b) prior to the Termination Date shall, with effect from the Termination Date, cease to be invested in the Terminating Portfolio and shall be invested in such manner as the Trustee may determine and notify to the Member, Sponsor or Participant, as appropriate.

9. MEMBERS' RIGHTS AND UNITS: A Member of a Fund has a beneficial interest in the Fund as a whole, not in parts or single assets. Neither an Employer nor a Member may interfere with, or exercise, the powers of the Trustee in respect of any Fund Property, **Fund Liability** or obligation, or lodge a caveat affecting Fund

Property. The beneficial interest of a Member is represented by that Member's Member Account and may be divided into **Units** on the basis of the Portfolios by reference to which the Member Account is invested. Each Plan Account may be divided into Units on the basis of the Portfolios by reference to which the Plan Account is invested. The ownership in those Units will be determined in accordance with the Designated Rules. Except in the case of a fraction of a Unit, all Units referable to a unitised Portfolio are of one class and confer identical rights and interests. A Member Account or Plan Account which is invested by reference to only one unitised Portfolio will accordingly be constituted by Units of one class only, but a Member Account or Plan Account which is invested by reference to more than one unitised Portfolio will be constituted by Units of different classes. The Trustee may create, issue, redeem and cancel fractions of Units, calculated to the fourth decimal place, which will be dealt with for all purposes of the Rules as Units, but in the proportion that the fraction bears to a whole Unit. Units are not transferable.

10. CONTRIBUTIONS AND TRANSFERS: The Trustee may accept contributions, Government co-contributions or transfers (**'Deposits'**) to a Fund:

- (a) in the case of the Corporate Division, from an Employer or an associate of an Employer or a benefit arrangement in which an Employer has previously participated, for crediting to that Employer's Plan or to Member Accounts or Plan Accounts within that Plan; and
- (b) from a Member or from a person on behalf of a Member or a benefit arrangement in which the Member has previously participated, for crediting to that Member's Member Account; and
- (c) for the Retail Division, in accordance with the Designated Rules of the Retail Division.

All Deposits must be made in accordance with the Rules, and the Trustee must refuse to accept any Deposit if acceptance would contravene Superannuation Law. A Deposit may be made other than as cash or its equivalent, but only with the consent of the Trustee and subject to Superannuation Law. These Deposits will be valued in accordance with clause 11. Deposits are credited, and Units (if the Portfolio is unitised) referable to the relevant Portfolio are created and issued, on amounts paid to the Trustee, or consideration transferred, becoming Fund Property.

If Units are not issued immediately after the Trustee receives a Deposit the Trustee will deal with that Deposit as required by Superannuation Law. A Deposit made by a subsequently dishonoured cheque is void.

11. VALUATIONS: The Trustee may instruct a valuer or other expert to value any property. The costs of those valuations must be paid out of the Fund. Property must be valued by reference to the valuation principles determined by the Trustee from time to time.

12. UNIT ISSUE:

(a) Subject to clause 12(b), Superannuation Law and clause 14A, the price at which Units referable to a Portfolio may be created and issued by the Trustee (other than Units issued before the first valuation of the relevant Portfolio) is the amount derived by dividing the sum of the Net Value of the relevant Portfolio as at the next valuation time after the contribution, Government co-contribution or transfer becomes Fund Property and an amount not exceeding the Trustee's estimate of the total cost which would be incurred in respect of the acquisition of the relevant Portfolio's investments afresh by the number of Units in issue referable to the relevant Portfolio at that valuation time. For the purpose of this clause 12(a), clause 14 and clause 24, Net Value of a Portfolio is the value of Fund Property referable to that Portfolio less Fund Liabilities referable to that Portfolio less an appropriate proportion of Fund Liabilities not specifically referable to that Portfolio. The Trustee will calculate Net Value at least once per week (or more frequently as the Trustee may consider necessary), on the basis of the most recent valuation of each item of Fund Property and determination of Fund Liabilities. Units issued before the first valuation of a Portfolio will be priced at such amount as is determined by the Trustee at the time of the establishment of the relevant Portfolio.

(b) Where the Trustee does not create or issue Units for the purposes of a relevant Portfolio, the Trustee may determine another method of calculating the Net Value of that Portfolio, including but not limited to the sum of the market value of the specified kinds of assets such as securities, exchange traded funds and bank term deposits. Where this clause 12(b) applies,

clause 14 does not apply and the Trustee may calculate Net Value as the Trustee considers necessary.

13. BENEFITS AND WITHDRAWALS: The Trustee will pay a Member's benefits, or make payment in respect of a withdrawal from a Member Account, (by way of redemption and cancellation of Units or otherwise) in accordance with the Rules. Any such payment, whether to the relevant Member or to another person believed by the Trustee in good faith to be entitled to receive it, will be a complete discharge of the Trustee's obligations in respect of that payment. A payment may be made other than as cash or its equivalent, but only with the consent of the recipient and subject to Superannuation Law. These payments will be valued in accordance with clause 11. The amount of the payment is debited, and any Units referable to the relevant Portfolio are redeemed and cancelled, on amounts being paid, or consideration being transferred, to or in respect of the relevant Member.

13A. NON-LAPSING DEATH BENEFIT NOMINATIONS:

- (a) Subject to the Superannuation Law, the Trustee may determine that this clause applies to one or more Divisions and to one or more groups of Members within a Division.
- (b) The Trustee may consent to the exercise of a discretion by a Member that the Member's superannuation benefit on or after their death is to be paid to the Member's legal personal representative and / or one or more of the Member's dependants, as notified to the Trustee in accordance with such rules (including any policies or guidelines of the Trustee) as determined by the Trustee (**Non-Lapsing Nomination**).
- (c) Where Trustee admits a person as a Member of the Fund due to a successor fund transfer, the Trustee may consent each valid non-lapsing nomination provided to the trustee of the former fund in force at the time of the transfer. Such a non-lapsing nomination becomes a Non-Lapsing Nomination upon the Trustee providing its consent.
- (d) Upon the death of a Member who has a valid Non-Lapsing Nomination, the Trustee must pay the Member's superannuation benefit in accordance with the Non-Lapsing Nomination.

- (e) Notwithstanding anything to the contrary in this Deed, a Non-Lapsing Nomination ceases to be valid upon the earlier of: (i) the Member revoking the Non-Lapsing Nomination; (ii) the Member providing a new Non-Lapsing Nomination; (iii) where the Trustee's rules (including any policies or guidelines of the Trustee) require a Non-Lapsing Nomination to cease to be valid; and (iv) where required by Superannuation Law.

14. UNIT REDEMPTION: Subject to Superannuation Law and clause 14A, the price at which Units referable to a Portfolio will be redeemed and cancelled by the Trustee is the amount derived by **dividing** the Net Value of the relevant Portfolio as at the next valuation time after the date of redemption **less** an amount not exceeding the Trustee's estimate of the total cost which would be incurred in respect of the disposition of the relevant Portfolio's investments **by** the number of Units in issue referable to the relevant Portfolio at that valuation time. Subject to clauses 17(c) and (d), the Trustee will redeem and cancel Units within 60 days after lodgement with the Trustee of the redemption request.

14A. SPECIAL CIRCUMSTANCES: Notwithstanding clauses 12 and 14, the Trustee may determine a price at which Units referable to a Portfolio will be:

- (d) issued in relation to any particular contribution, Government co-contribution or transfer; or
- (e) redeemed in relation to any particular payment,

that is different from the price determined under clause 12 or 14 (as appropriate) if the Trustee believes that to do so will not prejudice the interests of the other Members.

15. TRANSFERS:

- (a) The Trustee has the power to transfer the benefits of Members to and from a Fund (including between Funds) as set out in the Rules.
- (b) Unless prohibited by Superannuation Law and subject to the Rules, the Trustee has the power to transfer the benefits of one or more Members from any category of membership, Division or Plan of a Fund, to another category of membership, Division or Plan of that Fund with or without the consent of the Member or Members by way of either:

- (i) the redemption of their interest in one Division or Plan and the issue of an interest in another Division or Plan; or
- (ii) a variation of the terms and conditions of their superannuation interest in the Fund.

For the avoidance of doubt, this paragraph (b) empowers the Trustee to transfer the benefits of Members from one part of a Division, Plan or Fund to another part of that Division, Plan or Fund.

16. POWERS OF THE TRUSTEE: Subject to the Rules, the Trustee has within and outside Australia all the powers in relation to the Funds, Fund Property and Fund Liabilities that it is legally possible for a natural person or a corporation to have, including (but not limited to) power to:

- (a) invest in real or personal property of any nature;
- (b) incur liabilities and obligations of any kind, as if it were the absolute and beneficial owner of all Fund Property;
- (c) effect (including payment of premiums) any life assurance policy on the life of any Member, any indemnity insurance policy covering the Trustee or its directors and officers or both, or any other insurance or assurance policy;
- (d) exercise any powers or discretions conferred by, and comply with, the Relevant Requirements in general and the Rules of each Fund and Division in particular;
- (e) give undertakings, guarantees, discharges, releases and indemnities;
- (f) pay commission or brokerage to a person in consideration of that person applying or agreeing to apply to be a Member or an Employer or procuring or agreeing to procure applications to be a Member or an Employer;
- (g) provide for or transfer any Tax;
- (h) by power of attorney or otherwise, authorise one or more persons (whether or not related to or associated with the Trustee) to do anything that the Trustee may do, including (but not limited to) holding any Fund Property and executing documents on its behalf;

- (i) engage and remove any administrators, advisers, agents, brokers, contractors, custodians, investment managers, valuers, actuaries, underwriters or other persons (whether or not related to or associated with the Trustee) in connection with the performance of its duties, and pay fees or other remuneration to those persons out of the relevant Fund, Division or Plan; and
- (j) establish and maintain reserves for the Fund or any other part of the Fund for any purpose the Trustee considers necessary or desirable, and determine the credits, debits or other adjustments that may be made to a reserve (including allocations arising from any Tax related matter, including a Tax refund, credit, rebate, offset, loss or reduction).

17. DISCRETIONS: The Trustee may determine the manner, mode and time of exercise of its powers and discretions in its absolute discretion, and in particular (but without limiting the generality of that statement) may at its discretion and without giving any reason:

- (a) reject any application to become a Participant, a Sponsor, an Employer or a Member of a Fund, Division or Plan;
- (b) refuse to accept all or part of any contribution, Government co-contribution or transfer for crediting to a Fund, Division, Plan or Member's Account; or
- (c) suspend the issue or redemption of Units referable to a Portfolio during any period in which the Trustee is of the opinion that the issue price or redemption price of those Units cannot be calculated in a manner that is fair to all persons holding those Units; or
- (d) suspend the redemption of Units referable to a Portfolio during any period in which the Trustee is unable to realise sufficient of the underlying assets of the Portfolio in order to satisfy fully a redemption request.

Despite anything to the contrary contained in the Rules:

- (i) in exercising any of the Trustee's powers under the Rules the Trustee:
 - (A) may rely on any information provided by any person; and

- (B) may only be subject to the direction of another person in the circumstances permitted under Superannuation Law (and where the Rules provide for the Trustee to be subject to a direction by any person in circumstances other than those permitted under Superannuation Law the right to give that direction must be interpreted instead as a right for that person to exercise a discretion subject to the consent of the Trustee); and
 - (ii) no discretion which is required under the Rules to be exercised by a person other than the Trustee may be exercised except in the circumstances permitted under Superannuation Law.
- 18. **OUTGOINGS:** All costs, charges, expenses and outgoings reasonably and properly incurred by the Trustee in connection with the performance of its duties or the exercise of its rights or powers or administration or termination of a Fund, Division, Plan or Member Account and which are not referable to a particular Division, Plan or Member Account are payable or reimbursable out of Fund Property (apportioned in a manner determined by the Trustee).
- 19. **RECOVERIES:** Each Member is liable for all Taxes and costs in relation to that Member's entitlement to benefits, or payment to, or any act requested by, that Member. The Trustee may withhold payment of any money payable to a Member until the liability is discharged, or may meet the liability and recover the amount from any money or property held for the Member. Without limiting the generality of this clause:
 - (a) The Trustee may credit a Member Account, in accordance with the Rules, with an amount equal to any Taxes that the Trustee determines were not incurred by a Fund as a direct or indirect result of the fact that the relevant Member was a Member of a particular Division.
 - (b) The Trustee may deduct from the contributions Government co-contributions, rollovers or other amounts received from or for a Member (**Amounts**), or debit a Member Account directly with, Taxes which in the opinion of the Trustee will be incurred in respect of those Amounts.
 - (c) The Trustee may:

- (i) establish policies setting out the amounts of tax that, in its opinion are reasonably likely to be incurred in respect of types of Amounts (**Policies**);
 - (ii) establish different Policies for different Funds, Divisions or Plans (or for different groups of members within any Fund, Division or Plan) as appropriate; and
 - (iii) make deductions in accordance with those Policies from any Amounts, or by debiting a Member Account directly.
- (d) Any deductions made under paragraphs (b) and (c) must be invested in a separate account and:
- (i) must be applied in the payment of those Taxes when they become due and payable;
 - (ii) may be applied to meet proper outgoings or expenses other than Taxes, if the Trustee is satisfied that:
 - (A) any amounts so applied will be replenished through a reduction of, or saving in, Taxes in respect of a Fund and an amount equal to that reduction or saving must be credited to the account once the saving is realised;
 - (B) the account will be replenished in that way in time for any payment of Taxes in respect of the above Amounts as and when they fall due; and
 - (C) applying amounts from the account in this way will not adversely affect benefits payable to Members; and
 - (iii) if the Trustee forms the view that any part of the account that it has attributed to a particular Fund, Division or Plan is no longer needed to pay Taxes relating to Members of that Fund, Division or Plan (**'Excess Amounts'**) the Trustee may apply those Excess Amounts for any purpose that the Trustee considers appropriate and is consistent with Superannuation Law.

- (e) Subject to paragraph (f), the Trustee may retain any interest earned on the account in paragraph (d) for its own benefit. Whether in this way or by netting transactions or otherwise, the Trustee may make a profit at the expense of a Fund.
- (f) Paragraph (e) applies to interest relating to any Amounts:
 - (i) that are contributions of Government co-contributions by or for any Member;
 - (ii) any rollovers or other amounts received from or for any Member who becomes a Member on or after the date that this paragraph is inserted into this Deed (**Amendment Date**).
- (g) For clarity, whether the Trustee may retain any interest earned on the account (in paragraph (d)) for its own benefit (in relation to any rollovers or other amounts received from or for any Member who becomes a Member before the Amendment Date) is determined by the provisions of the Deed and Designated Rules before the Amendment Date.

20. INDEPENDENT RIGHTS: The Trustee and any related company or associate of the Trustee may, subject always to acting in good faith to Members, deal in any capacity with a Fund or act in any capacity in relation to any other trusts, without in any such case being liable to account to the Fund or to any Member.

21. INDEMNITY: Except if the Trustee or a director of the Trustee (as the case may be) fails to act honestly in a matter concerning a Fund or intentionally or recklessly fails to exercise, in relation to a matter affecting a Fund, the degree of care and diligence that the Trustee or the director (as the case may be) was required to exercise, or unless the liability is for a monetary penalty under a civil penalty order imposed under Superannuation Law:

- (a) the Trustee or the director (as the case may be) will not be liable for any loss or breach of trust;
- (b) the Trustee or the director (as the case may be) will not be liable to any greater extent than the Fund Property actually vested in the Trustee in accordance with this Deed; and

- (c) the Trustee and each director is indemnified out of Fund Property against all liabilities, losses, costs and expenses incurred in the proper exercise or purported exercise of the Trustee's powers.
- 22. LIMITATION:** The Trustee is not required to do anything for which it does not have a full right of indemnity out of Fund Property. Any indemnity to which the Trustee is entitled under the Rules is in addition to any indemnity allowed by law.
- 23. LIABILITY OF MEMBERS AND EMPLOYERS:** The liability of each Member is limited to the amount for the time being standing to the credit of that Member's Member Account, (which may be represented by that Member's Units). The liability of each Employer is limited to its obligations to contribute in accordance with the Rules. Recourse of the Trustee and of Fund creditors will be limited to Fund Property. Any relationship of agency between the Trustee and any Member is expressly excluded.
- 24. REMUNERATION:** Whenever the Trustee calculates the Net Value of a Portfolio the Trustee may deduct out of the Fund Property and retain for its own use a fee in respect of each day that it acted as Trustee since the last calculation equal to:
- (a) in respect of a New Portfolio, the sum of 4.0% per annum of the Net Value of that Portfolio; or
 - (b) in respect of any other Portfolio, the sum of 2.5% per annum of the Net Value of that Portfolio.

The Trustee is also entitled to receive additional remuneration in respect of a Division, Plan or Member determined and paid in accordance with the Rules. The Trustee may reduce the amount of any fee either generally or in relation to particular Funds, Divisions, Plans, Employers or Members.

- 25. RETIREMENT OF TRUSTEE:** The Trustee may retire as trustee of a Fund by giving 90 days written notice:
- (a) in the case of the MST, to the Participants in the Corporate Division, the Sponsors in the Retail Division and to the Members of each other Division of that Fund; and
 - (b) in the case of any other Fund, to the Members of that Fund.

The Trustee must retire as trustee of a Fund if it becomes disqualified for the purposes of Superannuation Law. Whenever the Trustee retires, it must by deed appoint another constitutional corporation (which is, if required by Superannuation Law, an approved trustee) to take its place. If no replacement is appointed within 90 days after the Trustee's retirement, that Fund will be terminated.

26. STATUTORY REQUIREMENTS: If at any time the Trustee is subject to any statutory or official requirement in relation to a Fund which is or may be materially prejudicial to the Trustee, the Trustee may retire as trustee of that Fund forthwith or may terminate that Fund.

27. DURATION OF FUND: Each Fund, Division, Plan and Member Account will terminate at such time as the Rules provide or the Trustee determines. On termination of a Fund or a Division, the Trustee will realise all relevant Fund Property, pay or discharge all relevant Fund Liabilities and expenses of termination and distribute the net proceeds in accordance with the provisions in the Rules governing termination of Plans and Member Accounts. The Trustee may postpone realisation and will not be responsible for any resulting loss except as set out in clause 21.

28. AMENDMENT OF GOVERNING RULES

28.1 Amendment of Deed and Designated Rules

Subject to Superannuation Law and clause 28.2 below, the Trustee may by deed make any modification or addition to, or deletion from, this Deed. The Designated Rules may be amended in accordance with their terms.

28.2 MySuper Amendment Restrictions

An amendment to this Deed, the Designated Rules of the Corporate Division or of the Retail Division or any Plan's Schedule is void to the extent that the amendment would have the result that the MySuper Requirements are no longer satisfied in relation to Mercer MySuper, Corporate Plan MySuper, Tailored Plan MySuper or Retail Plan MySuper, unless the Trustee determines for any reason to no longer offer that MySuper product.

29. CHANGE OF NAME: If Mercer Superannuation (Australia) Limited (or another company related to it) is no longer the Trustee of a Fund then the name of the Fund

and its Divisions (if any) and, if all of the Funds are involved, the collective name of the Funds, must be amended to omit the name 'Mercer'.

30. NOTICES: Any notice, material or cheque may be sent to an Employer or a Member by prepaid post to the address shown in the Trustee's records, or delivered by hand at that address, and will be deemed received on the next business day after posting or on hand delivery, as the case may be. A notice to an Employer's employees may be placed on a notice-board at the relevant work-place, and will be deemed received on the next business day (but this method of giving notice may only be used where allowed, or not disallowed, by the Relevant Requirements). A notice to a beneficiary may be published in a newspaper which the Trustee considers appropriate, and will be deemed received on the next business day after publication.

31. GOVERNING LAW: This Deed is governed by the laws of Victoria.

32. MEANINGS: In this Deed, unless a contrary intention appears:

- (a) words and phrases used have the same meanings as in Superannuation Law;
- (b) the singular includes the plural and vice versa;
- (c) legislation is referred to as amended or replaced from time to time;
- (d) the following expressions have the indicated meaning:

'Corporate Plan MySuper' means each class of beneficial interest in a Plan in the Corporate Division, which the Trustee has been authorised to offer as a MySuper product under section 29TA of the SIS Act.

'Deed' means this deed as amended from time to time.

'Designated Rules' means, in relation to a Fund or a Division, any further provisions designated by the Trustee from time to time as forming part of the Rules applicable to that Fund or that Division. A reference to 'the Rules' without qualification means all or any Rules or the applicable Rules, as the context requires.

'Fund Liabilities' include, at the discretion of the Trustee and without limitation, liabilities, borrowings, accrued costs, charges, expenses and outgoings, contingent liabilities, provisions, liability to Tax, unpaid remuneration, reimbursement or indemnity due to the Trustee and unpaid amounts due and payable to Members or others in respect of benefits.

'GST' means a goods and services tax, value added tax, consumption tax or a similar tax or a tax on services only.

'Mercer MySuper' means the class of beneficial interest in a Plan in the Corporate Division or the Retail Division which the Trustee has been authorised to offer as a MySuper product under section 29T of the SIS Act (and not sections 29TA or 29TB).

'Mercer MySuper Investment Portfolio' means the Ready-Made Option adopted by the Trustee for Mercer MySuper.

'Mercer MySuper Member' means a Member of a Plan in the Corporate Division or the Retail Division in respect of whom the Trustee must comply with the relevant MySuper Requirements for Mercer MySuper.

'MST 2.0 Provision' means the rule or rules in the Designated Rules of the Corporate Division which applies certain features of Mercer MySuper to Members who are not Mercer MySuper Members, which rule or rules may be further identified within the Designated Rules.

'MySuper product' has the meaning given to those words by section 10 of the SIS Act.

'MySuper Requirements' means the Relevant Requirements with which the Trustee must comply to ensure it is, and remains, authorised to offer Mercer MySuper, Corporate Plan MySuper, Tailored Plan MySuper or Retail Plan MySuper as MySuper products and includes:

- (a) the required legislative characteristics of a MySuper product under section 29TC of the SIS Act ; and

- (b) in respect of a Tailored Plan, the relevant requirements applicable to MySuper products for large employers under section 29TB of the SIS Act.

'New Portfolio' means a Portfolio first specified by the Trustee under clause 8 on or after 1 July 2005.

'Non-Member Spouse' has the meaning given to those words by section 90MD of the *Family Law Act 1975*.

'Participant' has the same meaning as in the Designated Rules for the Corporate Division.

'Plan' means:

- (a) a plan set up for a Sponsor under the Retail Division Designated Rules; and/or
- (b) a plan established for a Participant under the Designated Rules of the Corporate Division.

'Plan Membership' has the meaning given to those words in the Rules.

'Ready-Made Option' has the meaning given to those words in the Designated Rules of the Corporate Division.

'Retail Plan MySuper' means a class of beneficial interest in a Plan in the Retail Division, which the Trustee has been authorised to offer as a MySuper product under section 29TA of the SIS Act to Members of the relevant Plan.

'Retail Plan MySuper Member' means a Member of a Plan in the Retail Division in respect of whom the Trustee must comply with the relevant MySuper Requirements for Retail Plan MySuper.

'Responsible Authority' means the Australian Prudential Regulation Authority, the Australian Securities and Investments Commission, the Commissioner of Taxation or any other governmental authority responsible for administering the laws or any other rules governing superannuation funds or the availability of income tax concessions to superannuation funds.

'Rules' means, in relation to a Fund or a Division, this Deed, the applicable Relevant Requirements and the applicable Designated Rules.

'Schedule'

- (a) in relation to the Corporate Division, has the meaning given to those words in the Designated Rules of the Corporate Division; and
- (b) in relation to the Retail Division, has the meaning given to those words in the Designated Rules of the Retail Division.

'SIS Act' means the *Superannuation Industry (Supervision) Act 1993* (Cth) as amended from time to time.

'SmartSuper Plan' has the meaning given to those words in the Designated Rules of the Corporate Division.

'Sponsor' has the same meaning as in the Designated Rules for the Retail Division.

'Superannuation Interest' has the meaning given to those words by section 90MD of the *Family Law Act 1975*.

'Superannuation Law' means, as the context requires, the SIS Act, the *Income Tax Assessment Act 1936*, the *Income Tax Assessment Act 1997*, the *Superannuation Guarantee (Administration) Act 1992*, the *Corporations Act 2001*, the *Family Law Act 1975* and any other present or future Act of the Commonwealth of Australia or any State or Territory of Australia which the Trustee may determine to be a superannuation law for the purposes of the Rules and any regulations made pursuant to any of those Acts, as modified in their application to the Funds by any subsisting declaration, modification or exemption granted by the Responsible Authority and, where the Trustee thinks it appropriate, any announcement of a proposed change to any of those Acts or regulations (whether or not the change is to have retrospective effect).

'Tailored Plan' means a Plan in the Corporate Division in respect of which the Trustee has been specifically authorised to offer a particular class of beneficial interest in that Plan as a MySuper product under section 29TB of the SIS Act.

'Tailored Plan MySuper' means the class of beneficial interest in a Tailored Plan, which the Trustee has been authorised to offer as a MySuper product under section 29TB of the SIS Act.

'Tailored Plan MySuper Investment Portfolio' means each investment option adopted by the Trustee for Tailored Plan MySuper.

'Tailored Plan MySuper Member' means a Member in a Tailored Plan in respect of whom the Trustee must comply with the relevant MySuper Requirements for Tailored Plan MySuper.

'Tax' means all income, capital gains, debits, land and other taxes, stamp, documentary, financial institutions, registration and other duties, excise and any other levies, imposts, deductions and charges, related interest and penalties (including any amount charged by a supplier of goods or services or both to the Trustee by way of or as a reimbursement for GST).

'Transferrable Benefit' has the meaning given to those words by regulation 1.03 of the *Superannuation Industry (Supervision) Regulations 1994*.

'Trustee' means the trustee of a Fund from time to time.