

**THE TRUST
COMPANY
(SUPERANNUATION)
LIMITED**

Dated *18 MAY* 2015

**Deed of Retirement and
Appointment**

SmartSave 'Member's Choice' Superannuation Master Plan

Parties

Tidswell Financial Services Ltd
ABN 55 010 810 607

The Trust Company (Superannuation) Ltd
ABN 49 006 421 638

Diversa Limited
ABN 60 079 201 835

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Deed of Retirement and Appointment

dated **18 MAY** 2015

Parties

Tidswell Financial Services Ltd
ABN 55 010 810 607
of 167 Flinders Street, Adelaide SA 5000
(Retiring Trustee)

The Trust Company (Superannuation) Ltd
ABN 49 006 421 638
RSE Licence L0000635
of Level 20, 357 Collins Street, Melbourne VIC 3000
(TTCSL)

Diversa Limited
ABN 60 079 201 835
of Level 9, Waterfront Place, 1 Eagle Street, Brisbane QLD 4000
(Diversa)

Recitals

- A. The SmartSave 'Member's Choice' Superannuation Master Plan ABN 43 905 581 639 (*Fund*) is governed by the establishing trust deed dated 18 March 1991 as amended from time to time (*Trust Deed*).
- B. The Promoter has informed the Retiring Trustee that it had formed the firm view that it is in the best interests of the members for there to be a change of trustee to TTCSL.
- C. In consultation with the Promoter the Retiring Trustee wishes to retire as trustee of the Fund and to appoint TTCSL as the new trustee of the Fund pursuant to Rule 7.2 of the Trust Deed on the terms and conditions set out in this Deed.
- D. Subject to the terms of this Deed, TTCSL wishes to accept its appointment to act as trustee of the Fund.
- E. Diversa has agreed to provide funding support to TTCSL until at least 30 June 2017 or if the Appointment Date is after 30 June 2015 then for at least two (2) years after the Appointment Date, so as to provide the Retiring Trustee with comfort that TTCSL can properly perform its obligations as trustee of the Fund.

The parties agree

1. Definitions and Interpretation

1.1 Definitions

In this Deed unless expressed or implied to the contrary:

- (1) **Administrator** means Tranzact Superannuation Services Pty Ltd ABN 33 056 524 522.
- (2) **Appointment Date** means 12:01am (Adelaide Time) on:
 - (a) if the Conditions listed in clauses 3.4.1 to 3.4.5 (inclusive) are satisfied before 30 May 2015 then, the first Business Day after those Conditions are satisfied; or
 - (b) if (a) is not satisfied then, seven days after all of the Conditions are satisfied.
- (3) **APRA** means the Australian Prudential Regulation Authority.
- (4) **Business Day** means a day on which banks are open for general banking business in Melbourne, Victoria and in Adelaide South Australia.
- (5) **Custodian Agreement** means the custodian agreement dated 14 February 2011 between the Retiring Trustee and Australian Executor Trustees Ltd ACN 007 869 794 (as custodian).
- (6) **TTCSL Administration Agreement** means the administration agreement to be entered into between the Administrator and TTCSL in relation to the administration and management of the Fund.
- (7) **TTCSL Promoter Agreement** means the promoter agreement to be entered between the Promoter and TTCSL in relation to promotion of the Fund.
- (8) **Claim** means any:
 - (a) demands, claims, suits, actions, judgements, or proceedings; or
 - (b) any audit, examination, enquiry, investigation, hearing, subpoena, notice to produce a document or notice requiring disclosure of information conducted or issued by a Responsible Authority.
- (9) **Conditions** has the meaning given in clause 3.4.
- (10) **Custodian** means the company appointed by the trustee of the Fund as custodian to hold legal title to assets of the Fund, which

on the date of this Agreement is Australia Executor Trustees Ltd ACN 007 869 794 as appointed by the Retiring Trustee.

- (11) **Deed** means this deed, including any schedule or annexure to it.
- (12) **Diversa Funding Deed** means the funding deed to be entered into between Diversa and TTCSL.
- (13) **Fund** has the meaning given in Recital A.
- (14) **Fund Liabilities** means with respect to the Fund:
 - (a) all losses, costs, charges, damages, expenses and any other liability (including any liability for taxation or other government impost); and
 - (b) all other complaints, claims, demands, suits, legal proceedings, causes of action, proceedings or regulatory action or investigation that may already have arisen or may arise in relation to the Fund whether direct or indirect,including, but not limited to, any liability in respect of the retirement of the Retiring Trustee as trustee of the Fund.
- (15) **GST** has the meaning given by the GST Law.
- (16) **GST Law** means the A New Tax System (Goods and Services Tax) Act 1999 (Cth), or, if that Act does not exist, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.
- (17) **Investment Manager** means Tranzact Consulting Limited ABN 78 058 305 525, AFSL 244560.
- (18) **Investment Management Agreement** means the investment management agreement dated 4 July 2013 between the Retiring Trustee and the Investment Manager.
- (19) **Normal Business Activity** means a member claim, complaint or loss, cost, change, damage, expense or any other liability that is of the type usually seen in the day to day management and administration of a regulated superannuation fund including, amongst others:
 - (a) a member claim for, or complaint in respect of, insurance benefits;

- (b) a member claim for, or complaint in respect of, benefit entitlements;
 - (c) a liability to a third party service provider for fees, expenses or charges;
 - but does not include any member claim, complaint or liability;
 - (d) in respect of any issues relating to disclosure material issued by the Retiring Trustee or the previous trustee in respect of the Fund;
 - (e) in respect of any investment options offered by the Retiring Trustee or the previous trustee as trustee of the Fund;
 - (f) in respect of any unit pricing issues relating to the period of time prior to the Appointment Date; and
 - (g) any other issue which may result in reputational damage to the Retiring Trustee.
- (20) **Promoter** means Group Insurance & Superannuation Concepts Pty Ltd ABN 51 070 756 740.
- (21) **Relevant Requirements** means any requirements imposed under the Superannuation Industry (Supervision) Act 1993, the Superannuation Industry (Supervision) Regulations, the Superannuation (Resolution of Complaints) Act 1993, the Income Tax Assessment Act 1936, the Income Assessment Act 1997, the Family Law Act 1975, the Corporations Act 2001 and Regulations, the Anti-Money Laundering and Counter Terrorism Financing Act 2006 and Rules and any other present or future legislation or by a Responsible Authority:
- (a) on the trustee of a regulated superannuation fund; or
 - (b) which the Fund must satisfy in order to have the most favourable taxation treatment available to superannuation funds.
- (22) **Responsible Authority** means, as the case requires, APRA, the Australian Securities and Investments Commission (ASIC), the Commissioner of Taxation or any other regulatory body or government authority having responsibility for the administration of the laws, regulations or rules relating to regulated superannuation funds.

- (23) **RSE Licence** means the RSE Licence issued by APRA to TTCSL.
- (24) **Retiring Trustee Administration Agreement Termination Deed** means the deed to be entered into between the Administrator and Retiring Trustee governing matters relating to the retirement of the Retiring Trustee and termination of the Administration Agreement between them dated 14 February 2011 (as amended).
- (25) **Retiring Trustee Promoter Agreement Termination Deed** means the deed to be entered into between the Promoter and Retiring Trustee governing matters relating to the retirement of the Retiring Trustee and termination of the Promoter Agreement between them dated 3 December 2010 (as amended).
- (26) **Successor Fund** means any superannuation entity to which some or all of the assets of the Fund are transferred on a bulk basis and from which TTCSL has a right of indemnity.
- (27) **Trust Deed** has the meaning given in Recital A.

1.2 Interpretation

In this Deed, unless the context requires otherwise:

- (1) Headings are inserted for convenience only and do not affect the interpretation of this Deed.
- (2) A reference to a party is a party to this Deed.
- (3) A reference to a party by its defined term includes its executors, administrators, delegates, agents, officers, employees and permitted assigns, as appropriate.
- (4) Other grammatical forms of defined words or expressions have corresponding meanings.
- (5) A reference to a person includes a natural person and a corporation.
- (6) The singular includes the plural and the plural includes the singular.
- (7) The words "in writing" include any communication sent by letter, facsimile transmission or email or any other form of communication capable of being read by the recipient.

2. Retirement of the Retiring Trustee

- 2.1 In accordance with Rule 7.2 of the Trust Deed, the Retiring Trustee will retire as trustee of the Fund on and from the Appointment Date, subject to the terms of this Deed.
- 2.2 TTCSL releases and discharges the Retiring Trustee and each of its directors (future, current and former) and officers (future, current and former) from:
- (1) all its duties and obligations as trustee under the Trust Deed on and from the Appointment Date; and
 - (2) all of the Fund Liabilities arising from or incurred by the Retiring Trustee acting in its capacity as trustee of the Fund.

This release and discharge does not extend to any breach of trust by the Retiring Trustee prior to the Appointment Date for which the Retiring Trustee is not entitled to be indemnified from the assets of the Fund.

- 2.3 Diversa agrees, for the purpose of enabling the Retiring Trustee to satisfy itself that its retirement and the appointment of TTCSL as trustee of the Fund in its place is in the best interests of the members of the Fund, to enter into the Diversa Funding Deed with TTCSL as referred to in clause 3.4.1 (e).

3. Appointment of TTCSL

- 3.1 Subject to clause 3.4, the Retiring Trustee appoints TTCSL under Rule 7.2 of the Trust Deed to be the new trustee of the Fund on the terms contained in this Deed from the Appointment Date.
- 3.2 TTCSL accepts the appointment as trustee of the Fund from the Appointment Date.
- 3.3 On and from the Appointment Date, TTCSL has all the powers, rights, duties and obligations of the trustee under the Trust Deed as if it has been originally named as trustee under the Trust Deed. For the avoidance of doubt, on and from the Appointment Date, all trustee responsibility shall be vested in TTCSL and the Retiring Trustee will not retain any residual function or liability as trustee of the Fund.
- 3.4 The retirement of the Retiring Trustee and appointment of TTCSL as trustee in its place as trustee of the Fund is subject to the following consents, approvals and agreements being obtained or events occurring ("**Conditions**"):

- 3.4.1 agreement on the terms of and execution of:
- (a) TTCSL Administration Agreement, by TTCSL and the Administrator;
 - (b) TTCSL Promoter Agreement, by TTCSL and the Promoter;
 - (c) Retiring Trustee Administration Agreement Termination Deed, by the Retiring Trustee and the Administrator;
 - (d) Retiring Trustee Promoter Agreement Termination Deed, by the Retiring Trustee and the Promoter **and** the Promoter paying the Retiring Trustee the amount referred to in clause 5.1 of the Retiring Trustee Promoter Agreement Termination Deed;
 - (e) Diversa Funding Deed, by Diversa and TTCSL with a copy provided to and approved by the Retiring Trustee.
- 3.4.2 assignment of:
- (a) the Investment Management Agreement by the Retiring Trustee to TTCSL;
 - (b) the Custodian Agreement by the Retiring Trustee to TTCSL;
 - (c) legal ownership from the Retiring Trustee to TTCSL of the group life policies of insurance issued by MLC Limited ABN 90 000 000 402 relating to the insurance cover of members of the Fund.
- 3.4.3 the Fund is compensated by TTCSL to the extent agreed by the Retiring Trustee for the member losses the Fund incurred in consequence of administration by TTCSL when it was previously trustee of the Fund of the management of investment switches in LM Mortgage Fund.
- 3.4.4 APRA authorising TTCSL to operate the Fund, including a MySuper authorisation.
- 3.4.5 TTCSL provides evidence to the satisfaction of the Retiring Trustee that insurance cover (in accordance with clause 4.2) will be in place at the Appointment Date.
- 3.4.6 if the Appointment Date has not occurred on or before 30 May 2015 then, completion of the Fund's financial statements for the year ended 30 June 2015 (including finalisation of the annual audit of the Fund which includes receipt and acceptance of the final auditor's management letter, responses by the service providers and the trustee relating to audit issues raised if any and finalisation of such issues to the Retiring Trustee's satisfaction, and lodgment of the financial statements at APRA), lodgment of the Fund 2015 tax

return and completion of the member reporting for the year ended 30 June 2015. For the avoidance of doubt, this Condition does not apply if the Appointment Date occurs on or before 30 May 2015.

3.5 In relation to satisfying the Conditions:

- (1) TTCSL must use reasonable endeavours to satisfy the Conditions as soon as possible after execution of this Deed.
- (2) The Appointment Date cannot occur until the Conditions are either satisfied or waived in writing by the Retiring Trustee.
- (3) Either party must promptly notify the other in writing, including providing evidence, if any Condition is satisfied or it is discussed that a Condition has become incapable of being satisfied.

4. Obligations of TTCSL

4.1 In undertaking its role as trustee of the Fund, TTCSL is bound by all the terms of the Trust Deed on and from the Appointment Date, including without limitation, performing all the obligations of the trustee under the Trust Deed, trust law and Relevant Requirements.

4.2 On and from the Appointment Date and at all times while it is trustee of the Fund, TTCSL must maintain insurance of such amount and coverage as TTCSL in good faith believes a prudent trustee would consider appropriate, having regard to TTCSL's obligations as trustee of the Fund under the Trust Deed, the quantum of the assets of the Fund and also having regard to the other funds or trusts of which TTCSL is trustee and any obligations under the Relevant Requirements, and which insurance is on fundamentally the same terms (including minimum sum insured \$20M) as is retained by the Retiring Trustee in relation to the Fund.

4.3 From the Appointment Date:

- (1) As soon as practicable, but at least within 14 days, of receiving any Claim which relates to the period when the Retiring Trustee was trustee of the Fund or which relates to or involves the Retiring Trustee, TTCSL must give written notice to the Retiring Trustee setting out full details of the Claim;
- (2) TTCSL must act in good faith to minimise any potential Claim under this clause 4.3 and must consult with the Retiring Trustee on a regular basis in relation to the conduct of any matter and keep the Retiring Trustee fully informed of any matter and, upon request, provide the Retiring Trustee with all applicable information;
- (3) TTCSL must not accept, compromise or pay any Claim or agree to arbitrate, compromise or settle any Claim which may lead to liability on the part of the Retiring Trustee without written approval

of the Retiring Trustee (which approval will not be unreasonably withheld);

- (4) Where the Retiring Trustee has carriage of a Claim relating to the period when it was trustee of the Fund, TTCSL, its service providers or its successors must provide all reasonable assistance to the Retiring Trustee in defending any Claim against the Retiring Trustee, including providing access to relevant books, records, files, and documents;

except that TTCSL is not required to notify the Retiring Trustee of any Claim or Fund Liability which is a Normal Business Activity.

- 4.4 If TTCSL asks the Retiring Trustee to perform any services or provide any books and records after the Retiring Trustee has already properly vacated the office of trustee as described in Rule 7.5 of the Trust Deed, the Retiring Trustee will be entitled to charge TTCSL, as an expense of the Fund, an additional fee at the non-routine task fee rate applicable under the promoter agreement between the Retiring Trustee and the Promoter dated 3 December 2010 (as amended) as in force at the date of execution of this Deed.
- 4.5 From the Appointment Date, TTCSL must not use, issue, distribute or publish any materials which contain any references to the Retiring Trustee without the Retiring Trustee's written consent, (which consent shall not unreasonably be withheld).

5. Obligations of the Retiring Trustee

- 5.1 From the Appointment Date, the Retiring Trustee must:
 - (1) take all reasonable steps to mitigate any Fund Liability which relates to the period when the Retiring Trustee was trustee of the Fund, including pursuing any entitlement to indemnity under any contract of insurance arranged for the benefit of the Retiring Trustee, which the Retiring Trustee must maintain for a period of 5 years from the Appointment Date provided the Fund pays for such insurance, including any indemnity given to the trustee under a service agreement;
 - (2) subject to clause 4.4, provide all reasonable assistance to TTCSL in defending any Claim or action against the Fund or TTCSL which relates to the period when the Retiring Trustee was trustee of the Fund, at the request of TTCSL and at the expense of the Fund;
 - (3) subject to clause 4.4, provide any documents in the possession or control of the Retiring Trustee reasonably required by TTCSL to substantiate any Fund Liability which was incurred before the Appointment Date during the period when the Retiring Trustee was trustee of the Fund; and

- (4) notify TTCSL as soon as practicable after becoming aware of a Fund Liability which relates to the period when the Retiring Trustee was trustee of the Fund.

5.2 As soon as practicable after the Appointment Date, the Retiring Trustee must in accordance with Rule 7.5 of the Trust Deed (at the expense of the Fund):

- (1) deliver to or at the direction of TTCSL, all books and other records relating to the Fund within its possession which are reasonably required for the purposes of ongoing administration of the Fund, including but not limited to, documents of title relating to the Fund assets, the Fund's accounting and member records, the Fund's disclosure documents and copies of:
 - (a) relevant minutes of meetings of the Board of the Retiring Trustee (extracts only to the extent that they relate to the Fund); and
 - (b) relevant minutes relating to any other committees of the Retiring Trustee (extracts only to the extent that they relate to the Fund);

For the avoidance of doubt, this clause relates only to Fund books and records in the Retiring Trustee's possession and does not include Fund books and records in the possession of the Promoter, Administrator, Investment Manager or the previous trustee of the fund.

The Retiring Trustee and TTCSL agree that:

- (c) the Retiring Trustee will only keep copies of current Fund records, the cost of which copying will be borne by the Fund; and
 - (d) TTCSL undertakes that after the Appointment Date, TTCSL will provide copies of any Fund records to the Retiring Trustee within a reasonable period of time of any request by the Retiring Trustee to the extent such records relate to any period before the Appointment Date.
- (2) execute all documents, subject to due care and skill expected of a trustee, and do all things necessary to effect the transfer of the Fund's assets to the Custodian appointed by TTCSL;
 - (3) provide all reasonable assistance to TTCSL to assist with the transfer.

5.3 If TTCSL so requests at least 5 Business Days prior to the Appointment Date, the Retiring Trustee must execute a document prepared by TTCSL, and reasonably satisfactory to the Retiring Trustee, to assign or novate any contractual arrangement with a third party relating to the Fund (except those already dealt with under clauses 3.4.1 and 3.4.2) to the benefit of TTCSL with effect from the Appointment Date subject to exercise of its duty of members' best interest (and the Retiring Trustee is under no obligation to prepare any document to assign or novate any contract to TTCSL).

6. Representations, warranties and undertaking

6.1 Each party represents and warrants to the other that:

- (1) the entering into and performance of its obligations under this Deed has been duly authorised; and
- (2) all authorisations and consents required by it in connection with the execution and performance of this Deed have been obtained and are in full force and effect;
- (3) as at the Appointment Date all authorisations and consents required by it in connection with the execution and performance of any of the documents listed in clause 3.4.1 and 3.4.2 to which it is or will be a party have been obtained and are in full force and effect.

6.2 TTCSL represents and warrants to the Retiring Trustee that at all times while it is acting as trustee of the Fund, the following statements are and will remain true:

- (1) it is a constitutional corporation (within the meaning of the Trust Deed) which satisfies the Relevant Requirements (within the meaning of the Trust Deed) for trustees of regulated superannuation funds;
- (2) it has the skills, facilities, capacity and staff necessary, internally or by using external service providers, to perform the duties and obligations of the trustee under the Trust Deed;
- (3) it has, or has access to, sufficient competent management staff experienced in trustee duties and administration of regulated public offer superannuation funds who will have charge and conduct of, and will maintain close supervision of, the Fund;
- (4) any decisions to in-source or outsource to a related entity administration and investment consulting services for the Fund will be made for proper purposes in the best interests of the members of the Fund;

- (5) it is a holder of an Australian Financial Services Licence (**AFSL**) which contains all authorisations necessary for it to act as trustee of the Fund, including but not limited to authorisations to:
 - (a) provide general financial product advice in respect of superannuation products; and
 - (b) issue superannuation products in relation to regulated superannuation funds;
- (6) it is a holder of an **RSE Licence** authorising it to act as trustee of employer sponsored, corporate or public offer superannuation funds, including authorisation to operate a MySuper product;
- (7) it otherwise holds all licenses, approvals, certifications and registrations necessary to act as trustee of the Fund;
- (8) it is not a disqualified person under the Relevant Requirements, and will take all reasonable steps to ensure that it does not become a disqualified person under the Relevant Requirements;
- (9) none of its responsible officers are disqualified persons under the Relevant Requirements.

6.3 TTCSL represents and warrants to the Retiring Trustee that at the date of this Deed and the Appointment Date the following statements are true:

- (1) it is not aware of any event, matter or circumstance that would be reasonably likely to cause it to breach its duties as trustee of the Fund, including any statutory covenants prescribed in the Relevant Requirements.
- (2) during the Retiring Trustee's due diligence investigations relating to whether it is in the best interests of members of the Fund for TTCSL to become trustee instead of the Retiring Trustee, TTCSL disclosed all information which was material to be known by the Retiring Trustee in making this decision and all information so disclosed was fair, accurate and not misleading.
- (3) the TTCSL Promoter Agreement is on substantially the same terms as the Promoter Agreement dated 3 December 2010 (as amended) between the Retiring Trustee and the Promoter except that TTCSL is not entitled to charge a fee for the performance of non-routine tasks.
- (4) it is not subject to any penalty or sanction from any Responsible Authority (other than as disclosed to the Retiring Trustee in writing prior to the Appointment Date).

6.4 Subject to clause 6.5 and subject to any information within the knowledge of TTCSL, the Retiring Trustee represents and warrants to TTCSL:

- (1) having made reasonable enquiries, it is unaware that it is the subject of any legal proceedings in respect of the Fund (other than any legal proceedings the existence of which has been disclosed to TTCSL in writing prior to the Appointment Date);
- (2) having made reasonable enquiries, it is unaware of any complaints made by members of the Fund (other than any complaints the existence of which has been disclosed to TTCSL in writing prior to the Appointment Date);
- (3) it is unaware that it is the subject of any regulatory action or investigation by a Responsible Authority in respect of the Fund (other than any action or investigations the existence of which has been disclosed to TTCSL in writing prior to the Appointment Date); and
- (4) it has disclosed to TTCSL details of any issues in respect of the Fund which, in its reasonable opinion, would be material to be known by an incoming trustee of the Fund.

6.5 The Retiring Trustee will not be in breach of a warranty or representation made by it under clause 6.4 where:

- (a) information which would have been the subject of a warranty or representation under clause 6.4 is not disclosed by the Retiring Trustee to TTCSL; and
- (b) that information is within the knowledge of the Administrator or Promoter or Investment Manager; and
- (c) the Administrator or Promoter or Investment Manager have not disclosed that information to the Retiring Trustee.

6.6 Each representation, warranty and undertaking given in this clause 6 continues in force after the Appointment Date.

7. Indemnities by TTCSL

7.1 Subject to clause 7.2, TTCSL agrees to indemnify and keep indemnified the Retiring Trustee and its directors in respect of the Fund Liabilities (including by virtue of breach of warranties given by TTCSL under clauses 6.1, 6.2 and 6.3), whether suffered or incurred before or after the Appointment Date.

7.2 The indemnity granted under clause 7.1:

- (1) is limited to the aggregate of:
- (a) any amount that TTCSL actually receives in the exercise of its indemnity out of the assets of the Fund;
 - (b) any amount that TTCSL can access from a Successor Fund;
 - (c) any amount that TTCSL actually receives under a policy of insurance held by TTCSL in respect of liabilities incurred by it as trustee of the Fund; and
 - (d) any amount that TTCSL actually receives in the exercise of an indemnity given to it by a trustee that replaces TTCSL as the trustee of the Fund or trustee of a Successor Fund; and

except where TTCSL's inability to access assets/insurance proceeds is caused by a breach of trust by TTCSL or a breach of clauses 4.2 or 7.4.

- (2) does not extend to any Fund Liabilities which:
- (a) the Retiring Trustee would not be entitled to be indemnified out of the assets of the Fund if it were trustee of the Fund;
 - (b) have been agreed to be paid by the Retiring Trustee or any other person on behalf of the Retiring Trustee; or
 - (c) are the subject of an accepted claim under an indemnity policy held by the Retiring Trustee; and
- (3) is given by TTCSL only in its capacity as trustee of the Fund, and no party will be entitled to:
- (a) claim from or commence proceedings against TTCSL in respect of any liability under clause 7.1 in any capacity other than as trustee of the Fund; or
 - (b) enforce or seek to enforce any judgement in respect of a liability under clause 7.1 against any property of TTCSL other than property held by TTCSL as trustee of the Fund or under a policy of insurance maintained by TTCSL in respect of liabilities incurred by TTCSL as trustee of the Fund.

7.3 TTCSL must diligently pursue all of its rights referred to in clause 7.2(2), including its rights from the assets of the Fund, any policies of insurance and from any indemnities given to it by a replacement trustee.

7.4 If at any time on or after the Appointment Date while TTCSL is still trustee of the Fund its access to assets of the Fund, as contemplated under clause 7.2(1) is limited as a result of:

- (1) the Fund terminating; or
- (2) some or all of the assets of the Fund being transferred to a Successor Fund or another superannuation entity on a bulk basis (from which TTCSL does not have a right of indemnity),

TTCSL must establish and maintain a policy of professional trustee indemnity insurance providing run-off cover to TTCSL and its directors of a period of 6 years from the date of the termination or transfer which:

- (3) at a minimum, provides cover for standard events which would ordinarily be covered in such policies; and
- (4) is of an amount which a prudent trustee in the position of TTCSL would consider appropriate having regard to TTCSL's obligations in relation to the Fund, Trust Deed, this Deed and the Relevant Requirements.

7.5 TTCSL agrees that it will use all reasonable endeavours to ensure that each of its successors as trustee of the Fund indemnify the Retiring Trustee and its directors and officers in accordance with this Deed.

8. Indemnity by the Retiring Trustee

8.1 The Retiring Trustee agrees to indemnify and keep indemnified, TTCSL against the Fund Liabilities whether incurred before the Appointment Date or after TTCSL ceases to be a trustee of the Fund, arising from (as found by a court of competent jurisdiction):

- (1) a material breach by the Retiring Trustee or any of its officers, employees, delegates, or agents of any obligation imposed on the Retiring Trustee under the Relevant Requirements or the Trust Deed; or
- (2) the dishonest, fraudulent, intentional or reckless misconduct of the Retiring Trustee or any of its officers, employees, delegates or agents,

before the Appointment Date, provided that the indemnity does not extend to any Fund Liabilities:

- (3) in respect of which TTCSL has provided an indemnity to the Retiring Trustee pursuant to clause 7;

- (4) which have been agreed to be paid by another person;
- (5) for which TTCSL would be entitled to be indemnified from the assets of the Fund (whether under the Trust Deed or at law); or
- (6) to the extent that it is an accepted claim under an insurance policy.

8.2 For the avoidance of doubt, clause 8.1 includes an indemnity relating to any of the following:

- (1) Any legal proceedings;
- (2) Complaints; and
- (3) Regulatory action or investigation.

9. Overriding Indemnity

Nothing in this Deed limits or restricts any continuing right of indemnity that the Retiring Trustee might have under the Trust Deed or general law..

10. Confidentiality

10.1 Except as required by law, with the other party's written consent or as is necessary or desirable for the performance of its obligations under this Deed by its officers, employees or agents, neither party may directly or indirectly disclose to any other person, or use or permit to be disclosed or used for any purpose other than a purpose contemplated by this Deed any information that may be acquired by the party under or for the purposes of this Deed and each party must keep all such information confidential, except where publicly available other than by breach of this Deed.

10.2 Without limiting clause 10.1, TTCSL covenants and agrees with the Retiring Trustee that all information (whether verbal or written) relating to trusteeship of the Fund provided or made available to TTCSL or its representatives by the Retiring Trustee is confidential information and in relation to this confidential information TTCSL:

- (1) will keep such information strictly confidential;
- (2) will not, without the prior written consent of the Retiring Trustee in each instance, be disclosed or divulged to any third party

(including service providers to the Fund) in any manner whatsoever; and

- (3) will not, without the prior written consent of the Retiring Trustee, be photocopied or reproduced in any way.

11. Dispute Resolution

- 11.1 A party must not start court proceedings (except proceedings seeking interlocutory relief) in respect of a dispute arising out of this Deed ("**Dispute**") unless it has complied with this clause.
- 11.2 A party claiming that a Dispute has arisen must notify each other party to the Dispute giving details of the Dispute.
- 11.3 Within seven (7) days after a notice is given under clause 11.2, each party to the Dispute ("**Disputant**") must nominate in writing a representative authorised to settle the Dispute on its behalf.
- 11.4 During the seven (7) day period after a notice is given under clause 11.3 (or longer period agreed in writing by the Disputants) ("**Initial Period**") each Disputant must use its best efforts to resolve the Dispute.
- 11.5 If the Disputants are unable to resolve the Dispute within the Initial Period, they must, within an additional seven (7) days, refer the Dispute to an agreed mediator (in the absence of agreement, a mediator nominated by the then President of the Law Society of Victoria) which mediator shall assist the parties to resolve the Dispute.
- 11.6 Each Disputant must bear its own costs of complying with this clause.
- 11.7 If in relation to a Dispute a Disputant breaches any provision of clauses 11.1 to 11.3 each other Disputant need not comply with clauses 11.1 to 11.3 in relation to that Dispute.
- 11.8 Neither party will be entitled to commence or maintain any action relating to a disputed matter until it has been referred and determined as provided in this clause.
- 11.9 The mediator may engage other consultants to advise them if they consider that necessary.

12. Notice

- 12.1 In this Agreement, a 'notice' means: 12.1.1 a notice; or

- 12.1.2 a consent, approval or other communication required to be in writing under this Agreement.
- 12.2 A notice must be in writing and signed by or on behalf of the sender addressed to the recipient and:
- 12.2.1 delivered by hand to the recipient's address as shown in clause 12.4;
- 12.2.2 sent by pre-paid mail to the recipients address as shown in clause 12.4;
- 12.2.3 transmitted by facsimile to the recipient's address as shown in clause 12.4; or
- 12.2.4 sent by email to the email address of the recipient as shown in clause 12.4.
- 12.3 A notice given to a person in accordance with this clause is treated as having been given and received:
- 12.3.1 if delivered by hand, on the day of delivery if delivered before 5.00pm on a Business Day, otherwise on the next Business Day;
- 12.3.2 if sent by pre-paid mail, on the third Business Day after posting;
- 12.3.3 if transmitted by facsimile and a correct and complete transmission report is received on the day of transmission on that day if the report states that transmission was completed before 5.00pm on a Business Day, otherwise on the next Business Day;
- 12.3.4 if sent by email, if it is received by the recipient's email server before 5.00pm on a Business Day, on the day of receipt, or otherwise on the next Business Day.
- 12.4 Notices are to be delivered in accordance with the following:
- | | | |
|-----------------------------|------------|--|
| If to the Retiring Trustee: | Address: | Tidswell Financial
Services Ltd
Ground Floor, 50
Hindmarsh Square
Adelaide SA 5000 |
| | Email: | j.tidswell@tidswell.com.au |
| | Facsimile: | (08) 8232 1675 |
| | Attention: | Mr Jeff Tidswell |

17. Stamp Duty

TTCSL must pay all stamp duty imposed on this Deed or any document executed or transaction entered into pursuant to this Deed or to give effect to this Deed.

18. Entire Agreement

This Deed, the Trust Deed and all of the documents referred to in clause 3.4.1 and 3.4.2 are the entire agreement between the parties about its subject matter.

19. No Waiver

A party's failure to insist another part perform any obligation under this Deed is not a waiver of that party's right:

(1) to insist the other party perform, or to claim damages for breach of, that obligation; or

(2) to insist the other party perform any other obligation,

unless the waiving party acknowledges the waiver in writing.

EXECUTED as a Deed by the parties

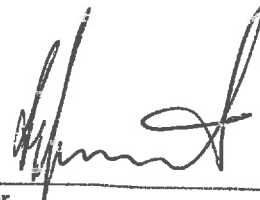
Executed by **TIDSWELL FINANCIAL SERVICES LTD** ABN 55 010 810 607 in accordance with section 127 of the *Corporations Act 2001*:



Director/company secretary

JKT. OSWEN

Name of director/company secretary
(BLOCK LETTERS)



Director

R. P. BEAD

Name of director
(BLOCK LETTERS)

Executed by **THE TRUST COMPANY
(SUPERANNUATION) LTD** ABN 49
006 421 638 in accordance with
section 127 of the *Corporations Act
2001*:

Director/company secretary

Director

Name of director/company secretary
(BLOCK LETTERS)

Name of director
(BLOCK LETTERS)

Executed by **DIVERSA LIMITED**
ABN 60 079 201 835 in accordance
with section 127 of the *Corporations
Act 2001*:



Director/company secretary



Director

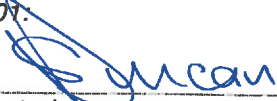


Name of director/company secretary
(BLOCK LETTERS)



Name of director
(BLOCK LETTERS)

Executed by **THE TRUST COMPANY (SUPERANNUATION) LTD** ABN 49 006 421 638 in accordance with section 127 of the *Corporations Act 2001*:



Director/company secretary *Attorney*

Simon Duncan

Name of director/company secretary (BLOCK LETTERS) *Attorney*


Executed by **DIVERSA LIMITED** ABN 60 079 201 835 in accordance with section 127 of the *Corporations Act 2001*:

Director/company secretary

Name of director/company secretary (BLOCK LETTERS)

THE TRUST COMPANY (SUPERANNUATION) LIMITED ABN 49 006 421 638

By its Attorneys who declare that they have no notice of revocation of the Power of Attorney under which this document is signed.



Director *Attorney*

ROBERT CHMIELEWSKI

Name of director (BLOCK LETTERS) *Attorney*

Director

Name of director (BLOCK LETTERS)