

Dated 25 Feb. 2016

Deed of Amendment Hostplus Pooled Superannuation Trust

Host-Plus Pty Limited
ABN 79 008 634 704

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Our ref: 2830640

Deed Poll dated 25 Feb 2016

By **Host-Plus Pty Limited** ABN 79 008 634 704
of Level 9, 114 William Street, Melbourne VIC 3000
(Trustee)

Recitals

- A** The Hostplus Pooled Superannuation Trust (**Trust**) was established by a trust deed dated 7 February 2014 (**Trust Deed**).
- B** Under clause 35.1 of the Trust Deed, the Trustee may amend the Trust Deed if, in the opinion of the Trustee, the amendments are not prejudicial, nor likely to be prejudicial, to the interests of the unitholders of the Trust unless approved by resolution of the unitholders of the Trust.
- C** The Trustee wishes to amend the Trust Deed in the manner set out in this deed poll.
- D** The Trustee considers that the amendments set out in this deed poll comply with the requirements specified in clause 35.1 of the Trust Deed.
- E** The sole unitholder of the Trust has approved the amendments to the Trust Deed by resolution of the unitholder as required by clause 35.1 of the Trust Deed.

Operative Provisions

1 Amendment

- 1.1 With effect from the date of this deed poll, all the provisions of the Trust Deed are deleted in their entirety and replaced with the provisions of Annexure A to this deed poll.

2 Confirmation

The Trustee confirms that the amendments in this deed poll are not intended to declare, resettle or create any trust in relation to the Trust, or to cause the transfer, vesting or accrual of property to or in any person.

3 Governing law and jurisdiction

The law of Victoria governs this deed poll.

Executed as a deed poll on the date shown on the first page.

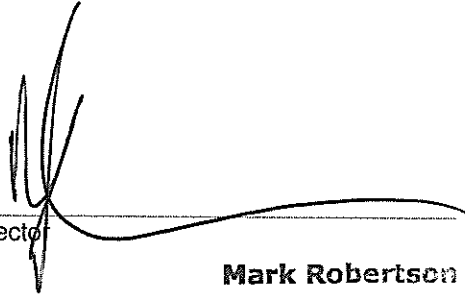
Executed by **Host-Plus Pty Limited** ABN
79 008 634 704 in accordance with
section 127 of the *Corporations Act 2001*:



Director/company secretary

DAVID SJA

Name of ~~director~~ company secretary
(BLOCK LETTERS)



Director

Mark Robertson
Director

Name of director
(BLOCK LETTERS)

Annexure A

Annexure A

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1 Definitions and interpretation

1.1 Definitions

(1) In this deed:

- (a) **Additional Tax** means an amount which can reasonably be said to represent, in relation to the Trust, the amount of additional Tax to which the Trust is assessed, in a particular year of income, as a result of the transfer of taxable Application Moneys under section 275 of the Tax Act;
- (b) **Application Moneys** has the meaning in clause 7;
- (c) **Business Day** means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Melbourne;
- (d) **GST** means a goods and services tax, value added tax, consumption tax or a similar tax;
- (e) **Net Value of a Portfolio** has the meaning specified in clause 8.2;
- (f) **Original Deed** means the trust deed dated 7 February 2014 under which the Trust was established;
- (g) **Portfolio** has the meaning specified in clause 4.1;
- (h) **Redemption Amounts** means the moneys referred to in clause 9.2;
- (i) **Responsible Authority** means the Australian Prudential Regulation Authority, the Australian Securities and Investments Commission, the Commissioner of Taxation, the Australian Transaction Reports and Analysis Centre (AUSTRAC) or any other governmental authority responsible for administering the laws or any other rules governing superannuation entities or the availability of income tax concessions to superannuation entities;
- (j) **Superannuation Law** means, as the context requires:
 - (i) the *Superannuation Industry (Supervision) Act 1993*, the *Income Tax Assessment Act 1936*, the *Income Tax Assessment Act 1997*, the *Superannuation Guarantee (Administration) Act 1992*, the *Corporations Act 2001* and the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*;
 - (ii) any other present or future Act of the Commonwealth of Australia or any State or Territory of Australia, which imposes obligations on the Trustee, or which the Trustee must comply with in order to avoid any penalty or detriment, as trustee of the Trust;
 - (iii) any regulatory instrument or pronouncement of a Responsible Authority that modifies any of the above laws in their application to the Trust or the Trustee;
 - (iv) any requirements or guidance of a Responsible Authority made or issued under any of the above laws; and

- (v) where the Trustee thinks it appropriate, any announcement of a proposed change to any of the above requirements or guidance (whether or not the change is to have retrospective effect);
- (k) **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);
- (l) **Tax Act** means the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997*;
- (m) **Tax Saving** means an amount which can reasonably be said to represent, in relation to the Trust, the amount of Tax from which the Trust is exempt, in a particular year of income, as a result of any applicable exemption from Tax under the Tax Act;
- (n) **Terminating Portfolio** has the meaning specified in clause 4.2;
- (o) **Termination Date** has the meaning specified in clause 4.2;
- (p) **Trust** means the trust now known as the Hostplus Pooled Superannuation Trust established under the Original Deed;
- (q) **Trust Liabilities** include, at the discretion of the Trustee and without limitation, liabilities, borrowings, accrued costs, charges, expenses and outgoings, contingent liabilities, provisions (including provision for contingent or future losses, expenses and liabilities), liability for Tax, unpaid , reimbursement or indemnity due to the Trustee and unpaid amounts due and payable to Unitholders or others in respect of withdrawal payments;
- (r) **Trust Property** means any assets of any nature (including, cash, derivatives and income or other receivables);
- (s) **Trustee** means the trustee for the time being of the Trust;
- (t) **Unit** has the meaning set out in clause 5.6;
- (u) **Unitholder** means a person who has been admitted as a Unitholder of the Trust and who has not ceased to be a Unitholder under clause 5.5;
- (v) **Unitholder Account** has the meaning specified in clause 15.1.

1.2 Interpretation

- (1) Unless a contrary intention appears:
 - (a) one gender includes the others;
 - (b) the singular includes the plural and vice versa;
 - (c) a party includes the party's executors, administrators, successors and permitted assigns;
 - (d) a thing includes the whole and each part of it separately;

- (e) a statute, regulation, code or other law or a provision of any of them includes:
 - (i) any amendment or replacement of it; and
 - (ii) another regulation or other statutory instrument made under it, or made under it as amended or replaced; and
- (f) dollars means Australian dollars unless otherwise stated.
- (2) "Amendment" includes an addition, variation, deletion and substitution.
- (3) "For example" is only illustrative and means including without limitation.
- (4) "Including" and similar expressions are not words of limitation.
- (5) "May" confers absolute discretion on the person entitled to exercise a right or power conferred but does not infer any obligation to exercise that right or power.
- (6) "Person" includes:
 - (a) a body corporate and any other person recognised at law;
 - (b) a partnership and any other group or association; and
 - (c) a governmental authority.
- (7) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (8) Headings and any table of contents or index are for convenience only and do not form part of this deed or affect its interpretation.
- (9) If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.
- (10) Any power, right or discretion given under this deed, for example, the power to determine or agree, may be exercised:
 - (a) from time to time; and
 - (b) generally or in any particular case.
- (11) Unless otherwise defined, words and phrases have the same meaning as in Superannuation Law.
- (12) A term similar to any term defined in this deed has a corresponding meaning, for example, Net Value of a Portfolio has the same meaning as Net Value of the relevant Portfolio.
- (13) References to any law include:
 - (a) that law as amended, re-enacted or replaced and any law that supersedes that law; and
 - (b) any regulation, binding determination and ruling made in connection with that law.

(14) An express reference to one matter (including a rule or law) must not be taken as excluding other matters (including rules or laws).

(15) References to this deed include this deed as amended or replaced.

1.3 Severance

Any provision of this deed which:

- (1) Is invalid in whole or in part; or
- (2) would need to be limited or read down in order to be valid,

is severed or limited or read down to the extent of the invalidity, but the remainder of the provision continues in full force and effect.

1.4 Governing Law

- (1) This deed is governed by the laws of Victoria.
- (2) The Trustee submits to the non-exclusive jurisdiction of the courts of Victoria and of the Commonwealth of Australia.

2 Trustee

2.1 Eligibility

Only a single constitutional corporation that satisfies the requirements of Superannuation Law may be trustee of the Trust.

2.2 Appointment

- (1) The Trustee is appointed as the trustee of the Trust and consents to that appointment.
- (2) The Trustee will maintain the Trust for the benefit of its Unitholders.

3 Trust

3.1 Name of Trust

The Trust governed by this deed is called the Hostplus Pooled Superannuation Trust or such other name as the Trustee determines from time to time.

3.2 Vesting

The Trustee holds the Trust Property on trust for the Unitholders of the Trust.

3.3 Superannuation Law

- (1) The Trust will be maintained as a pooled superannuation trust as defined in, and for the purposes of, Superannuation Law.
- (2) Despite any other provision of this deed, if any requirements of Superannuation Law must be included in this deed from time to time in order for the Trust to be a pooled superannuation trust in any year of income, those requirements are

deemed to be included in this deed, but only for so long as that deemed inclusion is necessary for that purpose or such longer period as the Trustee may determine.

- (3) The Trustee may comply with Superannuation Law even if Superannuation Law is inconsistent with this deed.
- (4) A breach of Superannuation Law will not constitute a breach of trust.
- (5) If there is any inconsistency between any part of this deed and any other part of this deed, the order of priority to prevail will be:
 - (a) this clause;
 - (b) Superannuation Law; and
 - (c) the balance of this deed.

4 Investment

4.1 Investment

- (1) The Trustee may, from time to time, specify one or more Portfolios comprising the Trust. A Portfolio consists of specified kinds of assets in specified proportions, each of which corresponds to a particular investment strategy.
- (2) Subject to Superannuation Law and the consent of the Trustee, on admission as a Unitholder, a Unitholder may select the Portfolios by reference to which their Application Moneys are to be invested.
- (3) Subject to Superannuation Law, each Unitholder Account will be invested by reference to one or more Portfolios selected in accordance with this deed.
- (4) Portfolio selections may be varied by the Unitholder or the Trustee from time to time in accordance with this deed.

4.2 Special Conditions

The Trustee may:

- (1) offer a Portfolio for selection by one or more Unitholders on special terms, conditions and restrictions; and
- (2) vary or remove any special terms, conditions and restrictions previously imposed.

4.3 Termination of Portfolios

The Trustee may determine that a Portfolio (**Terminating Portfolio**) will terminate with effect from a particular date (**Termination Date**), in which event:

- (1) all Unitholders affected by that determination will be notified by the Trustee (in a manner approved by the Trustee) of the determination;
- (2) any Unitholder who has, in accordance with this deed, requested the Trustee to invest any part of the assets referable to their Unitholder Account in the Terminating Portfolio must be given the option to elect to transfer, on or before the Termination Date, the amount invested in the Terminating Portfolio to other Portfolios offered by the Trustee to the Unitholder; and

- (3) any amount in respect of which any Unitholder fails to return a valid transfer election under clause 4.3(2) prior to the Termination Date (in a manner determined by the Trustee) will, with effect from the Termination Date, cease to be invested in the Terminating Portfolio and must be invested in such manner as the Trustee determines.

5 Unitholders

5.1 Application to become Unitholder

The trustee or custodian of a regulated superannuation fund under Superannuation Law may apply to become a Unitholder in a form acceptable to the Trustee.

5.2 Admission of Unitholders

A person becomes a Unitholder from the date the Trustee accepts the person's application as a Unitholder or any other date agreed between the person and the Trustee.

5.3 Information and Evidence

Each applicant must:

- (1) give such information and evidence;
- (2) execute such documents (including by electronic means); and
- (3) satisfy such other requirements,

as, and when, the Trustee requires.

5.4 Special Conditions

The Trustee may:

- (1) reject any application to become a Unitholder;
- (2) admit a Unitholder on special terms, conditions and restrictions; and
- (3) vary or remove any special terms, conditions and restrictions previously imposed.

5.5 Ceasing to be a Unitholder

A person ceases to be a Unitholder when all amounts which are or may be payable in respect of the Unitholder have been paid or otherwise applied or satisfied in accordance with this deed.

5.6 Unitholders' Rights and Units

- (1) A Unitholder of a Trust has a beneficial interest in the Trust as a whole, not in parts or single assets.
- (2) A Unitholder may not interfere with, or exercise, the powers of the Trustee in respect of any Trust Property, Trust Liability or obligation, or lodge a caveat affecting Trust Property.
- (3) The beneficial interest of a Unitholder is represented by the Units referable to the Portfolios in which their Unitholder Account is invested.

- (4) The rights attached to Units referred to in clause 5.6(3) will be determined in accordance with this deed.
- (5) 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 this deed as Units, but in the proportion that the fraction bears to a whole Unit.
- (6) The Trustee may round up or down Units, and amounts to be converted into Units, to the nearest fraction of a Unit calculated under clause 5.6(5).

6 Liability of Unitholders

6.1 Limitation of Liability

- (1) The liability of each Unitholder is limited to the amount for the time being standing to the credit of their Unitholder Account, as represented by the Units recorded in the Unitholder Account.
- (2) Recourse of the Trustee and of Trust creditors will be limited to Trust Property.
- (3) Any relationship of agency between the Trustee and any Unitholder is expressly excluded (except for the purposes of clause 9.5(5)).

7 Application for units

7.1 Application for Units

Subject to the other provisions of this deed, each Unitholder may apply, in a manner acceptable to the Trustee, for Units referable to a particular Portfolio.

7.2 Application Moneys

The moneys received by the Trustee from a Unitholder representing an application for Units under clause 7.1 must be treated as Application Moneys for the purpose of this deed.

7.3 Payment of Application Moneys

Application Moneys must be paid at the times and in the manner determined by the Trustee, subject to any requirements of Superannuation Law.

7.4 Application Moneys other than Cash

The Trustee may, accept Application Moneys other than in cash on special terms, conditions or restrictions. These Application Moneys will be valued in accordance with clause 13.

7.5 Application Moneys Paid by Mistake

The Trustee must repay Application Moneys which:

- (1) it determines were paid by mistake, unless:
 - (a) Superannuation Law prevents that repayment; or
 - (b) the person who mistakenly paid the Application Moneys and the Trustee agree otherwise; or

- (2) the Trustee should have refused to accept the Application Moneys under this clause 7.

7.6 Refusal of Application Moneys

- (1) The Trustee may refuse to accept all or part of any Application Moneys.
- (2) The Trustee must refuse to accept Application Moneys if required by Superannuation Law.

7.7 Special Conditions

The Trustee may:

- (1) issue Units to a Unitholder on special terms, conditions and restrictions; and
- (2) vary or remove any special terms, conditions and restrictions previously imposed.

8 Units

8.1 Unit Price

Subject to Superannuation Law and clause 11, the price at which Units referable to a Portfolio may be created by the Trustee is the amount derived by dividing the sum of:

- (1) the Net Value of the Portfolio as at the next valuation time after the Application Moneys become Trust Property; and
- (2) 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,

by the number of Units on issue referable to the relevant Portfolio at that valuation time.

8.2 Net Value

- (1) For the purpose of this deed, Net Value of a Portfolio is the value of Trust Property referable to that Portfolio less Trust Liabilities referable to that Portfolio.
- (2) The Trustee will calculate the Net Value of a Portfolio at least once each week (or at such other times as the Trustee determines), on the basis of the most recent valuation of each item of Trust Property and determination of Trust Liabilities.

8.3 Refusal to Issue Units

The Trustee may suspend the issue of Units referable to a Portfolio during any period in which the Trustee is of the opinion that the issue price of those Units cannot be calculated in a manner that is fair to all persons holding those Units.

8.4 Classes of Units

- (1) The Trustee may:
 - (a) issue different classes of Units; or
 - (b) divide issued Units into different classes; or
 - (c) consolidate Units; or

(d) reclassify Units,

as and when it thinks fit.

- (2) The Trustee must determine the rights attached to a class of Units when it exercises its discretion under clause 8.4(1), and such rights will prevail over the provisions of this deed to the extent of any inconsistency.

9 Redemption of units

9.1 Redemption of Units

A Unitholder may request, in a form acceptable to the Trustee, the payment of all or part of the Unitholder Account of the Unitholder. The Unitholder may specify Units referable to a particular Portfolio which are to be redeemed in order to make the payment.

9.2 Redemption Amount

The proceeds of the redemption of Units to be paid to a Unitholder under clause 9.1 must be treated as if they were a withdrawal for the purpose of clause 9.4.

9.3 Redemption Price

- (1) Subject to Superannuation Law and clause 11, the price at which Units referable to a Portfolio will be redeemed and cancelled by the Trustee is the amount derived by dividing:

- (a) the Net Value of the Portfolio as at the next valuation time after the date of the redemption request; less
- (b) an amount not exceeding the Trustee's estimate of the total cost which would be incurred in respect of the disposal of the relevant Portfolio's investments,

by the number of Units on issue referable to the relevant Portfolio at that valuation time.

- (2) Subject to clause 9.5, the Trustee will redeem and cancel Units within 60 days after lodgement with the Trustee of the redemption request.

9.4 Withdrawals

- (1) The Trustee will make payment in respect of a withdrawal from a Unitholder Account (by way of redemption and cancellation of Units) in accordance with this deed.
- (2) Any such payment, whether to the relevant Unitholder 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.
- (3) Subject to Superannuation Law, a payment may be made other than in cash or its equivalent in accordance with clause 9.5(5).
- (4) Where an amount is paid, or consideration is provided other than in cash, in respect of a withdrawal from a Unitholder Account, the amount of the payment or value of the consideration, must be debited to the Unitholder Account, and Units referable to the relevant Portfolio of an equivalent value must be redeemed and cancelled.

9.5 Suspension of Redemptions

The Trustee may suspend the redemption of Units referable to a Portfolio during any period in which the Trustee considers any of the following circumstances to prevail:

- (1) it is of the opinion that the redemption price of the Units cannot be calculated in a manner that is fair to all persons holding those Units;
- (2) there would be insufficient cash remaining in the Trust to meet other Trust Liabilities;
- (3) it reasonably believes that sufficient Trust Property will not be able to be realised:
 - (a) at an appropriate price; or
 - (b) on adequate terms; or
 - (c) due to any other circumstances outside its control;
- (4) if the outstanding redemption requests are all satisfied immediately:
 - (a) Unitholders who continue to hold Units may bear a disproportionate burden of Trust Liabilities; or
 - (b) there would be a material diminution in the value of the Trust Property to the material disadvantage of existing Unitholders; or
- (5) in the Trustee's opinion, it is not otherwise in the interests of Unitholders for any Trust Property to be sold in order to satisfy a redemption request.

10 Transfer of Trust Property

- (1) Subject to Superannuation Law, the Trustee may, instead of paying cash, transfer Trust Property to a Unitholder in satisfaction of any part of a redemption request with or without the consent of the Unitholder.
- (2) The value of the Trust Property to be transferred to the Unitholder under this clause 9.5(5) is to be determined by the Trustee in accordance with clause 13.
- (3) For the purposes of this clause 9.5(5), each Unitholder:
 - (a) appoints the Trustee as their agent to do anything needed to give effect to a transfer of the Trust Property from the Trustee (or its custodian) to the Unitholder;
 - (b) agrees to become a member of any body corporate or trust whose securities are included in the relevant Trust Property; and
 - (c) agrees that any agreement or arrangement made under the agency authority in this clause 10(3) is effective and binds the Unitholder.
- (4) In this clause 9.5(5), a reference to a Unitholder includes a reference to the custodian of the Unitholder.

11 Special Circumstances

Despite clauses 8.1 and 9.3, the Trustee may determine a price at which Units referable to a Portfolio will be:

- (1) issued in relation to any particular Application Moneys; or
- (2) redeemed in relation to any particular withdrawal payment,

that is different from the price determined under clause 8.1 or 9.3 (as appropriate) if the Trustee believes that to do so will not prejudice the interests of the other Unitholders.

12 Switching Portfolios

12.1 Switching Request

A Unitholder may request:

- (1) in a manner acceptable to the Trustee; and
- (2) with the approval of the Trustee,

for any or all of the Units referable to a particular Portfolio to be switched to Units referable to another Portfolio.

12.2 Effect of Request

A switching request approved by the Trustee must be treated by the Trustee as:

- (1) a request under clause 9.1 for redemption of the relevant Units referable to a Portfolio; and
- (2) an application under clause 7.1 for the issue of the relevant Units referable to another Portfolio.

13 Valuation of Trust Property

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

14 Tax

14.1 Taxation

- (1) In addition to its powers under clause 15, the Trustee:
 - (a) must comply with the law in force in relation to the deduction, remittance and payment of Tax (**Tax Laws**); and
 - (b) may adjust (either or both of):
 - (i) the amount of Application Moneys or Redemption Amounts; and
 - (ii) conditions relating to any applications for, or redemptions of, Units,

in order to comply with any Tax Laws or as a result of any changes in Tax or Tax arrangements.

- (2) Any adjustment under this clause 14.1 will have immediate effect without the necessity of amending this deed.

14.2 **Provision for Tax**

The Trustee may make provision for Tax:

- (1) in the Unitholder Account of each Unitholder; and
- (2) in the calculation of any Trust Liabilities and the Net Value of a Portfolio.

15 **Accounts**

15.1 **Accounts**

- (1) The Trustee will establish and maintain a separate Unitholder Account for each Unitholder of the Trust.
- (2) The Trustee:
 - (a) must establish and maintain for the Trust such other accounts as this deed requires;
 - (b) may establish and maintain for the Trust such other accounts, including reserving accounts as the Trustee considers appropriate; and
 - (c) may establish and maintain sub-accounts within any account for any purpose and in any manner the Trustee considers appropriate.

15.2 **Unitholder Account**

- (1) Unitholder Accounts will not constitute separate trusts.
- (2) Each Unitholder Account will commence when the Trustee first accepts Application Moneys in respect of that Unitholder Account or as otherwise determined by the Trustee.
- (3) The following amounts may be credited to the Unitholder Account of a Unitholder:
 - (a) any Application Moneys received in respect of the Unitholder;
 - (b) any amount credited to the Unitholder Account under clause 15.4; and
 - (c) any other amount which the Trustee determines is appropriate to credit to the Unitholder Account.
- (4) The following amounts may be debited to the Unitholder Account of a Unitholder:
 - (a) any amount required to be debited to the Unitholder Account under clauses 15.5 or 15.6;
 - (b) any Redemption Amounts paid or applied from the Unitholder Account; and

- (c) any other amount which this deed requires to be debited to the Unitholder Account or the Trustee considers it appropriate and equitable to debit to the Unitholder Account.

15.3 Unitising amounts

Where an amount is to be credited or debited to an account under this deed, the Trustee may:

- (1) convert the amount into Units of the relevant Portfolio immediately before the amount is credited or debited to the account; and
- (2) issue or redeem (as the case may be) the relevant number of Units of the relevant Portfolio having regard to the relevant issue or redemption price.

15.4 Allocation of Tax Savings

The Trustee may, at any time, determine to credit to all or any Unitholder Accounts, the amount of any Tax Saving, in such proportions as the Trustee determines.

15.5 Allocation of Additional Tax

The Trustee may, at any time, determine to debit to all or any Unitholder Accounts, the amount of any Additional Tax, in such proportions as the Trustee determines.

15.6 Trust Liabilities

Each Unitholder's share of the Trust Liabilities must be applied in one of the following ways as determined by the Trustee:

- (1) deducted from Application Moneys before they are credited to the Unitholder Account;
- (2) debited to the Unitholder Account;
- (3) taken into account in the calculation of the Net Value of a Portfolio;
- (4) deducted from Redemption Amounts;
- (5) dealt with in any other manner determined by the Trustee; or
- (6) applied in any combination of the above.

15.7 Estimation of Expenses

The Trustee may make:

- (1) any deduction or debit under clause 15.6 on an estimated basis; and
- (2) subsequent adjustments to take account of any difference between estimated and actual amounts.

15.8 Closing of Accounts

- (1) The Trustee must close a Unitholder Account after all amounts which could become payable in respect of the Unitholder have been paid or applied.

- (2) Any amount remaining in a Unitholder Account at that time may be forfeited to the Trust and applied as the Trustee considers appropriate.

15.9 Trustee's Discretion

The Trustee:

- (1) must terminate a Unitholder Account if required to do so under Superannuation Law; and
- (2) may terminate a Unitholder Account after giving reasonable notice to the relevant Unitholder.

15.10 Application of Assets

On termination of a Unitholder Account, the Trustee must apply the assets referable to the Unitholder Account in the following order of priority:

- (1) all Trust Liabilities which have been incurred or are likely to be incurred in respect of the Unitholder Account (including the termination of the Unitholder Account); and
- (2) the balance of the Unitholder Account to the Unitholder or at their direction in accordance with Superannuation Law.

15.11 Securing of Entitlements

The Trustee may make any arrangements it considers appropriate to secure any entitlements of a Unitholder on the termination of a Unitholder Account, without the Unitholder's consent and even if the arrangement is contrary to the Unitholder's wishes.

15.12 Liability of Trustee

On completion of the arrangements under clause 15.11:

- (1) no person has any right against the Trustee in respect of any entitlement in relation to the relevant Unitholder Account; and
- (2) the Trustee is discharged from the trusts of the relevant Unitholder Account.

16 Trust accounts and audits

The Trustee will keep accounts for the Trust, and arrange for them to be audited, in accordance with Superannuation Law.

17 Powers of Trustee

17.1 Powers of the Trustee

Subject to this deed, the Trustee has within and outside Australia all the powers in relation to the Trust, Trust Property and Trust Liabilities that it is legally possible for a natural person or a corporation to have, including (but not limited to) power to:

- (1) invest in real or personal property of any nature and in any jurisdiction;
- (2) incur liabilities and obligations of any kind, as if it were the absolute and beneficial owner of all Trust Property;

- (3) effect (including payment of premiums) any indemnity insurance policy covering the Trustee or its directors and officers or both, or any other insurance or assurance policy;
- (4) exercise any powers or discretions conferred by, and to comply with, Superannuation Law and the provisions of this deed;
- (5) give undertakings, guarantees, discharges, releases and indemnities;
- (6) pay commission or brokerage to a person in consideration of that person applying or agreeing to apply to be a Unitholder or procuring or agreeing to procure applications to be a Unitholder;
- (7) provide for or transfer any Tax;
- (8) 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 Trust Property and executing documents on its behalf;
- (9) engage and remove any administrators, advisers, agents, service providers, brokers, contractors, custodians, investment managers, valuers, actuaries, auditors, underwriters or any 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 Trust.

17.2 Discretions

- (1) The Trustee may determine the manner, mode and time of exercise of its powers in its absolute discretion. The Trustee may exercise any of its powers in its absolute discretion and without giving any reasons for the exercise of its powers.
- (2) Despite anything to the contrary in this deed:
 - (a) in exercising any of the Trustee's powers under this deed, the Trustee:
 - (i) may rely on any information provided by any person; and
 - (ii) may only be subject to the direction of another person in the circumstances permitted under Superannuation Law;
 - (b) where this deed provides 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
 - (c) no discretion which is required under this deed to be exercised by a person other than the Trustee may be exercised except in the circumstances permitted under Superannuation Law.
- (3) Any exercise of discretion, determination or decision by the Trustee under this deed is final and effective and binding on all Unitholders.

17.3 Development power

- (1) The Trustee may, either by itself or in joint venture, partnership or other association or by arrangement with any other person, develop or participate in or commit or agree to participate in the development of any Trust Property.
- (2) For the purposes of clause 17.3(1), "participate in" includes providing equity or loan funding for the development of the Trust Property on such terms as the Trustee may determine, and whether with or without security.

18 Dealings with Trust and Unitholders

The Trustee and any related company or associate of the Trustee may, subject always to acting in good faith to Unitholders, deal in any capacity with the Trust or act in any capacity in relation to any other trusts, without in any such case being liable to account to the Trust or to any Unitholder.

19 Reimbursement of Trustee

19.1 Trust Liabilities

All Trust Liabilities incurred by the Trustee in connection with the administration, management, operation or termination of the Trust and which are not referable to a particular Unitholder Account or Portfolio are payable or reimbursable out of Trust Property (apportioned in a manner determined by the Trustee).

19.2 Reimbursement of Expenses

The Trustee is, in addition to its right of indemnity under clause 19.1 and its other rights under this deed, entitled to recover out of the Trust the following costs, charges and expenses:

- (1) disbursements in connection with the acquisition or disposal of any asset, including commission and brokerage;
- (2) any Tax or reimbursement of Tax properly charged to the Trustee or the Trust in connection with the Trust but excluding any Tax payable personally by the Trustee on its own account;
- (3) all costs in connection with the initiation, carriage, defence and settlement of any tribunal or court proceedings; and
- (4) all other costs, charges and expenses incurred in connection with the administration, management, operation or termination of the Trust.

19.3 Reserving Charge

- (1) Whenever the Trustee calculates the Net Value of a Portfolio, the Trustee may deduct out of the Trust Property comprising the Portfolio and credit to one or more reserving accounts maintained under clause 15, an amount as determined by the Trustee equal to a percentage of the Net Value of the Portfolio.
- (2) The Trustee may reduce the amount of any reserving charge under clause 19.3(1) in relation to a particular Unitholder by crediting the relevant Unitholder Account and issuing additional Units of an equivalent value in any Portfolio in which the Trustee is required to invest Application Moneys in respect of the Unitholder or as the Trustee otherwise determines.

19.4 Allocation of Expenses and charges

Amounts paid or payable to the Trustee under this clause 19 must be allocated in accordance with clause 15 or otherwise in accordance with this deed.

20 Trustee indemnity

20.1 Indemnity

Except if the Trustee or a director of the Trustee (as the case may be) fails to act honestly in a matter concerning the Trust or intentionally or recklessly fails to exercise, in relation to a matter affecting the Trust, 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:

- (1) the Trustee or the director (as the case may be) will not be liable for any loss or breach of trust;
- (2) the Trustee or the director (as the case may be) will not be liable to any greater extent than the Trust Property actually vested in the Trustee in accordance with this deed; and
- (3) the Trustee and each director is indemnified out of Trust Property against all liabilities, losses, costs and expenses incurred in the exercise or purported exercise of the Trustee's powers.

20.2 Limitation

The Trustee is not required to do anything for which it does not have a full right of indemnity out of Trust Property. Any indemnity to which the Trustee is entitled under this deed is in addition to any indemnity allowed by law.

21 Recoveries

21.1 Unitholder Liable for Taxes and Costs

The Trustee may recover from each Unitholder any Taxes and costs referable to their Unitholder Account or referable to any payment to, or any act requested by that Unitholder.

21.2 Withholding Payments to Unitholders

The Trustee may withhold payment of any money payable to a Unitholder until the liability is discharged, or may meet the liability and recover the amount from any money or property held for the Unitholder.

21.3 Deductions from Application Moneys

Without limiting the generality of this clause 21, the Trustee may deduct from Application Moneys received in relation to a Unitholder, or debit a Unitholder Account directly with, Taxes which in the opinion of the Trustee will be incurred on acceptance of the Application Moneys.

21.4 Deductions and Forfeiture

- (1) Subject to clause 21.4(2), the Trustee may deduct any amount which a Unitholder owes to the Trustee or the Trust from any amount payable in respect of the Unitholder, except to the extent that Superannuation Law prevents such deduction.

- (2) Any amount deducted in accordance with clause 21.4(1) may be used as the Trustee considers appropriate.

22 Retirement of Trustee

22.1 Retirement of Trustee

- (1) The Trustee may retire as trustee of the Trust by giving 90 days written notice to the Unitholders of the Trust.
- (2) The Trustee must retire as trustee of the Trust if it becomes disqualified for the purposes of Superannuation Law.
- (3) Whenever the Trustee retires, it must, by deed poll, appoint another constitutional corporation that satisfies the requirements of Superannuation Law to take its place.
- (4) If no replacement trustee is appointed within 90 days after the Trustee's retirement under this clause 22.1, the Trust will be terminated.

22.2 Statutory Requirements

If at any time the Trustee is subject to any statutory or official requirement in relation to the Trust which is or may be materially prejudicial to the Trustee, the Trustee may retire as trustee of the Trust forthwith or may terminate the Trust.

23 Termination of Trust

23.1 Termination

The Trust will be terminated at such time as this deed provides or the Trustee determines.

23.2 Trustee's duties upon termination

Subject to clause 23.4, on termination of the Trust, the Trustee will realise all relevant Trust Property, pay or discharge all relevant Trust Liabilities and expenses of termination and distribute the net proceeds in accordance with the provisions in this deed governing termination of Unitholder Accounts.

23.3 Realisation

The Trustee may postpone realisation and will not be responsible for any resulting loss except as set out in clause 20.1.

23.4 Transfer of Trust Property

- (1) The Trustee may distribute any Trust Property to a Unitholder in lieu of the distribution to the Unitholder under clause 23.2.
- (2) Clause 9.5(5) applies to any distribution of Trust Property under clause 23.4 as if the distribution was a redemption request.

24 Amendment

24.1 Amendment of deed

Subject to Superannuation Law and clause 24.2, the Trustee may amend any provision of this deed by deed.

24.2 Effective date

Any amendment under clause 24.1 takes effect:

- (1) on any earlier or later effective date specified in the deed of amendment; or
- (2) if no effective date is specified, on the date the deed of amendment is executed.

25 Notices

25.1 Notices to the Trustee

Subject to Superannuation Law, any notice or other communication by a Unitholder to the Trustee:

- (1) must be in writing (or in any other manner determined by the Trustee);
- (2) must be signed personally or bear the facsimile or electronic signature or other electronic identification of the Unitholder or, of a duly authorised officer or representative of the Unitholder unless the Trustee determines otherwise;
- (3) must be addressed to the registered office of the Trustee or to the fax number or any other address (including electronic address) that the Trustee notifies from time to time; and
- (4) is taken to be duly given by the sender and received by the Trustee only at the time of actual receipt by the Trustee.

25.2 Notices by the Trustee

Subject to Superannuation Law, any notice or other communication:

- (1) must be given in writing (or in such other manner as the Trustee determines);
- (2) sent to the recipient at their physical or electronic address specified in the Trustee's records;
- (3) is taken to be received by the recipient:
 - (a) (in the case of delivery by hand) on delivery at the physical address of the recipient or on delivery personally to them;
 - (b) (in the case of pre-paid post) on the next Business Day after the date of posting;
 - (c) (in the case of facsimile transmission) on receipt of a transmission report confirming successful transmission;
 - (d) (in the case of email) at the time recorded on the Trustee's computer as the time the communication was sent; and
 - (e) (if sent by any other manner) at the time the Trustee determines.