

Form 603

Corporations Act 2001
Section 671B

Notice of initial substantial holder

To Company Name/Scheme **Select Harvests Limited**

ACN/ARSN **000 721 380**

1. Details of substantial holder (1)

Name **United Super Pty Ltd in its capacity as trustee of Cbus (United Super)**

ACN/ARSN (if applicable) **006 261 623**

The holder became a substantial holder on **29/07/2021**

2. Details of voting power

The total number of votes attached to all the voting shares in the company or voting interests in the scheme that the substantial holder or an associate (2) had a relevant interest (3) in on the date the substantial holder became a substantial holder are as follows:

Class of securities (4)	Number of securities	Person's votes (5)	Voting power (6)
Ordinary Shares	6,701,652	6,701,652	5.57%

3. Details of relevant interests

The nature of the relevant interest the substantial holder or an associate had in the following voting securities on the date the substantial holder became a substantial holder are as follows:

Holder of relevant interest	Nature of relevant interest (7)	Class and number of securities
United Super	United Super is the beneficial owner of the shares and therefore has a relevant interest in the shares under s608(1)(b) and (c) of the Corporations Act.	Ordinary Shares 5,642,582
United Super	Media Super Limited in its capacity as trustee of Media Super (Media Super) is the beneficial owner of the relevant shares. United Super and Media Super have entered into a Successor Fund Transfer Deed under which the assets of the Media Super fund will be transferred to United Super. United Super therefore has a relevant interest in the shares under s608(8) of the Corporations Act.	Ordinary Shares 1,059,070

4. Details of present registered holders

The persons registered as holders of the securities referred to in paragraph 3 above are as follows:

Holder of relevant interest	Registered holder of securities	Person entitled to be registered as holder (8)	Class and number of securities
United Super	JP Morgan Nominees Australia Ltd as Custodian for	JP Morgan Nominees Australia Ltd as Custodian for United	Ordinary Shares 5,642,582

	United Super Pty Ltd	Super Pty Ltd	
United Super	BNP Paribas Nominees Pty Limited as Custodian for Media Super	BNP Paribas Nominees Pty Limited as Custodian for Media Super	Ordinary Shares 1,059,070

5. Consideration

The consideration paid for each relevant interest referred to in paragraph 3 above, and acquired in the four months prior to the day that the substantial holder became a substantial holder is as follows:

Holder of relevant interest	Date of acquisition	Consideration (9)		Class and number of securities
		Cash	Non-cash	
See Annexure A				

6. Associates

The reasons the persons named in paragraph 3 above are associates of the substantial holder are as follows:

Name and ACN/ARSN (if applicable)	Nature of association
N/A	

7. Addresses

The addresses of persons named in this form are as follows:

Name	Address
See Annexure B	

Signature

print name **Emma Rodgers** capacity **Company Secretary**

sign here  date **20/01/2022**

DIRECTIONS

- (1) If there are a number of substantial holders with similar or related relevant interests (eg. a corporation and its related corporations, or the manager and trustee of an equity trust), the names could be included in an annexure to the form. If the relevant interests of a group of persons are essentially similar, they may be referred to throughout the form as a specifically named group if the membership of each group, with the names and addresses of members is clearly set out in paragraph 7 of the form.
- (2) See the definition of "associate" in section 9 of the Corporations Act 2001.
- (3) See the definition of "relevant interest" in sections 608 and 671B(7) of the Corporations Act 2001.
- (4) The voting shares of a company constitute one class unless divided into separate classes.
- (5) The total number of votes attached to all the voting shares in the company or voting interests in the scheme (if any) that the person or an associate has a relevant interest in.
- (6) The person's votes divided by the total votes in the body corporate or scheme multiplied by 100.
- (7) Include details of:

- (a) any relevant agreement or other circumstances by which the relevant interest was acquired. If subsection 671B(4) applies, a copy of any document setting out the terms of any relevant agreement, and a statement by the person giving full and accurate details of any contract, scheme or arrangement, must accompany this form, together with a written statement certifying this contract, scheme or arrangement; and
- (b) any qualification of the power of a person to exercise, control the exercise of, or influence the exercise of, the voting powers or disposal of the securities to which the relevant interest relates (indicating clearly the particular securities to which the qualification applies).

See the definition of "relevant agreement" in section 9 of the Corporations Act 2001.

- (8) If the substantial holder is unable to determine the identity of the person (eg. if the relevant interest arises because of an option) write "unknown".
 - (9) Details of the consideration must include any and all benefits, money and other, that any person from whom a relevant interest was acquired has, or may, become entitled to receive in relation to that acquisition. Details must be included even if the benefit is conditional on the happening or not of a contingency. Details must be included of any benefit paid on behalf of the substantial holder or its associate in relation to the acquisitions, even if they are not paid directly to the person from whom the relevant interest was acquired.
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Annexure A

Holder of relevant interest	Date of Acquisition	Consideration (9)		Class of securities	Number of securities
		Cash	Non-Cash		
	Opening balance 29/03/2021				6,241,002
United Super Pty Ltd	30/03/2021	-\$ 213,995.74		Ordinary Shares	34,941
United Super Pty Ltd	30/03/2021	\$ 14,085.00		Ordinary Shares	- 2,250
United Super Pty Ltd	7/04/2021	\$ 202,266.66		Ordinary Shares	- 32,140
United Super Pty Ltd	8/04/2021	\$ 466,590.60		Ordinary Shares	- 74,062
United Super Pty Ltd	8/04/2021	\$ 22,775.79		Ordinary Shares	- 3,592
United Super Pty Ltd	23/04/2021	\$ 307,000.00		Ordinary Shares	- 50,000
United Super Pty Ltd	26/04/2021	\$ 312,023.34		Ordinary Shares	- 51,489
United Super Pty Ltd	27/04/2021	\$ 781,794.00		Ordinary Shares	- 130,299
United Super Pty Ltd	3/05/2021	-\$ 31,993.88		Ordinary Shares	5,297
United Super Pty Ltd	4/05/2021	\$ 6,138.78		Ordinary Shares	- 1,013
United Super Pty Ltd	5/05/2021	-\$ 699,029.50		Ordinary Shares	114,595
United Super Pty Ltd	5/05/2021	-\$ 154,431.22		Ordinary Shares	25,379
United Super Pty Ltd	5/05/2021	-\$ 16,529.84		Ordinary Shares	2,712
United Super Pty Ltd	7/05/2021	-\$ 33,699.18		Ordinary Shares	5,484
United Super Pty Ltd	7/05/2021	-\$ 81,572.33		Ordinary Shares	13,277
United Super Pty Ltd	7/05/2021	-\$ 4,881.30		Ordinary Shares	795
United Super Pty Ltd	7/05/2021	\$ 135,958.13		Ordinary Shares	- 22,125
United Super Pty Ltd	7/05/2021	\$ 33,912.82		Ordinary Shares	- 5,532
United Super Pty Ltd	7/05/2021	\$ 101,715.09		Ordinary Shares	- 16,593
United Super Pty Ltd	10/05/2021	-\$ 21,826.98		Ordinary Shares	3,580
United Super Pty Ltd	11/05/2021	-\$ 32,183.32		Ordinary Shares	5,276
United Super Pty Ltd	13/05/2021	-\$ 47,997.19		Ordinary Shares	8,010
United Super Pty Ltd	18/05/2021	-\$ 32,765.64		Ordinary Shares	5,380
United Super Pty Ltd	19/05/2021	-\$ 6,795.40		Ordinary Shares	1,114
United Super Pty Ltd	20/05/2021	-\$ 302,958.83		Ordinary Shares	49,769
United Super Pty Ltd	24/05/2021	\$ 11,162.97		Ordinary Shares	- 1,833
United Super Pty Ltd	24/05/2021	-\$ 318,322.16		Ordinary Shares	51,844
United Super Pty Ltd	28/05/2021	-\$ 152,108.17		Ordinary Shares	27,911
United Super Pty Ltd	28/05/2021	-\$ 280,800.18		Ordinary Shares	49,528
United Super Pty Ltd	28/05/2021	\$ 13,798.50		Ordinary Shares	- 2,500
United Super Pty Ltd	31/05/2021	-\$ 455,909.18		Ordinary Shares	78,629
United Super Pty Ltd	1/06/2021	-\$ 37,109.53		Ordinary Shares	6,657
United Super Pty Ltd	3/06/2021	\$ 95,047.70		Ordinary Shares	- 16,172
United Super Pty Ltd	3/06/2021	\$ 222,000.00		Ordinary Shares	- 40,000
United Super Pty Ltd	10/06/2021	-\$ 588,098.37		Ordinary Shares	102,335
United Super Pty Ltd	11/06/2021	-\$ 271,677.93		Ordinary Shares	45,058
United Super Pty Ltd	11/06/2021	-\$ 383,903.49		Ordinary Shares	62,902
United Super Pty Ltd	11/06/2021	\$ 8,806.00		Ordinary Shares	- 1,480
United Super Pty Ltd	15/06/2021	-\$ 359,221.21		Ordinary Shares	58,902
United Super Pty Ltd	16/06/2021	-\$ 106,423.42		Ordinary Shares	17,322
United Super Pty Ltd	18/06/2021	-\$ 238,077.74		Ordinary Shares	36,913
United Super Pty Ltd	18/06/2021	\$ 14,035.20		Ordinary Shares	- 2,176
United Super Pty Ltd	21/06/2021	-\$ 35,054.56		Ordinary Shares	5,610
United Super Pty Ltd	22/06/2021	-\$ 85,045.87		Ordinary Shares	13,631
United Super Pty Ltd	23/06/2021	-\$ 92,554.27		Ordinary Shares	14,815
United Super Pty Ltd	28/06/2021	-\$ 22,998.18		Ordinary Shares	3,466
United Super Pty Ltd	29/06/2021	-\$ 27,617.45		Ordinary Shares	4,153
United Super Pty Ltd	30/06/2021	-\$ 49,528.44		Ordinary Shares	7,395
United Super Pty Ltd	5/07/2021	\$ 238,231.63		Ordinary Shares	- 37,233
United Super Pty Ltd	6/07/2021	-\$ 38,339.01		Ordinary Shares	5,991
United Super Pty Ltd	6/07/2021	\$ 62,622.04		Ordinary Shares	- 9,785
United Super Pty Ltd	12/07/2021	-\$ 5,793.90		Ordinary Shares	890
United Super Pty Ltd	14/07/2021	-\$ 128,943.08		Ordinary Shares	18,040
United Super Pty Ltd	16/07/2021	-\$ 204,837.68		Ordinary Shares	28,468
United Super Pty Ltd	19/07/2021	-\$ 250,722.82		Ordinary Shares	35,072
United Super Pty Ltd	20/07/2021	-\$ 5,313.00		Ordinary Shares	759
United Super Pty Ltd	22/07/2021	-\$ 55,511.20		Ordinary Shares	7,874
United Super Pty Ltd	26/07/2021	-\$ 8,621.09		Ordinary Shares	1,150
	Closing balance 29/07/2021				6,701,652

Annexure B

Name	Address
United Super Pty Ltd	Level 22, 130 Lonsdale Street, Melbourne
JP Morgan Nominees Australia Ltd	Locked Bag 20049, Melbourne VIC 3001
Media Super Limited	Level 22, 130 Lonsdale Street, Melbourne
BNP Paribas Nominees Pty Limited	PO Box R209 Royal Exchange NSW 1225 Australia



Deed of Transfer

—
Media Super Limited (**Transferring Trustee**)
United Super Pty Limited (**Receiving Trustee**)
—

Level 40 Governor Macquarie Tower 1 Farrer Place
Sydney NSW 2000 Australia DX 117 Sydney
T +61 2 9921 8888 F +61 2 9921 8123
minterellison.com

MinterEllison

Deed of transfer

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Details

Date

29 July 2021

Parties

Name	Media Super Limited
ABN	30 059 502 948
Short form name	Transferring Trustee
Notice details	Level 22, 130 Lonsdale Street Melbourne Victoria 3000

Name	United Super Pty Limited
ABN	46 006 261 623
Short form name	Receiving Trustee
Notice details	Level 19, 130 Lonsdale Street Melbourne Victoria 3000

Background

- A The Media Super (**Transferring Fund**) was established by a trust deed dated 28 January 1981 (as amended from time to time) (**Transferring Fund Deed**).
- B The Transferring Trustee is the trustee of the Transferring Fund, for the time being.
- C Construction & Building Unions Superannuation (Registrable Superannuation Entity (RSE) No. R1000979) (**Receiving Fund**) was established by a trust deed dated 27 July 1984 (as amended from time to time) (**Receiving Fund Deed**).
- D The Receiving Trustee is the trustee of the Receiving Fund, for the time being.
- E Under clause 14.2 of the Transferring Fund Deed, the Transferring Trustee may transfer any moneys or assets comprising the benefit of a Beneficiary (as defined in the Transferring Fund Deed) to a Benefit Arrangement (as defined in the Transferring Fund Deed) without the consent of the Member.
- F Under clause 4.11 of the Receiving Fund Deed, the Receiving Trustee may accept into the Receiving Fund moneys or assets transferred to the Receiving Fund by way of a successor fund transfer.
- G SIS Regulation 6.29 prohibits the trustee of a superannuation fund from transferring a member's benefits from the fund without the member's consent unless, among other things, the transfer is to a 'successor fund' (within the meaning of that expression in SIS Regulation 1.03).
- H It is proposed that:
 - (i) The Transferring Trustee transfers the assets representing the Benefits of each Transferring Member to the Receiving Fund without the consent of the Transferring Member; and
 - (ii) for this purpose, the Receiving Fund be a successor fund in relation to the Transferring Fund (within the meaning of SIS Regulation 1.03).

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

The following definitions apply in this document, unless a contrary intention appears:

AFCA means the Australian Financial Complaints Authority.

Benefits, in respect of a Transferring Member, means his or her benefit entitlement in the Transferring Fund as calculated by the Transferring Trustee in accordance with the Transferring Fund Deed as at the Transfer Date.

Complying Superannuation Fund has the meaning given to it in the SIS Act.

Current Death and Disablement Policy means the group life and salary continuance policy, held by the Transferring Trustee with Hannover Re.

Drop Dead Date means 7 days before the Transfer Date.

Due Diligence has the meaning provided in the Implementation Deed.

Due Diligence and Confidentiality Deed means the Due Diligence and Confidentiality Deed between the parties dated 25 September 2020.

Hannover Re means Hannover Life Re of Australasia Ltd (ABN 37 062 395 484).

Implementation Deed means the Implementation Deed entered into by the Transferring Trustee and the Receiving Trustee on 26 February 2021 (as amended from time to time).

Indemnified Person means:

- (a) the Transferring Trustee; and
- (b) any director or officer of the Transferring Trustee.

Indemnity Policy means:

- (a) any policy of trustee indemnity insurance held by the Transferring Trustee under which an Indemnified Person is or was covered for a Liability; and
- (b) a policy of trustee indemnity 'run-off' insurance covering an Indemnified Person.

Liability means any costs, charges, damages, expenses and any other liability (including any liability to taxation or other Government impost, legal costs and expenses on a full indemnity basis and winding-up costs) and any other claims, demands, causes of action or proceedings.

Media Super Division means the newly created division of the Receiving Fund.

New Death and Disablement Policy means the group life and salary continuance policy, held by the Receiving Trustee with TAL Life.

Proceedings means any legal proceedings commenced in a court, commission or tribunal in Australia (at State or Federal level) or outside of Australia (including, without limitation, any class actions, complaints lodged with AFCA and proceedings before the Fair Work Commission).

RSE licence has the meaning provided under the SIS Act.

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

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

TAL Life means TAL Life Limited (ABN 70 050 109 450).

Tax means any tax of any nature lawfully imposed including but not limited to income tax, goods and services tax, recoupment tax, land tax, sales tax, payroll tax, fringe benefits tax, group tax, capital gains tax, profit tax, interest tax, property tax, undistributed profits tax, withholding tax, municipal rates, financial institutions duty, bank account debit tax, stamp duty and any other tax, charge, duty or levy assessed or charged or assessable or chargeable by or payable to any

national, federal, state or municipal authority and includes any interest, related cost and expense, fee or penalty imposed in connection with any tax, rate, duty, charge or levy.

Transfer means the transfer of the Transferring Members and the Transfer Assets to the Receiving Fund contemplated under clause 2, in accordance with this document.

Transfer Assets means all of the assets of the Transferring Fund and **Transfer Asset** means any asset of the Transferring Fund.

Transfer Date means 11:59pm on 11 April 2022 or any other date agreed by the parties.

Transferring Member means each beneficiary of the Transferring Fund at the Transfer Date.

Transferring Records means the documents and records of all kinds of the Transferring Trustee as at the Transfer Date, as agreed by the parties.

1.2 Interpretation

The following rules apply to the interpretation of this document, except where the context makes it clear that a rule is not intended to apply:

- (a) **(rules of interpretation):**
 - (i) other parts of speech and grammatical forms of a defined word or expression have corresponding meaning;
 - (ii) a reference to one gender includes the other gender;
 - (iii) a reference to the singular includes the plural and vice versa;
 - (iv) a reference to a person includes a natural person, body corporate, partnership, joint venture, association or authority;
 - (v) a reference to a party includes the party's executors, administrators, successors, substitutes (including, without limitation, any persons taking by novation) and permitted assigns;
 - (vi) a reference to conduct includes a reference to any omission, statement or undertaking, whether or not in writing;
 - (vii) a reference to this document or another instrument includes a reference to any replacement, variation or novation of it;
 - (viii) a reference to anything (including, without limitation, any amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;
 - (ix) a reference to any legislation or law or to any provision of any legislation or law includes a reference to any regulations, modifications, declarations and other instruments issued under them and any consolidation, amendment, substitution or re-enactment of any of them;
 - (x) headings are for convenience only and do not affect interpretation; and
 - (xi) the use of the word '*including*' in a provision when introducing a list of items does not limit that provision to that list or to items of a similar nature and does not exclude a reference to other items of the same class;
- (b) **(exercise of powers)** subject to any provision of this document to the contrary, a person, in the exercise of that person's powers, has an absolute discretion and may from time to time:
 - (i) exercise and enforce all or any such powers; and
 - (ii) refrain from exercising or otherwise not exercise all or any such powers; and
- (c) **(severance)** to the extent that any provision, or part of a provision, of this document infringes the law or is invalid for any other reason whatsoever:

- (i) that provision, or part, must be read down, changed, construed or severed to avoid such infringement or invalidity; and
- (ii) to the extent that such infringement or invalidity cannot be avoided, the provision, or part, will be of no effect and will not affect the remainder of this document.

2. Transfer from Transferring Fund to the Receiving Fund

2.1 Transferring Trustee's obligations

- (a) Subject to clause 4, the Transferring Trustee must:
 - (i) transfer all assets of the Transferring Fund on, or as soon as practicable after, the Transfer Date and in any event by 30 June in the same financial year as the Transfer Date; and
 - (ii) provide the Receiving Trustee with all Transferring Records and information that the Receiving Trustee may reasonably require in order to enable the Receiving Trustee to verify the correctness of the calculation of each Transferring Member's Benefits on the Transfer Date and in order to meet its obligations under this document.
- (b) The Transferring Trustee will not wind up or deregister as a corporation for a period of not less than seven years from the Transfer Date without first obtaining the prior consent of the Receiving Trustee, such consent not to be unreasonably withheld.

2.2 Receiving Trustee's obligations

In consideration of the Transferring Trustee transferring the Benefits of the Transferring Members and the Transfer Assets from the Transferring Fund to the Receiving Fund in accordance with this document, the Receiving Trustee agrees with the Transferring Trustee that the Receiving Trustee will:

- (a) subject to clause 4, admit all the Transferring Members as members of the Receiving Fund with effect from the Transfer Date; and
- (b) subject to clauses 4, 5, 6, 7, 9 and 12 (to the extent relevant to the operation of this clause), assume and discharge the Liabilities of the Transferring Fund and liability for the payment of Benefits (excluding liability for the payment of insured death and disablement benefits) to or in respect of each Transferring Member (whether liability for the payment of such Benefits arises in the Transferring Fund or the Receiving Fund before, on or after the Transfer Date) on the terms and conditions and to the extent set out in the Receiving Fund Deed.

2.3 Contingent or unascertainable assets and liabilities as at Transfer Date

- (a) The parties acknowledge that:
 - (i) the effect of this document is to transfer all Transferring Members and associated liabilities of the Transferring Fund, and the legal or beneficial ownership of all of the Transfer Assets, to the Receiving Trustee at the Transfer Date; and
 - (ii) all efforts will be made to identify all of the Transferring Members and associated liabilities of the Transferring Fund, and the Transfer Assets, as at the Transfer Date, including amounts which may be or become payable by, or payable to, the Transferring Trustee, may be contingent or otherwise unascertainable at that time.
- (b) Despite any other provision of this deed, the parties acknowledge that:
 - (i) the transfer of the legal title to all of the Transfer Assets may not be completed on the Transfer Date; and
 - (ii) if the transfer of all legal title to a Transfer Asset is not completed on the Transfer Date, that legal title is held on bare trust by the Transferring Trustee for the Receiving Trustee.

- (c) The parties agree to co-operate to ensure that the transfer of legal title, to the extent required, is effected as soon as reasonably practicable after the Transfer Date, and in any event by 30 June in the same financial year as the Transfer Date.

3. Successor fund

- (a) The purposes of this clause 3 is to ensure that the Receiving Fund is treated as a 'successor fund' for the purposes of SIS Regulation 6.29 in relation to the transfer of the Benefits of each Transferring Member to the Receiving Fund.
- (b) The Receiving Trustee and the Transferring Trustee agree that, with effect on and from the Transfer Date, the Receiving Fund will confer on each Transferring Member equivalent rights to the rights that the Transferring Member had under the Transferring Fund in respect of his or her Benefits.

4. Conditions precedent

4.1 Conditions precedent

The transfer of the Transferring Members and the Transfer Assets to the Receiving Fund under clause 2 will not proceed unless on or before the Transfer Date, all the following conditions (the **Conditions Precedent**) are satisfied:

- (a) **(Implementation Deed)** Each 'Condition Precedent' set out in clause 3.1 of the Implementation Deed is fulfilled in accordance with the terms of the Implementation Deed.
- (b) **(Trust deed amendments)** The Receiving Trustee executes a deed of amendment to amend the Receiving Fund Trust Deed to create the Media Super Division which will confer on Transferring Members as at the Transfer Date, equivalent rights in the Receiving Fund to the rights that the Transferring Members had under the Transferring Fund in respect of Benefits.
- (c) **(Regulatory approvals)** All regulatory authorisations, approvals and consents as are required or reasonably necessary in connection with the transfer contemplated by this deed have been obtained.

4.2 Waiver

- (a) The Condition Precedent set out in clause 4.1(a) may be waived or varied in accordance with the terms of the Implementation Deed.
- (b) The Conditions Precedent set out in clauses 4.1(b) and (c) may only be waived or varied by both parties jointly.

5. Agreed matters

The parties agree to the additional conditions set out in Schedule 1 of this deed.

6. Indemnity

6.1 Indemnity

Subject to clauses 6.2, 6.3 and 7, the Receiving Trustee indemnifies out of the Transfer Assets each Indemnified Person against any Liability that may arise, or that may already have arisen, in connection with the Transferring Fund. Transferring Trustee holds the benefit of this indemnity on trust for each of the other Indemnified Persons.

6.2 Conditions on indemnity

The indemnity granted under clause 6.1:

- (a) is conditional upon the Transferring Trustee complying with clause 2.1;
- (b) is conditional upon the accuracy of the warranties provided under clause 9.1;
- (c) is conditional upon each Indemnified Person satisfying the requirements of clause 7;
- (d) does not extend to any Liability:
 - (i) which has been paid by another person;
 - (ii) for which the Indemnified Person would not have been entitled to be indemnified from the assets of the Transferring Fund had the successor fund transfer contemplated in this document not occurred; or
 - (iii) to the extent that an Indemnified Person receives payment in respect of Liability under an Indemnity Policy held by or in respect of an Indemnified Person;
- (e) is limited to the aggregate of:
 - (i) the aggregate account balances of the Transferring Members remaining in the Media Super Division; and
 - (ii) the value of the reserves transferred from the Transferring Trustee at the Transfer Date plus any increase or decrease in the value of those reserves as a result of investment earnings on the reserves and any addition to, or deductions from the reserves,

at the time at which the Receiving Trustee accepts responsibility (acting reasonably) for indemnification of a Liability under clause 6.1.

6.3 Limit on indemnity

For the avoidance of doubt, the limit under clause 6.2(e) is applied to the total of all claims under the indemnity. It is not applied to individual claims.

7. Liability

7.1 Liability

Each Indemnified Person must:

- (a) notify the Receiving Trustee promptly after becoming aware of a Liability;
- (b) provide the Receiving Trustee with evidence that the Receiving Trustee may reasonably require to substantiate a claim of a Liability by or against an Indemnified Person; and
- (c) to the extent that the Indemnified Person is claiming on the indemnity under clause 6.1 in respect of a Liability:
 - (i) upon the reasonable request of the Receiving Trustee, provide the Receiving Trustee with all reasonable assistance in dealing with (including the completion of any documentation required for processing the payment of the Liability) or defending the Liability;
 - (ii) take reasonable steps to mitigate the Liability; and
 - (iii) not admit responsibility for or settle any Liability or incur any defence costs in connection with a claim without first obtaining the written consent of the Receiving Trustee (with such consent not to be unreasonably withheld).

7.2 Indemnified Person must pursue rights under Indemnity Policy

Where a Liability is covered by an Indemnity Policy, each Indemnified Person must:

- (a) make no claim on the Receiving Trustee in respect of the Liability until it has first diligently pursued all of its rights under the Indemnity Policy, to the extent that a reasonable trustee

of a superannuation entity, in relation to which the Liability was incurred, and who did not have the benefit of the indemnity in clause 6, could be expected to do; and

- (b) not intentionally do anything or intentionally fail to do anything that might prejudice its rights under the Indemnity Policy in relation to that Liability.

7.3 Proceedings

In respect of the carriage of any Proceedings to which an Indemnified Person is a party, subject to the terms of any Indemnity Policy under which the Indemnified Person is being indemnified, each Indemnified Person:

- (a) may, upon the reasonable request of the Receiving Trustee, allow the Receiving Trustee to have the conduct of any such Proceedings in consultation with the Indemnified Person; and
- (b) if it allows the Receiving Trustee to have conduct of a defence pursuant to clause 7.3(a):
 - (i) the Receiving Trustee must:
 - (A) act in consultation with the Indemnified Person in relation to carriage of the Proceedings;
 - (B) provide the Indemnified Person with reasonable access to any documents and records relating directly to the Proceedings; and
 - (C) not admit responsibility for any Liability or settle any Proceedings without first obtaining the written consent of the Indemnified Person (with such consent not to be unreasonably withheld); and
 - (ii) the Indemnified Person must:
 - (A) if requested by the Receiving Trustee, execute any document which is reasonably necessary to conduct the defence (whether or not in its own name); and
 - (B) act in accordance with all reasonable directions and instructions of the Receiving Trustee in respect of matters concerning the Proceedings; and
- (c) if it does not allow the Receiving Trustee to have conduct of a defence pursuant to clause 7.3(a), the Indemnified Person must:
 - (i) act in consultation with the Receiving Trustee in relation to carriage of the Proceedings; and
 - (ii) provide the Receiving Trustee with reasonable access to any documents and records relating directly to the Proceedings.

8. Receiving Trustee's warranty

8.1 Warranty

The Receiving Trustee warrants that, as at the date of this document and at the Transfer Date:

- (a) it has provided the Transferring Trustee with a complete and up-to-date copy of the Receiving Fund Deed;
- (b) the Receiving Fund is a Complying Superannuation Fund;
- (c) the Receiving Trustee is not aware of any matter or circumstance which would materially affect the solvency of the Receiving Fund;
- (d) all information given by or on behalf of the Receiving Trustee to the Transferring Trustee (or to anyone acting on behalf of the Transferring Trustee) in the course of the Transferring Trustee's Due Diligence, and negotiations leading to this document, was given in good faith and was provided in accordance with the terms of the Due Diligence and Confidentiality Deed;
- (e) it is validly incorporated and existing under the laws of its place of incorporation; and

- (f) it has the power to authorise the execution, delivery and performance of this document in accordance with its terms, to perform its obligations under this document and to carry out the transactions that this document contemplates.

9. Transferring Trustee's warranty and indemnity

9.1 Warranty

The Transferring Trustee warrants that (as at the date of this document and at the Transfer Date):

- (a) it has provided the Receiving Trustee with a complete and up-to-date copy of the Transferring Fund Deed;
- (b) the Transferring Fund is a Complying Superannuation Fund;
- (c) the Transferring Trustee is not aware of any matter or circumstance which would materially affect the solvency of the Transferring Fund;
- (d) other than as disclosed in writing to the Receiving Trustee, the Transfer Assets will be sufficient to meet the total Benefits of the Transferring Members as at the Transfer Date;
- (e) all information given by or on behalf of the Transferring Trustee to the Receiving Trustee (or to anyone acting on behalf of the Receiving Trustee) in the course of the Receiving Trustee's Due Diligence, and negotiations leading to this document, was given in good faith and was provided in accordance with the terms of the Due Diligence and Confidentiality Deed;
- (f) it is validly incorporated and existing under the laws of its place of incorporation; and
- (g) it has the power to authorise the execution, delivery and performance of this document in accordance with its terms, to perform its obligations under this document and to carry out the transactions that this document contemplates.

10. Continuation of insurance by the Transferring Trustee

- (a) The Transferring Trustee represents and warrants to the Receiving Trustee that, subject to availability and the cost being commercially acceptable to the Transferring Trustee (acting in good faith and reasonably), the Transferring Trustee will obtain an Indemnity Policy to cover the Indemnified Persons for a period of seven years from the Transfer Date on terms no less favourable than that currently provided to the Transferring Trustee and its directors and officers. In the event that the Transferring Trustee does not obtain an Indemnity Policy on the terms set out in this clause, the parties agree to consult in good faith in accordance with the Implementation Deed on alternative arrangements that may be put in place.
- (b) The Transferring Trustee will:
 - (i) at the request of the Receiving Trustee, provide the Receiving Trustee with a certificate of currency in respect of, and a copy of the Indemnity Policy on a strictly confidential basis; and
 - (ii) promptly notify the Receiving Trustee if it becomes aware that an Indemnified Person is no longer entitled to cover under an Indemnity Policy.
- (c) Nothing in this document shall in any way affect the Transferring Trustee's rights at law or in equity in relation to the assets of the Transferring Fund.

11. Confidential Information

The parties agree that clause 9 (Confidentiality and Public Communications) of the Implementation Deed applies as if set out in full in this document (*mutatis mutandis*).

12. Death and disablement insurance

- (a) The parties agree that, with effect from the Transfer Date, the Receiving Trustee will be responsible for:
- (i) administering (including lodging and pursuing) any insurance claim;
 - (ii) determining; and
 - (iii) (if determined to be payable) paying any insurance claim which is accepted by an insurer,
- where such claim arises from an event which occurred before, on or after the Transfer Date by or in respect of a Transferring Member.
- (b) From the Transfer Date, insurance cover under the Current Death and Disablement Policy in respect of the Transferring Members will cease and Transferring Members in the Receiving Fund will be covered under the New Death and Disablement Policy.
- (c) Both the Transferring Trustee and the Receiving Trustee acknowledge that they have received advice from Hannover Re and TAL Life, respectively, that it will abide by the group insurance takeover terms set out in FSC Guidance Note No. 11 in respect of the transfer of the insured benefits of the Transferring Members.
- (d) For the purposes of this clause 12 and with effect from the Transfer Date, the Transferring Trustee hereby assigns to the Receiving Trustee any rights and benefits that the Transferring Trustee has in relation to the Current Death and Disablement Policy or any other policy of death and disablement insurance held in respect of the Transferring Fund at any time on or before the Transfer Date.

13. Termination

13.1 Termination of document

- (a) The document cannot be terminated after the Transfer Date.
- (b) Prior to the Transfer Date, this document may be terminated on the earliest of:
- (i) either party giving notice to the other in the event that the Conditions Precedent are not satisfied in accordance with this document on or before the Drop Dead Date;
 - (ii) the date on which the parties agree in writing to terminate this document;
 - (iii) where a party fails to maintain its RSE licence or the date on which APRA cancels a party's RSE licence; or
 - (iv) the termination of the Implementation Deed.
- (c) If this document is terminated prior to the Transfer Date under clauses 13.1(b)(i), (ii) or (iii), the parties agree that the Implementation Deed will automatically terminate with effect on the same date as this document is terminated.

13.2 Effect of termination

- (a) If this document is terminated, then in addition to any other rights or remedies provided by law:
- (i) each party is released from its obligations under this document; and
 - (ii) each party retains any rights, entitlements or remedies it has accrued before termination.

13.3 Communications following termination

If this document is terminated (on any basis), the parties will negotiate in good faith to agree on appropriate public communications in relation to the termination.

14. General

14.1 Further assurance

Each party to this document agrees to do everything reasonably necessary to give effect to this document at its own expense, and on the request of another party.

14.2 Waiver and variation

A provision of, or a right created under, this document may not be:

- (a) waived, except in writing, by the party granting the waiver; or
- (b) varied, except in writing, signed by each party to this document.

14.3 Amendment

This document can only be amended, supplemented or replaced by another deed signed by the Transferring Trustee and the Receiving Trustee.

14.4 Rights cumulative

Subject to any express provision in this document to the contrary, the rights of a party under this document are cumulative and are in addition to any other rights of that party.

14.5 Entire agreement

This document embodies the entire understanding and agreement between the parties as to the subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

14.6 Counterparts

This document may be signed in any number of counterparts and all those counterparts together make one instrument.

14.7 Attorneys

Each person who executes this document on behalf of a party to this document under a power of attorney declares that he or she is not aware of any fact or circumstance that might be able to affect his or her authority to execute this document under that power of attorney.

14.8 Governing law

- (a) This document is governed by the law in force in Victoria.
- (b) Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Victoria.

14.9 Survival

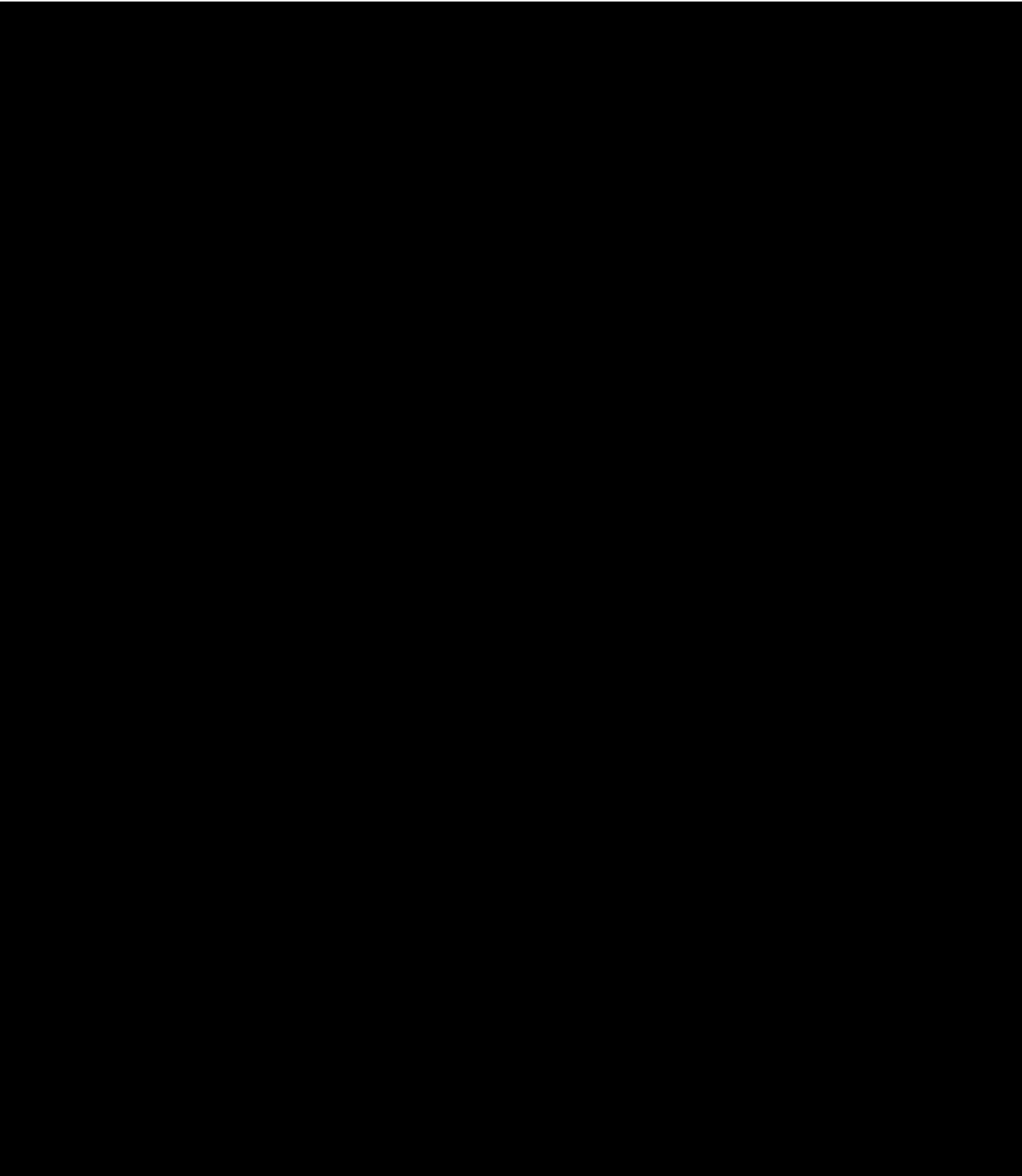
Without limiting anything else in this document:

- (a) clauses 2.1(b), 2.2, 2.3, 3(b), 4 to 12 and 14, and any other clause which by implication survives the Transfer shall survive the Transfer; and
- (b) clauses 11, 13.2, 13.3 and 14 and any other clause which by implication survives termination of this document shall survive termination of this document.

14.10 Other provisions from Implementation Deed

The parties agree that clauses 14 (GST), 15 (Capacity and Liability) 16 (Dispute Resolution), 17.3 (Assignment), 17.5 (Legal Relationship) and 17.13 (Electronic Signatures) of the Implementation Deed apply as if set out in full in this document (*mutatis mutandis*).

Schedule 1 – Additional Conditions



Signing page

EXECUTED as a deed.

Executed by Media Super Limited (ABN 30 059 502 948) in accordance with Section 127 of the *Corporations Act 2001*

Signature of director

Signature of director/company secretary
(Please delete as applicable)

Name of director (print)

Name of director/company secretary (print)

Executed for and on behalf of United Super Pty Limited (ABN 46 006 261 623) as Trustee for the **Construction & Building Unions Superannuation Fund (ABN 75 493 363 262)** by its duly appointed attorneys, who declare that they have no notice of revocation of the power of attorney dated 15 June 2017 pursuant to which they were appointed:

Signature of Attorney

Signature of Attorney

Print Name

Print Name



Deed of Transfer

—
Media Super Limited (**Transferring Trustee**)
United Super Pty Limited (**Receiving Trustee**)
—

Level 40 Governor Macquarie Tower 1 Farrer Place
Sydney NSW 2000 Australia DX 117 Sydney
T +61 2 9921 8888 F +61 2 9921 8123
minterellison.com

MinterEllison

Deed of transfer

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Details

Date 29 July 2021

Parties

Name	Media Super Limited
ABN	30 059 502 948
Short form name	Transferring Trustee
Notice details	Level 22, 130 Lonsdale Street Melbourne Victoria 3000

Name	United Super Pty Limited
ABN	46 006 261 623
Short form name	Receiving Trustee
Notice details	Level 19, 130 Lonsdale Street Melbourne Victoria 3000

Background

- A The Media Super (**Transferring Fund**) was established by a trust deed dated 28 January 1981 (as amended from time to time) (**Transferring Fund Deed**).
- B The Transferring Trustee is the trustee of the Transferring Fund, for the time being.
- C Construction & Building Unions Superannuation (Registrable Superannuation Entity (RSE) No. R1000979) (**Receiving Fund**) was established by a trust deed dated 27 July 1984 (as amended from time to time) (**Receiving Fund Deed**).
- D The Receiving Trustee is the trustee of the Receiving Fund, for the time being.
- E Under clause 14.2 of the Transferring Fund Deed, the Transferring Trustee may transfer any moneys or assets comprising the benefit of a Beneficiary (as defined in the Transferring Fund Deed) to a Benefit Arrangement (as defined in the Transferring Fund Deed) without the consent of the Member.
- F Under clause 4.11 of the Receiving Fund Deed, the Receiving Trustee may accept into the Receiving Fund moneys or assets transferred to the Receiving Fund by way of a successor fund transfer.
- G SIS Regulation 6.29 prohibits the trustee of a superannuation fund from transferring a member's benefits from the fund without the member's consent unless, among other things, the transfer is to a 'successor fund' (within the meaning of that expression in SIS Regulation 1.03).
- H It is proposed that:
 - (i) The Transferring Trustee transfers the assets representing the Benefits of each Transferring Member to the Receiving Fund without the consent of the Transferring Member; and
 - (ii) for this purpose, the Receiving Fund be a successor fund in relation to the Transferring Fund (within the meaning of SIS Regulation 1.03).

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

The following definitions apply in this document, unless a contrary intention appears:

AFCA means the Australian Financial Complaints Authority.

Benefits, in respect of a Transferring Member, means his or her benefit entitlement in the Transferring Fund as calculated by the Transferring Trustee in accordance with the Transferring Fund Deed as at the Transfer Date.

Complying Superannuation Fund has the meaning given to it in the SIS Act.

Current Death and Disablement Policy means the group life and salary continuance policy, held by the Transferring Trustee with Hannover Re.

Drop Dead Date means 7 days before the Transfer Date.

Due Diligence has the meaning provided in the Implementation Deed.

Due Diligence and Confidentiality Deed means the Due Diligence and Confidentiality Deed between the parties dated 25 September 2020.

Hannover Re means Hannover Life Re of Australasia Ltd (ABN 37 062 395 484).

Implementation Deed means the Implementation Deed entered into by the Transferring Trustee and the Receiving Trustee on 26 February 2021 (as amended from time to time).

Indemnified Person means:

- (a) the Transferring Trustee; and
- (b) any director or officer of the Transferring Trustee.

Indemnity Policy means:

- (a) any policy of trustee indemnity insurance held by the Transferring Trustee under which an Indemnified Person is or was covered for a Liability; and
- (b) a policy of trustee indemnity 'run-off' insurance covering an Indemnified Person.

Liability means any costs, charges, damages, expenses and any other liability (including any liability to taxation or other Government impost, legal costs and expenses on a full indemnity basis and winding-up costs) and any other claims, demands, causes of action or proceedings.

Media Super Division means the newly created division of the Receiving Fund.

New Death and Disablement Policy means the group life and salary continuance policy, held by the Receiving Trustee with TAL Life.

Proceedings means any legal proceedings commenced in a court, commission or tribunal in Australia (at State or Federal level) or outside of Australia (including, without limitation, any class actions, complaints lodged with AFCA and proceedings before the Fair Work Commission).

RSE licence has the meaning provided under the SIS Act.

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

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

TAL Life means TAL Life Limited (ABN 70 050 109 450).

Tax means any tax of any nature lawfully imposed including but not limited to income tax, goods and services tax, recoupment tax, land tax, sales tax, payroll tax, fringe benefits tax, group tax, capital gains tax, profit tax, interest tax, property tax, undistributed profits tax, withholding tax, municipal rates, financial institutions duty, bank account debit tax, stamp duty and any other tax, charge, duty or levy assessed or charged or assessable or chargeable by or payable to any

national, federal, state or municipal authority and includes any interest, related cost and expense, fee or penalty imposed in connection with any tax, rate, duty, charge or levy.

Transfer means the transfer of the Transferring Members and the Transfer Assets to the Receiving Fund contemplated under clause 2, in accordance with this document.

Transfer Assets means all of the assets of the Transferring Fund and **Transfer Asset** means any asset of the Transferring Fund.

Transfer Date means 11:59pm on 11 April 2022 or any other date agreed by the parties.

Transferring Member means each beneficiary of the Transferring Fund at the Transfer Date.

Transferring Records means the documents and records of all kinds of the Transferring Trustee as at the Transfer Date, as agreed by the parties.

1.2 Interpretation

The following rules apply to the interpretation of this document, except where the context makes it clear that a rule is not intended to apply:

(a) **(rules of interpretation):**

- (i) other parts of speech and grammatical forms of a defined word or expression have corresponding meaning;
- (ii) a reference to one gender includes the other gender;
- (iii) a reference to the singular includes the plural and vice versa;
- (iv) a reference to a person includes a natural person, body corporate, partnership, joint venture, association or authority;
- (v) a reference to a party includes the party's executors, administrators, successors, substitutes (including, without limitation, any persons taking by novation) and permitted assigns;
- (vi) a reference to conduct includes a reference to any omission, statement or undertaking, whether or not in writing;
- (vii) a reference to this document or another instrument includes a reference to any replacement, variation or novation of it;
- (viii) a reference to anything (including, without limitation, any amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;
- (ix) a reference to any legislation or law or to any provision of any legislation or law includes a reference to any regulations, modifications, declarations and other instruments issued under them and any consolidation, amendment, substitution or re-enactment of any of them;
- (x) headings are for convenience only and do not affect interpretation; and
- (xi) the use of the word '*including*' in a provision when introducing a list of items does not limit that provision to that list or to items of a similar nature and does not exclude a reference to other items of the same class;

(b) **(exercise of powers)** subject to any provision of this document to the contrary, a person, in the exercise of that person's powers, has an absolute discretion and may from time to time:

- (i) exercise and enforce all or any such powers; and
- (ii) refrain from exercising or otherwise not exercise all or any such powers; and

(c) **(severance)** to the extent that any provision, or part of a provision, of this document infringes the law or is invalid for any other reason whatsoever:

- (i) that provision, or part, must be read down, changed, construed or severed to avoid such infringement or invalidity; and
- (ii) to the extent that such infringement or invalidity cannot be avoided, the provision, or part, will be of no effect and will not affect the remainder of this document.

2. Transfer from Transferring Fund to the Receiving Fund

2.1 Transferring Trustee's obligations

- (a) Subject to clause 4, the Transferring Trustee must:
 - (i) transfer all assets of the Transferring Fund on, or as soon as practicable after, the Transfer Date and in any event by 30 June in the same financial year as the Transfer Date; and
 - (ii) provide the Receiving Trustee with all Transferring Records and information that the Receiving Trustee may reasonably require in order to enable the Receiving Trustee to verify the correctness of the calculation of each Transferring Member's Benefits on the Transfer Date and in order to meet its obligations under this document.
- (b) The Transferring Trustee will not wind up or deregister as a corporation for a period of not less than seven years from the Transfer Date without first obtaining the prior consent of the Receiving Trustee, such consent not to be unreasonably withheld.

2.2 Receiving Trustee's obligations

In consideration of the Transferring Trustee transferring the Benefits of the Transferring Members and the Transfer Assets from the Transferring Fund to the Receiving Fund in accordance with this document, the Receiving Trustee agrees with the Transferring Trustee that the Receiving Trustee will:

- (a) subject to clause 4, admit all the Transferring Members as members of the Receiving Fund with effect from the Transfer Date; and
- (b) subject to clauses 4, 5, 6, 7, 9 and 12 (to the extent relevant to the operation of this clause), assume and discharge the Liabilities of the Transferring Fund and liability for the payment of Benefits (excluding liability for the payment of insured death and disablement benefits) to or in respect of each Transferring Member (whether liability for the payment of such Benefits arises in the Transferring Fund or the Receiving Fund before, on or after the Transfer Date) on the terms and conditions and to the extent set out in the Receiving Fund Deed.

2.3 Contingent or unascertainable assets and liabilities as at Transfer Date

- (a) The parties acknowledge that:
 - (i) the effect of this document is to transfer all Transferring Members and associated liabilities of the Transferring Fund, and the legal or beneficial ownership of all of the Transfer Assets, to the Receiving Trustee at the Transfer Date; and
 - (ii) all efforts will be made to identify all of the Transferring Members and associated liabilities of the Transferring Fund, and the Transfer Assets, as at the Transfer Date, including amounts which may be or become payable by, or payable to, the Transferring Trustee, may be contingent or otherwise unascertainable at that time.
- (b) Despite any other provision of this deed, the parties acknowledge that:
 - (i) the transfer of the legal title to all of the Transfer Assets may not be completed on the Transfer Date; and
 - (ii) if the transfer of all legal title to a Transfer Asset is not completed on the Transfer Date, that legal title is held on bare trust by the Transferring Trustee for the Receiving Trustee.

- (c) The parties agree to co-operate to ensure that the transfer of legal title, to the extent required, is effected as soon as reasonably practicable after the Transfer Date, and in any event by 30 June in the same financial year as the Transfer Date.

3. Successor fund

- (a) The purposes of this clause 3 is to ensure that the Receiving Fund is treated as a 'successor fund' for the purposes of SIS Regulation 6.29 in relation to the transfer of the Benefits of each Transferring Member to the Receiving Fund.
- (b) The Receiving Trustee and the Transferring Trustee agree that, with effect on and from the Transfer Date, the Receiving Fund will confer on each Transferring Member equivalent rights to the rights that the Transferring Member had under the Transferring Fund in respect of his or her Benefits.

4. Conditions precedent

4.1 Conditions precedent

The transfer of the Transferring Members and the Transfer Assets to the Receiving Fund under clause 2 will not proceed unless on or before the Transfer Date, all the following conditions (the **Conditions Precedent**) are satisfied:

- (a) **(Implementation Deed)** Each 'Condition Precedent' set out in clause 3.1 of the Implementation Deed is fulfilled in accordance with the terms of the Implementation Deed.
- (b) **(Trust deed amendments)** The Receiving Trustee executes a deed of amendment to amend the Receiving Fund Trust Deed to create the Media Super Division which will confer on Transferring Members as at the Transfer Date, equivalent rights in the Receiving Fund to the rights that the Transferring Members had under the Transferring Fund in respect of Benefits.
- (c) **(Regulatory approvals)** All regulatory authorisations, approvals and consents as are required or reasonably necessary in connection with the transfer contemplated by this deed have been obtained.

4.2 Waiver

- (a) The Condition Precedent set out in clause 4.1(a) may be waived or varied in accordance with the terms of the Implementation Deed.
- (b) The Conditions Precedent set out in clauses 4.1(b) and (c) may only be waived or varied by both parties jointly.

5. Agreed matters

The parties agree to the additional conditions set out in Schedule 1 of this deed.

6. Indemnity

6.1 Indemnity

Subject to clauses 6.2, 6.3 and 7, the Receiving Trustee indemnifies out of the Transfer Assets each Indemnified Person against any Liability that may arise, or that may already have arisen, in connection with the Transferring Fund. Transferring Trustee holds the benefit of this indemnity on trust for each of the other Indemnified Persons.

6.2 Conditions on indemnity

The indemnity granted under clause 6.1:

- (a) is conditional upon the Transferring Trustee complying with clause 2.1;
- (b) is conditional upon the accuracy of the warranties provided under clause 9.1;
- (c) is conditional upon each Indemnified Person satisfying the requirements of clause 7;
- (d) does not extend to any Liability:
 - (i) which has been paid by another person;
 - (ii) for which the Indemnified Person would not have been entitled to be indemnified from the assets of the Transferring Fund had the successor fund transfer contemplated in this document not occurred; or
 - (iii) to the extent that an Indemnified Person receives payment in respect of Liability under an Indemnity Policy held by or in respect of an Indemnified Person;
- (e) is limited to the aggregate of:
 - (i) the aggregate account balances of the Transferring Members remaining in the Media Super Division; and
 - (ii) the value of the reserves transferred from the Transferring Trustee at the Transfer Date plus any increase or decrease in the value of those reserves as a result of investment earnings on the reserves and any addition to, or deductions from the reserves,

at the time at which the Receiving Trustee accepts responsibility (acting reasonably) for indemnification of a Liability under clause 6.1.

6.3 Limit on indemnity

For the avoidance of doubt, the limit under clause 6.2(e) is applied to the total of all claims under the indemnity. It is not applied to individual claims.

7. Liability

7.1 Liability

Each Indemnified Person must:

- (a) notify the Receiving Trustee promptly after becoming aware of a Liability;
- (b) provide the Receiving Trustee with evidence that the Receiving Trustee may reasonably require to substantiate a claim of a Liability by or against an Indemnified Person; and
- (c) to the extent that the Indemnified Person is claiming on the indemnity under clause 6.1 in respect of a Liability:
 - (i) upon the reasonable request of the Receiving Trustee, provide the Receiving Trustee with all reasonable assistance in dealing with (including the completion of any documentation required for processing the payment of the Liability) or defending the Liability;
 - (ii) take reasonable steps to mitigate the Liability; and
 - (iii) not admit responsibility for or settle any Liability or incur any defence costs in connection with a claim without first obtaining the written consent of the Receiving Trustee (with such consent not to be unreasonably withheld).

7.2 Indemnified Person must pursue rights under Indemnity Policy

Where a Liability is covered by an Indemnity Policy, each Indemnified Person must:

- (a) make no claim on the Receiving Trustee in respect of the Liability until it has first diligently pursued all of its rights under the Indemnity Policy, to the extent that a reasonable trustee

- of a superannuation entity, in relation to which the Liability was incurred, and who did not have the benefit of the indemnity in clause 6, could be expected to do; and
- (b) not intentionally do anything or intentionally fail to do anything that might prejudice its rights under the Indemnity Policy in relation to that Liability.

7.3 Proceedings

In respect of the carriage of any Proceedings to which an Indemnified Person is a party, subject to the terms of any Indemnity Policy under which the Indemnified Person is being indemnified, each Indemnified Person:

- (a) may, upon the reasonable request of the Receiving Trustee, allow the Receiving Trustee to have the conduct of any such Proceedings in consultation with the Indemnified Person; and
- (b) if it allows the Receiving Trustee to have conduct of a defence pursuant to clause 7.3(a):
 - (i) the Receiving Trustee must:
 - (A) act in consultation with the Indemnified Person in relation to carriage of the Proceedings;
 - (B) provide the Indemnified Person with reasonable access to any documents and records relating directly to the Proceedings; and
 - (C) not admit responsibility for any Liability or settle any Proceedings without first obtaining the written consent of the Indemnified Person (with such consent not to be unreasonably withheld); and
 - (ii) the Indemnified Person must:
 - (A) if requested by the Receiving Trustee, execute any document which is reasonably necessary to conduct the defence (whether or not in its own name); and
 - (B) act in accordance with all reasonable directions and instructions of the Receiving Trustee in respect of matters concerning the Proceedings; and
- (c) if it does not allow the Receiving Trustee to have conduct of a defence pursuant to clause 7.3(a), the Indemnified Person must:
 - (i) act in consultation with the Receiving Trustee in relation to carriage of the Proceedings; and
 - (ii) provide the Receiving Trustee with reasonable access to any documents and records relating directly to the Proceedings.

8. Receiving Trustee's warranty

8.1 Warranty

The Receiving Trustee warrants that, as at the date of this document and at the Transfer Date:

- (a) it has provided the Transferring Trustee with a complete and up-to-date copy of the Receiving Fund Deed;
- (b) the Receiving Fund is a Complying Superannuation Fund;
- (c) the Receiving Trustee is not aware of any matter or circumstance which would materially affect the solvency of the Receiving Fund;
- (d) all information given by or on behalf of the Receiving Trustee to the Transferring Trustee (or to anyone acting on behalf of the Transferring Trustee) in the course of the Transferring Trustee's Due Diligence, and negotiations leading to this document, was given in good faith and was provided in accordance with the terms of the Due Diligence and Confidentiality Deed;
- (e) it is validly incorporated and existing under the laws of its place of incorporation; and

- (f) it has the power to authorise the execution, delivery and performance of this document in accordance with its terms, to perform its obligations under this document and to carry out the transactions that this document contemplates.

9. Transferring Trustee's warranty and indemnity

9.1 Warranty

The Transferring Trustee warrants that (as at the date of this document and at the Transfer Date):

- (a) it has provided the Receiving Trustee with a complete and up-to-date copy of the Transferring Fund Deed;
- (b) the Transferring Fund is a Complying Superannuation Fund;
- (c) the Transferring Trustee is not aware of any matter or circumstance which would materially affect the solvency of the Transferring Fund;
- (d) other than as disclosed in writing to the Receiving Trustee, the Transfer Assets will be sufficient to meet the total Benefits of the Transferring Members as at the Transfer Date;
- (e) all information given by or on behalf of the Transferring Trustee to the Receiving Trustee (or to anyone acting on behalf of the Receiving Trustee) in the course of the Receiving Trustee's Due Diligence, and negotiations leading to this document, was given in good faith and was provided in accordance with the terms of the Due Diligence and Confidentiality Deed;
- (f) it is validly incorporated and existing under the laws of its place of incorporation; and
- (g) it has the power to authorise the execution, delivery and performance of this document in accordance with its terms, to perform its obligations under this document and to carry out the transactions that this document contemplates.

10. Continuation of insurance by the Transferring Trustee

- (a) The Transferring Trustee represents and warrants to the Receiving Trustee that, subject to availability and the cost being commercially acceptable to the Transferring Trustee (acting in good faith and reasonably), the Transferring Trustee will obtain an Indemnity Policy to cover the Indemnified Persons for a period of seven years from the Transfer Date on terms no less favourable than that currently provided to the Transferring Trustee and its directors and officers. In the event that the Transferring Trustee does not obtain an Indemnity Policy on the terms set out in this clause, the parties agree to consult in good faith in accordance with the Implementation Deed on alternative arrangements that may be put in place.
- (b) The Transferring Trustee will:
 - (i) at the request of the Receiving Trustee, provide the Receiving Trustee with a certificate of currency in respect of, and a copy of the Indemnity Policy on a strictly confidential basis; and
 - (ii) promptly notify the Receiving Trustee if it becomes aware that an Indemnified Person is no longer entitled to cover under an Indemnity Policy.
- (c) Nothing in this document shall in any way affect the Transferring Trustee's rights at law or in equity in relation to the assets of the Transferring Fund.

11. Confidential Information

The parties agree that clause 9 (Confidentiality and Public Communications) of the Implementation Deed applies as if set out in full in this document (*mutatis mutandis*).

12. Death and disablement insurance

- (a) The parties agree that, with effect from the Transfer Date, the Receiving Trustee will be responsible for:
 - (i) administering (including lodging and pursuing) any insurance claim;
 - (ii) determining; and
 - (iii) (if determined to be payable) paying any insurance claim which is accepted by an insurer,where such claim arises from an event which occurred before, on or after the Transfer Date by or in respect of a Transferring Member.
- (b) From the Transfer Date, insurance cover under the Current Death and Disablement Policy in respect of the Transferring Members will cease and Transferring Members in the Receiving Fund will be covered under the New Death and Disablement Policy.
- (c) Both the Transferring Trustee and the Receiving Trustee acknowledge that they have received advice from Hannover Re and TAL Life, respectively, that it will abide by the group insurance takeover terms set out in FSC Guidance Note No. 11 in respect of the transfer of the insured benefits of the Transferring Members.
- (d) For the purposes of this clause 12 and with effect from the Transfer Date, the Transferring Trustee hereby assigns to the Receiving Trustee any rights and benefits that the Transferring Trustee has in relation to the Current Death and Disablement Policy or any other policy of death and disablement insurance held in respect of the Transferring Fund at any time on or before the Transfer Date.

13. Termination

13.1 Termination of document

- (a) The document cannot be terminated after the Transfer Date.
- (b) Prior to the Transfer Date, this document may be terminated on the earliest of:
 - (i) either party giving notice to the other in the event that the Conditions Precedent are not satisfied in accordance with this document on or before the Drop Dead Date;
 - (ii) the date on which the parties agree in writing to terminate this document;
 - (iii) where a party fails to maintain its RSE licence or the date on which APRA cancels a party's RSE licence; or
 - (iv) the termination of the Implementation Deed.
- (c) If this document is terminated prior to the Transfer Date under clauses 13.1(b)(i), (ii) or (iii), the parties agree that the Implementation Deed will automatically terminate with effect on the same date as this document is terminated.

13.2 Effect of termination

- (a) If this document is terminated, then in addition to any other rights or remedies provided by law:
 - (i) each party is released from its obligations under this document; and
 - (ii) each party retains any rights, entitlements or remedies it has accrued before termination.

13.3 Communications following termination

If this document is terminated (on any basis), the parties will negotiate in good faith to agree on appropriate public communications in relation to the termination.

14. General

14.1 Further assurance

Each party to this document agrees to do everything reasonably necessary to give effect to this document at its own expense, and on the request of another party.

14.2 Waiver and variation

A provision of, or a right created under, this document may not be:

- (a) waived, except in writing, by the party granting the waiver; or
- (b) varied, except in writing, signed by each party to this document.

14.3 Amendment

This document can only be amended, supplemented or replaced by another deed signed by the Transferring Trustee and the Receiving Trustee.

14.4 Rights cumulative

Subject to any express provision in this document to the contrary, the rights of a party under this document are cumulative and are in addition to any other rights of that party.

14.5 Entire agreement

This document embodies the entire understanding and agreement between the parties as to the subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

14.6 Counterparts

This document may be signed in any number of counterparts and all those counterparts together make one instrument.

14.7 Attorneys

Each person who executes this document on behalf of a party to this document under a power of attorney declares that he or she is not aware of any fact or circumstance that might be able to affect his or her authority to execute this document under that power of attorney.

14.8 Governing law

- (a) This document is governed by the law in force in Victoria.
- (b) Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Victoria.

14.9 Survival

Without limiting anything else in this document:

- (a) clauses 2.1(b), 2.2, 2.3, 3(b), 4 to 12 and 14, and any other clause which by implication survives the Transfer shall survive the Transfer; and
- (b) clauses 11, 13.2, 13.3 and 14 and any other clause which by implication survives termination of this document shall survive termination of this document.

14.10 Other provisions from Implementation Deed

The parties agree that clauses 14 (GST), 15 (Capacity and Liability) 16 (Dispute Resolution), 17.3 (Assignment), 17.5 (Legal Relationship) and 17.13 (Electronic Signatures) of the Implementation Deed apply as if set out in full in this document (*mutatis mutandis*).

- [illegible]

Signing page

EXECUTED as a deed.

Executed by **Media Super Limited (ABN 30 059 502 948)** in accordance with Section 127 of the *Corporations Act 2001*

Signature of director

Name of director (print)

Signature of director/company secretary
(Please delete as applicable)

Name of director/company secretary (print)

Executed for and on behalf of **United Super Pty Limited (ABN 46 006 261 623)** as Trustee for the **Construction & Building Unions Superannuation Fund (ABN 75 493 363 262)** by its duly appointed attorneys, who declare that they have no notice of revocation of the power of attorney dated 15 June 2017 pursuant to which

[REDACTED]

Print Name

[REDACTED]

Print Name