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Date..... 7/4/17

Signed..... 

Name..... NMANC



## Deed of Retirement and Appointment

**Diversa Trustees Limited**  
ABN 49 006 421 638  
(Retiring Trustee)

**Equity Trustees Superannuation Limited**  
ABN 50 055 641 757  
(New Trustee)

**Acclaim Management Group Pty Ltd**  
ABN 52 091 082 058  
(AMG)

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## Deed of Retirement and Appointment

Dated 23 / 2 / 2017

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### Parties

Name	<b>Diversa Trustees Limited</b>
ABN	49 006 421 638
Short name	<b>Retiring Trustee</b>

Name	<b>Equity Trustees Superannuation Limited</b>
ABN	50 055 641 757
Short name	<b>New Trustee</b>

Name	<b>Acclaim Management Group Pty Ltd</b>
ABN	52 091 082 058
Short name	<b>AMG</b>

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### Background

- A. The Fund is governed by the Trust Deed.
- B. The Retiring Trustee is the current trustee of the Fund.
- C. The New Trustee has experience as trustee of superannuation funds, and holds an RSE Licence appropriate for the New Trustee becoming trustee of the Fund.
- D. Clause 9.4(d) of the Trust Deed provides that the trustee of the Fund ceases to be the trustee if the trustee retires after appointing its replacement.
- E. Clause 9.5(d) of the Trust Deed provides that, if the trustee resigns from its office as trustee, then the trustee will appoint, by deed, a replacement trustee that has been nominated by AMG which nominee must be a constitutional corporation and, if required by law, an "approved trustee" (as defined in the SIS Act).
- F. The Retiring Trustee wishes, pursuant to Clause 9.4 of the Trust Deed, to retire as trustee of the Fund.
- G. AMG hereby nominates the New Trustee to be appointed as the replacement trustee by the Retiring Trustee in accordance with Clause 9.5 of the Trust Deed.
- H. The New Trustee consents to being appointed as trustee of the Fund, on the terms set out in this Deed.

## This Deed witnesses

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### 1. Definitions

In this Deed:

**APRA** means the Australian Prudential Regulation Authority.

**Assets** means the assets of the Fund.

**Business Day** means any day that is not a Saturday, Sunday, gazetted public holiday or bank holiday in Melbourne, and concludes at 5pm on that day.

**Defence Costs** means expenses, costs and charges (including legal costs) incurred by or on behalf of a Retiring Trustee Indemnified Person in the investigation, defence or settlement of any action, suit or proceedings in connection with a claim for or in relation to the Fund including, but not limited to, a complaint lodged with the Financial Ombudsman Service.

**Effective Time** means 12:01am on the next business day after which all conditions precedent in clause 6 have been met or such other later date agreed in writing by the parties.

**Fund** means AMG Super.

**Fund Liabilities** means all costs (including, but not limited to, Defence Costs), losses, charges, damages, expenses and any other liability (including any liability for taxation or other government impost) of the Retiring Trustee Indemnified Persons arising from any claim, demand, cause of action or proceeding relating to the Fund or the Retiring Trustee's management and administration of the Fund, but not including any liabilities:

- (a) which have been agreed in writing to be paid by a third party; or
- (b) for which the Retiring Trustee would not have been entitled to indemnification out of the Assets under the Trust Deed or under the Relevant Law.

**Indemnity Policy** means a trustee indemnity insurance policy or any other insurance policy maintained by or for the Retiring Trustee in respect of its trusteeship of the Fund, including, as applicable, a policy that provides 'run-off' trustee indemnity insurance cover in respect of the Fund.

**New Trustee Indemnified Person** means:

- (a) the New Trustee;
- (b) all directors, officers and employees of the New Trustee as at the Effective Time; and
- (c) all previous directors, officers and employees of the New Trustee as at the Effective Time.

**Regulators** means APRA, the Australian Securities and Investments Commission, the Australian Taxation Office, AUSTRAC and any other government authority responsible for administering the Relevant Law.

**Relevant Law** means the SIS Act, the Superannuation Industry (Supervision) Regulations, the Corporations Act 2001, the Corporations Regulations, the Income Tax Assessment Act 1997, the Income Tax Assessment Regulations, the Anti-Money Laundering and Counter

Terrorism Financing Act 2006, the Bankruptcy Act 1966 and any other applicable Act, regulation or other lawful requirement (as amended from time to time) with which the trustee or the Fund must comply (whether to avoid breaching the relevant Act, regulation or other lawful requirement or to qualify for tax or other concessions).

**Retiring Trustee Indemnified Person** means:

- (a) the Retiring Trustee;
- (b) all directors, officers and employees of the Retiring Trustee as at the Effective Time; and
- (c) all previous directors, officers and employees of the Retiring Trustee as at the Effective Time.

**RSE Licence** has the meaning given in the SIS Act.

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

**Trust Deed** means the trust deed governing the Fund dated 12 May 2000 (as amended from time to time).

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## **2. Interpretation**

In this Deed, except where the context otherwise requires:

- 2.1 the singular includes the plural and vice versa, and a gender includes the other gender;
- 2.2 another grammatical form of a defined word or expression has a corresponding meaning;
- 2.3 a reference to a Clause, paragraph or schedule is to a Clause, paragraph or schedule of this Deed, and a reference to this Deed includes from time to time;
- 2.4 a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- 2.5 a reference to time is to Melbourne, Australia time;
- 2.6 a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- 2.7 a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this agreement or any part of it; and
- 2.8 if a day or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

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## **3. Nomination and Appointment of New Trustee**

- 3.1 For the purposes of Clause 9.5(d) of the Trust Deed, AMG hereby nominates the New Trustee to be the replacement trustee upon the retirement of the Retiring Trustee as trustee of the Fund and the New Trustee hereby consents to be appointed trustee of the Fund on and from the Effective Date.

- 3.2 In accordance with Clause 9.5(d) of the Trust Deed the Retiring Trustee hereby appoints the New Trustee as trustee of the Fund with effect on and from the Effective Time.

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**4. Retirement of Retiring Trustee**

In accordance with Clause 9.4(d) of the Trust Deed the Retiring Trustee hereby retires as trustee of the Fund immediately after the appointment of the New Trustee on and from the Effective Time.

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**5. Conditions Precedent**

Clauses 4 and 5 of this Deed do not become binding on the parties until each of the following conditions have been met or they have been waived by the Retiring Trustee:

- 5.1 The New Trustee obtains an Indemnity Policy at its own expense to cover the Retiring Trustee from any Fund Liabilities arising within 7 year of the date of retirement of the Retiring Trustee and provides a copy to the Retiring Trustee;
- 5.2 The New Trustee and AMG agree on a Promoter Agreement on similar terms as those between the Retiring Trustee and AMG.;
- 5.3 The New Trustee obtains approval from APRA for a MySuper authorisation for the Fund;
- 5.4 The parties agree on the terms of novation for all material contracts of the Fund;
- 5.5 The Retiring Trustee is provided with completed instruments of transfer for each of the Fund assets and insurance policies.

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**6. New Trustee: Warranties and Undertakings**

The New Trustee:

- 6.1 warrants and represents to the Retiring Trustee that:
- 6.1.1 it is a 'constitutional corporation' (within the meaning of the Relevant Law);
- 6.1.2 it is the holder of an RSE Licence appropriate for the Retiring Trustee to assume the office of trustee of the Fund;
- 6.1.3 it is qualified to be appointed as trustee of the Fund;
- 6.1.4 neither it nor its responsible officers are disqualified persons for the purposes of the SIS Act;
- 6.1.5 all authorisations and consents required by it in connection with the execution and performance of this Deed have been obtained and are in full force and effect;
- 6.1.6 it has the skills, systems and facilities, capacity and staff necessary to perform its duties as trustee of the Fund, including without limitation to administer the benefits payable from the Fund;
- 6.1.7 as far as it is aware, there are no material outstanding issues relating to the New Trustee involving the Regulators that have not been notified in writing to the

Retiring Trustee that would materially affect the ability of the New Trustee to act as trustee of the Fund;

- 6.1.8 it is not the subject of any dispute and there is no litigation, arbitration or administrative proceedings taking place, pending or, to its knowledge, threatened against it as at the date of this Deed of which a prudent existing trustee could reasonably expect would be disclosed to it or which could have a material adverse effect on the New Trustee's ability to perform its obligations as trustee of the Fund; and
- 6.1.9 to the best of its knowledge and belief, the disclosures, books, documents and other information provided to the Retiring Trustee for the purpose of due diligence of the New Trustee were complete and accurate in all material respects;

6.2 The New Trustee warrants and undertakes that:

- 6.2.1 It will forgo any trustee fee for one month after becoming trustee of the Fund, with the foregone fee to be applied to members.
- 6.2.2 For a period of three years from becoming trustee of the Fund, the fees and expenses it recoups in respect of members at the date of change of trustee will be such that those members will not be financially worse off, subject to:
  - (a) No material reduction in member numbers which cannot be offset by expense reductions;
  - (b) Events outside the New Trustee's control that increase the costs of managing the Fund
  - (c) Increase in fees charged by service providers to the Fund;
  - (d) Product enhancements; or
  - (e) Changes in legislation resulting in changes in the nature or quantity of services required from EQT.
- 6.2.3 It will maintain the Indemnity Policy referred to in clause 5.1 for 7 years from the date that the Retiring Trustee retires as trustee of the Fund

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## 7. Retiring Trustee: Warranties and Undertakings

Except as otherwise disclosed in writing to the New Trustee the Retiring Trustee warrants and represents to the New Trustee that, as at the date of this Deed:

- 7.1 the Retiring Trustee has provided (or has arranged for another person to provide on behalf of the Retiring Trustee) to the New Trustee:
  - 7.1.1 copies of all books, records, documents and information in its possession relation to the Fund (including, but not limited to, minutes of meetings of the Retiring Trustee relating to the Fund);
  - 7.1.2 copies of all notices and other communications provided to members of the Fund and to the Regulators its possession regarding the Fund by the Retiring Trustee;
  - 7.1.3 copies of all current contracts (including adviser agreements, insurance policies and powers of attorney) its possession relating to the Fund;

- 7.1.4 details of all complaints (including details of all steps taken by the retiring Trustee) that the Retiring Trustee has received from members in the 24 months before the date of this Deed, including all currently unresolved complaints and complaints currently before the Superannuation Complaints Tribunal;
- 7.2 to the best of its knowledge and belief, the disclosures, books, documents and other information provided to the New Trustee for the purposes of due diligence were complete and accurate in all material respects;
- 7.3 all contracts and agreements which the Retiring Trustee has entered into in respect of the Fund that are in force immediately prior to the Effective Time have been disclosed to the New Trustee;
- 7.4 to the best of its knowledge and belief, the accounts of the Fund have been properly maintained and are accurate in all material respects;
- 7.5 to the best of its knowledge and belief, there has been no material breach of the Relevant Law in relation to the Fund;
- 7.6 to the best of its knowledge and belief, there are no material outstanding issues relating to the Fund involving the Regulators that have not been notified in writing to the New Trustee;
- 7.7 it has the necessary authority and power to enter into and perform its obligations under this Deed;
- 7.8 there are no pending or threatened claims or legal proceedings of which the Retiring Trustee is aware;
- 7.9 the Retiring Trustee will provide all reasonable assistance to transfer to the New Trustee the AUSkey relating to the Fund issued by the Australian Taxation Office; and
- 7.10 the Retiring Trustee will provide to the New Trustee such information and confirmations (including a management letter) relating to the period when the Retiring Trustee held the office of trustee of the Fund during the financial year ending 30 June 2017 as is reasonably required for the audit of the Fund for that financial year.

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## **8. AMG: Warranties and Undertakings**

AMG agrees that it shall at its own cost project manage the transition of the Fund assets, insurance policies and contracts and shall indemnify the Retiring Trustee and New Trustee for any losses arising from this activity, except to the extent that the losses arise from reliance on the Retiring Trustee and the New Trustee

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## **9. Assumption of Powers and Obligations by New Trustee**

On and from the Effective Time, the New Trustee:

- 9.1 agrees to perform all of the obligations of the trustee under the Trust Deed and Relevant Law; and
- 9.2 will exercise all the powers and enjoy all of the rights and will be subject to and perform all of the duties and obligations of the trustee under the Trust Deed and Relevant Law.



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## **10. Release of Retiring Trustee**

On and from the Effective Time, the Retiring Trustee is released from all further obligations as trustee, except in relation to any act or omission before the Effective Time for which it would not have been entitled to a right of indemnity out of the Assets under the Trust Deed or the Relevant Law.

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## **11. Vesting of Assets**

- 11.1 The Retiring Trustee must as soon as reasonably practicable after the execution of this Deed execute such documents and do all things lawfully required to vest the Assets in the New Trustee (or in any custodian appointed by the New Trustee) with effect on and from the Effective Time or as soon thereafter as reasonably practical. For the avoidance of doubt, the Retiring Trustee is not required to vest in the New Trustee (or in any custodian appointed by the New Trustee) any assets that the Retiring Trustee holds in its own right or as trustee of any other fund.
- 11.2 The Retiring Trustee must deliver to the New Trustee as soon as reasonably practicable after the Effective Time, all books, documents and records, investments, funds and all documents of title to real estate and any other property whatsoever relating to the Assets but may retain copies of any such materials in its discretion. Upon receipt of any of the foregoing, the New Trustee must sign any reasonable receipt prepared by the Retiring Trustee.
- 11.3 The Retiring Trustee agrees to novate or transfer as soon as practicable with effect from the Effective Date those contracts and policies of insurance relating to the Fund that the New Trustee requests in writing be novated or transferred (Relevant Contracts).
- 11.4 The New Trustee will accept and execute all documents and do all things necessary to complete any transfer, novation, delivery or assignment as may be required by this Clause 11.

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## **12. Indemnity in Favour of the Retiring Trustee Indemnified Persons**

- 12.1 Subject to Clause 14, the New Trustee (in its capacity as trustee for the time being of the Fund) for itself and its successors, indemnifies and keeps indemnified the Retiring Trustee Indemnified Persons against all Fund Liabilities that have been or may be incurred by those persons or any of them. To the extent that this Clause is stated to confer a benefit on the Retiring Trustee Indemnified Persons, the Retiring Trustee holds that benefit for itself and on trust for the other Retiring Trustee Indemnified Persons.
- 12.2 Unless required by law, the New Trustee will not amend the Trust Deed or do any other act to reduce or otherwise limit the rights of indemnification under the Trust Deed or the Relevant Law of the Retiring Trustee Indemnified Persons.
- 12.3 The Retiring Trustee Indemnified Persons must:
- 12.3.1 notify the New Trustee as soon as reasonably practicable after becoming aware of a Fund Liability which has not previously been notified to the New Trustee;
  - 12.3.2 take all reasonable steps to mitigate that Fund Liability and will be entitled to be indemnified by the New Trustee for its reasonable costs in doing so;

- 12.3.3 provide all reasonable assistance to the New Trustee in defending any claim or action against the Fund or the New Trustee, at the request of and at the expense of the New Trustee; and
- 12.3.4 to the extent that they have them in their possession, provide or execute any documents reasonably required, and requested, by the New Trustee in relation to a Fund Liability (including without limitation to substantiate a claim, action or any Fund Liability the New Trustee has incurred).

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### 13. Indemnity in Favour of the New Trustee Indemnified Persons

- 13.1 Subject to Clause 13.2 and 14, the Retiring Trustee indemnifies and keeps indemnified the New Trustee Indemnified Persons against all costs, expenses and other liabilities which are incurred by the New Trustee Indemnified Persons to the extent that the cost, expense or liability arises directly from a material breach by the Retiring Trustee of any obligation or other requirement imposed on the Retiring Trustee under the Relevant Law, this Deed or the Trust Deed in relation to its trusteeship of the Fund for which the Retiring Trustee would not have been entitled to a right of indemnity out of the Assets under the Trust Deed or the Relevant Law had it continued to act as trustee of the Fund.
- 13.2 The New Trustee must take all reasonable steps to mitigate costs, expenses and other liabilities.

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### 14. Limitation of Liability

- 14.1 The liability of the party providing an indemnity (**Indemnifying Party**) in favour of another party (**Indemnified Party**), its officers or agents or any other person under or arising out of this Deed or the transactions contemplated under it is limited to the amount that the Indemnifying Party is entitled to receive in the exercise of its right of indemnity against the Fund (or would have been entitled to receive if the Retiring Trustee had continued to act as trustee of the Fund) but subject to (and in any event no greater than) the extent of the Assets as at the time the indemnity is sought to be called upon.
- 14.2 If the Indemnified Party does not recover all money owing to it by enforcing the rights referred to in Clause **Error! Reference source not found.** it may not seek to recover the shortfall by:
  - 14.2.1 bringing proceedings against the Indemnifying Party in its personal capacity; or
  - 14.2.2 applying to have the Indemnifying Party wound up or proving in the winding up of the Indemnifying Party.
- 14.3 The limitation in this Clause 14 does not apply to the extent that any liability arises from an act or omission which cannot be the subject of an indemnity under the Trust Deed or the Relevant Law. [Nothing in this Clause 14 shall make the Indemnifying Party liable to any claim for an amount greater than the amount which the Indemnifying Party would have been able to claim and recover from the Assets in relation to the relevant liability if the Indemnifying Party's right of indemnification out of the Assets had not been prejudiced by the Indemnified Party's failure to properly perform its duties .]
- 14.4 This Clause 4 applies:
  - 14.4.1 without limiting the Retiring Trustee's right under the law to be indemnified from the Fund notwithstanding its retirement; and

14.4.2 despite any other provision in this Deed and extends to all liabilities and obligations of the Indemnifying Party in any way connected with any representations, warranty, conduct, omission, agreement or transaction related to this Deed.

14.5 In the event of any inconsistency in this Deed, this Clause 14 prevails.

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**15. Severability**

If any provision of this Deed is void, voidable, unenforceable, invalid or illegal and would not be so if a word or words were omitted, then that word or those words are to be severed and if this cannot be done, the entire provision is to be severed without affecting the validity or enforceability of the remaining provisions of this Deed.

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**16. Governing Law**

This Deed is governed by the laws of Victoria, and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria.

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**17. Counterparts**

This Deed may be executed in counterpart.

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**18. Assignment**

No party may assign its rights or obligations pursuant to this Deed without the prior written consent of the other party, such consent not to be unreasonably withheld.

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**19. Amendment**

This Deed may be varied or replaced by a deed duly executed by the parties.

# Signing Page

Executed by the parties as a deed

**EXECUTED** by Diversa Trustees Limited  
ABN 49 006 421 638 in accordance with  
Section 127 of the Corporations Act 2001:


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)  
)  
)

  
.....  
Signature of Director  
.....  
**Mark Cerché**  
.....  
Print full name

  
.....  
Signature of Director/Company Secretary  
.....  
**Robert Good**  
.....  
Print full name

**EXECUTED** by Equity Trustees  
Superannuation Limited ABN 50 055 641  
757 in accordance with Section 127 of the  
Corporations Act 2001:

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)  
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.....  
Signature of Director  
.....  
**Mark Blair**  
.....  
Print full name

  
.....  
Signature of Director/Company Secretary  
**Carmen Odette Lunderstedt**  
.....  
Company Secretary.....  
Print full name

**EXECUTED** by Acclaim Management Group  
Pty Ltd ABN 52 091 082 058 in accordance  
with Section 127 of the Corporations Act 2001:

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)  
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.....  
Signature of Director  
.....  
**PETER B. LOCKHART**  
.....  
Print full name

  
.....  
Signature of Director/Company Secretary  
**Ugo D. Girolamo**  
.....  
Print full name