

Trustee Services Deed

Platformplus Pty Limited
ACN 103 551 533

and

Equity Trustees Superannuation Limited
ACN 055 641 757

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Trustee Services Deed

Dated 1 February 2022

Parties

Name	Platformplus Pty Limited ABN 46 103 551 533
Address	Level 2, 37 Primary School Court, Maroochydore, Queensland 4558
Short name	Promoter

Name	Equity Trustees Superannuation Limited ABN 50 055 641 757
Address	Level 1, 575 Bourke Street, Melbourne, Victoria, 3000
Short name	ETSL

Background

- A. ETSL is a licenced trustee of regulated superannuation funds.
- B. The Promoter provides Promoter Services in respect of the Fund, and ETSL wishes to provide Trustee Services in respect of the Fund.
- C. The Promoter acknowledges the appointment of ETSL as trustee of the Fund in accordance with the Trust Deed.
- D. The parties enter into this Deed to record and give effect to their common intentions.

This Deed witnesses

1. Definitions

In this Deed, unless the contrary intention appears:

Adviser means a person who holds an AFSL and provides a financial service to a retail client (as defined under the Corporations Act) in that capacity; and includes a person who is authorised to act on behalf of such a person.

AFSL means a licence granted under section 913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services;

APRA means the Australian Prudential Regulation Authority.

ASIC means the Australian Securities & Investments Commission.

AUSTRAC means the Australian Transaction Reports and Analysis Centre.

Authorised Representative means an authorised representative as appointed in accordance with the Corporations Act.

Business Day means any day (other than a Saturday or Sunday) on which the major clearing banks in Sydney, NSW are open for business.

Commencement Date means the later of the date of this Deed, or such other date as agreed between the parties.

Confidential Information means the terms of this Deed and other information which comes into the possession of either party, whether it comes into that party's possession before or after the date of this Deed, as a result of performing its obligations under, or its being a party to, this Deed. Confidential Information includes, with respect to the obligation of confidentiality imposed on the parties under clause 7, without limitation:

- (a) information relating to the business, sales, marketing or technical operations of either party or any Related Body Corporate of either of them;
- (b) information provided to Regulators for the purpose of the prudential supervision of ETSL or the Promoter and the Funds, and proposed or actual on-site visits by APRA;
- (c) information relating to either party's clientele, or the clientele of any Related Body Corporate of ETSL or the Promoter, or their accounts or dealings with each other or any Related Body Corporate of ETSL or the Promoter;
- (d) any other information relating to ETSL or the Promoter or any Related Body Corporate of either ETSL or the Promoter classifiable in equity as confidential information; and
- (e) any other information in the possession or control of ETSL or the Promoter that relates to the Trustee Services or products that the Promoter provides to persons or entities (other than ETSL, the Fund or its members) that is classifiable in equity as confidential information.

Confidential Information extends to all forms of storage or representation of the information including without limitation, loose notes, diaries, memoranda, drawings, photographs,

electronic storage and computer printouts, provided however that Confidential Information shall not include information which either party:

- (a) can establish conclusively, entered the public domain without a breach of any obligation owed by that party;
- (b) is required to disclose by law.

Corporations Act means the *Corporations Act 2001* (Cth).

Deed means this document, including any schedule or annexure to it.

Force Majeure Event means an unforeseeable event or circumstance beyond the reasonable control of a party, including, but not limited to, an act of God, national emergency, pandemic, insurrection, riot, act of terrorism, or war.

Fund means Platformplus Super Wrap which was established by the Trust Deed.

Fund Brand means the Fund Trade Marks or any other trade mark or logo which incorporates all or part of the Fund Trade Marks or is deceptively similar or substantially identical to the Fund Trade Marks.

Fund Data means the data or information in respect of the Fund, which the ETSL and the Promoter reasonably require to discharge their respective obligations under this Deed.

Fund IP means all Intellectual Property Rights created or developed by either party in connection with the Fund, whether before or after the date of this Deed, including all information, documentation, notes, memoranda, reports, analyses, methodologies, computer programs, Marketing Material and Member Communications Material.

Fund Trade Marks means the trademarks or logos to be used in connection with the Fund which the Promoter nominates in writing to ETSL (but does not include the Promoter Trade Marks) and any trade mark applications or registrations for such marks, in each case owned by the Promoter or a Related Body Corporate of the Promoter.

Infocus Group means Platformplus Pty Limited ABN 46 103 551 533 and any of its Related Bodies Corporate.

Insolvency Event means the occurrence of any one or more of the following events in relation to any person:

- (a) an application is made to a court for an order that it be wound up, declared bankrupt or that a provisional liquidator or receiver or receiver and manager be appointed, and the application is not withdrawn, struck out or dismissed within 21 days of it being made;
- (b) a liquidator or provisional liquidator is appointed and the appointment is not terminated within 21 days of its being made;
- (c) an administrator or a controller is appointed to any of its assets and the appointment is not terminated within 21 days of it being made;
- (d) it enters into an arrangement or composition with one or more of its creditors, or an assignment for the benefit of one or more of its creditors;
- (e) it proposes a winding-up or dissolution or reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors;

- (f) it is insolvent as disclosed in its accounts, or otherwise states that it is insolvent, or it is presumed to be insolvent under an applicable law;
- (g) it becomes an Insolvent under Administration under the Corporations Act or action is taken which could result in that event and the proceeding is not dismissed within 21 days of the date action is taken;
- (h) it is taken to have failed to comply with a statutory demand as a result of section 459F(1) of the Corporations Act;
- (i) a notice is issued under section 601AA or 601AB of the Corporations Act and not withdrawn or dismissed within 21 days;
- (j) a writ of execution is levied against it or a material part of its property which is not dismissed within 21 days;
- (k) it ceases to carry on business or threatens to do so, other than arising from a bona fide internal corporate restructure; or
- (l) anything occurs under the law of any jurisdiction which has a substantially similar effect to any of the above paragraphs of this definition.

Intellectual Property Rights includes all present and future industrial and intellectual property rights throughout the world, whether registered or unregistered, including copyright and analogous rights, inventions, patents, trade marks (including service marks), designs, Confidential Information, moral rights, trade, business or company names, know-how and any right to apply for registration of or any application of these rights.

Intermediary means a person to whom the Promoter has provided information in relation to a Fund, for the purpose of providing financial services (as defined in the Corporations Act) to their retail clients (as defined in the Corporations Act).

Marketing Material means all material, in whatever form, developed for use or used in connection with the marketing or promotion of the Fund including any product disclosure statement, where that material contains the name of the trustee.

Material Breach means:

- (a) a breach of this Deed by a party (**Breaching Party**) that, in the reasonable opinion of the other party (**Innocent Party**), results in the Innocent Party or the Members of a Fund or the assets of the Fund incurring a monetary loss or significant damages; or
- (b) a series of breaches that in the reasonable opinion of the Innocent Party, are evidence of a systemic failure relating to the ability of the defaulting party to perform its obligations under this Deed.

Member means a member or beneficiary of a Fund.

Member Communications Material means any material used or proposed to be used to communicate with Members or in connection with communications to Members (including Fund and Member annual reporting documentation, website publications, data, online materials and tools, guidelines for oral communication and templates for ad hoc communications) in relation to the Fund, except for Marketing Materials.

Member Outcomes means an assessment of outcomes provided to Members of the Fund determined by reference to APRA Prudential Standard SPS 515 Outcomes Assessment and Relevant Law,

Personal Information means all information about a person that is 'personal information' as defined in the Privacy Law, which is collected or held by the Promoter or ETSL in connection with this Deed.

Privacy Law means

- (a) the Privacy Act 1988 (Cth);
- (b) the National Privacy Principles contained in Schedule 3 to the *Privacy Act 1988* (Cth); and
- (c) any other statute, regulation or law in Australia or elsewhere which relates to the protection of Personal Information and which ETSL or the Promoter must observe.

Promoter Brand means the Promoter Trade Marks or any other trade mark or logo which incorporates all or part of the Promoter Trade Marks or is deceptively similar or substantially identical to the Promoter Trade Marks.

Promoter Services means the services provided by Promoter in respect of the Fund under the Promoter Services Agreement.

Promoter Services Agreement means the deed entered into between the ETSL and the Promoter for the provision of Promoter Services to the Fund, dated around the date of this Deed.

Promoter Trade Marks means the trade marks or logos which are for or include Infocus Group and any trade mark applications or registrations for such marks, in each case owned by the Promoter or a Related Body Corporate of the Promoter.

Prudential Standards means the prudential standards determined by APRA under Section 34C of the *Superannuation Industry (Supervision) Act, 1993* (Cth).

Regulator means any person having regulatory or supervisory authority over any part of the business or affairs of a party, including APRA, ASIC and AUSTRAC and any regulatory body which replaces them.

Related Body Corporate has the meaning given in section 9 of the *Corporations Act 2001*;

Relevant Law means:

- (a) the Corporations Act;
- (b) the Superannuation Industry (Supervision) Act 1993 (Cth);
- (c) the Superannuation Guarantee (Administration) Act 1992 (Cth);
- (d) the Family Law Act 1975 (Cth)
- (e) the Australian Securities and Investments Commission Act 2001 (Cth);
- (f) the Financial Sector (Collection of Data) Act 2001 (Cth);
- (g) the Superannuation (Resolution of Complaints) Act 1993 (Cth);
- (h) the Income Tax Assessment Act 1936 (Cth);

- (i) the Income Tax Assessment Act 1997 (Cth);
- (j) the Anti-Money Laundering and Counter Terrorism Financing Act 2006 (Cth);
- (k) the Privacy Act 1988 (Cth);
- (l) the Treasury Laws Amendment (Putting Consumers First—Establishment of the Australian Financial Complaints Authority) Act 2018 (Cth);
- (m) the regulations promulgated under any of the above Acts; and
- (n) any determination, Prudential Standard or policy document issued by APRA or ASIC with which ETSL must comply;
- (o) any other present or future law of Australia or a State or Territory of Australia with which the parties must comply in relation to the provision of:
 - (i) the Trustee Services;
 - (ii) the Administration and Insurance Services; or
 - (iii) financial products and financial services (as defined in the Corporations Act),
 in connection with a Fund.

RSE Licence means a Registrable Superannuation Entity licence issued by APRA.

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

Trust Deed means the trust deed dated 12 March 2021 which established the Fund, as amended from time to time.

Trustee Services means the services listed in Schedule 2.

2. Term and condition precedent

2.1 Term

This Deed commences on the Commencement Date and continues until terminated under clause 10.

3. ETSL

3.1 Capacity of ETSL

ETSL assumes obligations under this Deed in its capacity as trustee of a Fund, and in no other capacity.

3.2 ETSL's indemnity

ETSL shall hold and keep indemnified the Promoter, its directors, officers, agents and employees (including any former directors, officers and employees) against any loss caused by or arising directly as a result of or in connection with:

- 3.2.1 any Material Breach or significant breach of Relevant Law by ETSL;
- 3.2.2 any negligence by ETSL, its directors, officers, agents or employees; or
- 3.2.3 any dishonesty, wilful default or fraud by ETSL, its directors, officers, agents or employees.

3.3 Exclusion of ETSL's liability

Clauses 3.2.1 and 3.2.2 do not apply where and to the extent that the loss is caused or contributed to by:

- 3.3.1 any breach or default by the Promoter of this Deed;
- 3.3.2 any negligence by the Promoter, its directors, officers, agents or employees; or
- 3.3.3 any dishonest, wilful default or fraud by the Promoter, its directors, officers, agents and employees.

3.4 Liability of ETSL

- 3.4.1 A liability of ETSL in its capacity as trustee of a Fund arising under or in connection with this Deed can be enforced against ETSL only to the extent to which it can be satisfied out of the property of the Fund out of which ETSL is actually indemnified for the liability.
- 3.4.2 The limitation of ETSL's liability in its capacity as trustee of a Fund applies despite any other provision of this Deed and extends to all liabilities and obligations of ETSL in its capacity as trustee of the Fund in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Deed, and no party may take any action to seek recourse to any assets held by ETSL in any capacity other than as trustee of the Fund.
- 3.4.3 The limitation of liability in this clause 3.4 does not apply to the extent that ETSL would not be entitled to an indemnity under the Trust Deed of a Fund, or at law due to an act or omission of ETSL, in which case, ETSL's liability is limited to the amount recovered by the Trustee under an insurance policy together with the amount of the deductible relating to that insurance.

4. Services

4.1 Obligations of ETSL

During the term of this Deed, ETSL must:

- 4.1.1 having regard to the terms of the Trust Deed and Relevant Law, perform the Trustee Services in such a way as to facilitate compliance with the Relevant Law and the Trust Deed in relation to the Fund and properly perform its obligations under this Deed;
- 4.1.2 comply with all lawful requirements of a Regulator in performing the Trustee Services;
- 4.1.3 at no time intentionally or recklessly do anything that directly or indirectly may impair the good name and reputation of the Promoter or otherwise give rise to the imposition of a penalty on, or administrative or regulatory action against, the Promoter;

- 4.1.4 notify the Promoter as soon as is reasonably practicable after becoming aware:
- (a) of an intervention or threatened intervention by a Regulator in relation to a Fund, or ETSL's provision of the Trustee Services, or the activities of an Intermediary in relation to a Fund (provided the Trustee is not prohibited by law or the relevant Regulator from notifying the Promoter);
 - (b) if this Deed is likely to be breached;
 - (c) of any reportable breach of a condition attaching to:
 - (i) ETSL's AFSL or RSE Licence;
 - (ii) the Funds,relating to the Trustee Services;
 - (d) of any Material Breach, or the Relevant Law; or
 - (e) of an investigation or threatened investigation by a Regulator in relation to ETSL, a Fund, the Promoter or an Intermediary referable to the Funds (provided the Trustee is not prohibited by law from notifying the Promoter);
- 4.1.5 notify the Promoter of any material changes to ETSL's professional indemnity insurance cover;
- 4.1.6 advise the Promoter of the identity of the relationship manager responsible for managing the relationship with the Promoter and, where the identity of the relationship manager changes, ETSL will notify the Promoter of the change within 30 days;
- 4.1.7 ensure that appropriate due diligence processes are undertaken in relation to the website of the Funds and promotional communications issued by ETSL, including to the extent considered necessary obtaining independent legal review of such communications, designed to ensure that they are consistent with the requirements of the Relevant Law;
- 4.1.8 ensure that it has all the required authorisations from the Regulator to act as trustee of the Fund;
- 4.1.9 consider, in good faith, any reasonable written request from the Promoter to exercise a right or power under the Trust Deed or an agreement with a service provider that ETSL has appointed in relation to the Fund, provided that the Promoter provides ETSL with its reasons for its request;
- 4.1.10 ensure that it does not amend a Trust Deed except in accordance with the Trust Deed;
- 4.1.11 ensure that it does not retire as trustee of a Fund except as contemplated by this Deed and/or the Trust Deed;
- 4.1.12 notify the Promoter of any proposal to make a material change to the insurance arrangements available to Members through the Fund; and
- 4.1.13 dedicate appropriate resources to the services contemplated by this Deed to ensure compliance with the Deed, each Trust Deed and the Relevant Law.

4.2 Overriding Provision

Despite anything to the contrary in this Deed, ETSL may do, or refrain from doing, anything that is necessary or prudent in order to comply with, or to avoid contravening, the Relevant Law or its duties as trustee of the Fund (including, but not limited to, its duty to act in the best interests of Members of the Fund) and anything done, or not done, in accordance with this clause 4.3 will not result in a breach of this Deed.

4.3 Obligations of the Promoter

During the term of this Deed, the Promoter must:

- 4.3.1 ensure that its Authorised Representatives are properly authorised under the Corporations Act;
- 4.3.2 at no time intentionally or recklessly do anything that directly or indirectly may impair the good name and reputation of ETSL or otherwise give rise to the imposition of a penalty on, or administrative or regulatory action against, ETSL;
- 4.3.3 to the extent that it has power to do so, provide reports and other information to ETSL in the manner, format and frequency that ETSL reasonably requests in writing in order to enable ETSL to properly perform its obligations under this Deed;
- 4.3.4 obtain the prior written approval of ETSL before committing ETSL to anything that would or would be likely to result in the imposition of a direct or indirect financial obligation on ETSL;
- 4.3.5 comply with the Relevant Law in paying any amount to an Adviser;
- 4.3.6 ensure that any act of the Promoter that results in a payment to an Adviser is confined to payments permitted under the Relevant Law;
- 4.3.7 obtain the approval, of ETSL (that may not be withheld unreasonably) before issuing any marketing or sales materials relating to the Fund;
- 4.3.8 notify ETSL of any material changes to the Promoter's professional indemnity insurance cover;
- 4.3.9 notify ETSL as soon as is reasonably practicable after becoming aware:
 - (a) of an intervention or threatened intervention by a Regulator in relation to a Fund, or the activities of an Intermediary in relation to the Fund;
 - (b) of any reportable breach of a condition attaching to:
 - (i) the Promoter's AFSL,
 - (ii) relating to the Fund; or
 - (iii) of an investigation or threatened investigation by a Regulator in relation to the Fund, the Promoter or an Intermediary referable to the Fund;
- 4.3.10 advise ETSL of the identity of the relationship manager responsible for managing the relationship with ETSL and, where the identity of the relationship manager changes, the Promoter will notify ETSL of the change within 30 days;

- 4.3.11 take all reasonable steps to ensure that each Intermediary that may advise retail clients in connection with the Fund, holds an AFSL or is an Authorised Representative;
- 4.3.12 ensure that appropriate due diligence processes are undertaken in relation to the website of the Fund and promotional communications issued by the Promoter, including to the extent considered necessary obtaining legal review of such communications, designed to ensure that they are consistent with the requirements of the Relevant Law.

4.4 Joint Obligations

- 4.4.1 During the term of this Deed, the parties must, at least once per year, or as agreed between the parties, review Member Outcomes.
- 4.4.2 If Member Outcomes are reasonably determined by the Trustee to be materially worse, and likely to remain materially worse, than for members in comparable superannuation funds, then the Trustee may require the Promoter to develop (to the reasonable satisfaction of the Trustee) a remedial action plan to improve Member Outcomes so that they are unlikely be materially worse than for members of comparable funds..

5. Warranties

5.1 ETSL

- 5.1.1 ETSL warrants and represents to the Promoter that ETSL:
 - (a) has the power to enter into and perform its obligations under this Deed, subject only to any express limitations under the Relevant Law and those that have been advised to the Promoter in writing prior to the Commencement Date;
 - (b) has, and will maintain, adequate financial, technical and human resources necessary to effectively and efficiently perform the Trustee Services and its other obligations under this Deed;
 - (c) holds, and will at all times hold, all registrations, licenses and authorisations required in order to provide the Trustee Services in relation to the Funds;
 - (d) is covered, and will at all times be covered, by professional indemnity insurance of the type and level required in order to prudently manage the risk associated with the provision of the Trustee Services in relation to the Funds and will provide to the Promoter:
 - (i) confirmation of the existence and scope of the professional indemnity insurance to the reasonable satisfaction of the Promoter provided that ETSL is not required to provide information under this paragraph (i) if the provision of the information would adversely affect ETSL's right to be indemnified under the relevant policy;
 - (ii) the relevant certificate of currency upon request;
 - (e) will ensure that sufficient and competent staff with the required regulatory authorisations and the required education, training and experience, will be

responsible at all times for the provision of the Trustee Services and will maintain close supervision of those staff;

- (f) in performing its obligations and duties and exercising its rights as trustee of the Fund it will act honestly and in good faith, and will comply with the Trust Deed and the Relevant Law;
- (g) will not receive any benefit or remuneration except the Trustee Fees under clause 6; and
- (h) will promptly notify the Promoter of any Trustee Benefits that ETSL may receive.

5.2 Promoter

The Promoter warrants and represents to ETSL that the Promoter (and any Related Body Corporate to whom it sub-contracts):

- 5.2.1 has the power to enter into and perform its obligations under this Deed, subject only to any express limitations under the Relevant Law and those that have been advised to ETSL in writing prior to the Commencement Date;
- 5.2.2 has, and will maintain, adequate financial, technical and human resources necessary to effectively and efficiently perform the Promoter Services and its other obligations under this Deed;
- 5.2.3 is covered, and will at all times be covered, by professional indemnity insurance of the type and level required in order to prudently manage the risk associated with the provision of the Promoter Services in relation to the Funds and will provide the relevant certificate of currency if requested by ETSL (within 15 Business Days of such request);
- 5.2.4 will ensure that sufficient and competent staff with the required regulatory authorisations and the required education, training and experience, will be responsible at all times for the provision of the Promoter Services and will maintain close supervision of those staff; and
- 5.2.5 must ensure that an Authorised Representative is properly authorised under the Corporations Act to act as the Promoter's authorised representative and has undertaken and satisfactorily completed all necessary training as required by Relevant Law.

5.3 Inaccurate warranty

If a warranty or representation given by a party to this Deed ceases to be accurate, that party must immediately advise the other party in writing.

5.4 Capacity

- 5.4.1 Each party acknowledges that it is not an employee, partner, joint venturer or agent of the other party in the performance of its Services.
- 5.4.2 Nothing in this Deed gives a party any authority to bind another party (the second party) to any agreement, arrangement, obligation, liability, duty or understanding or to purport to act as the agent of the second party.
- 5.4.3 A party must not represent to any person or act in a way that causes any person to believe that it is an agent of another party.

5.5 Acknowledgment of the parties

Each party acknowledges that neither party to this Deed, nor any of its Related Bodies Corporate, guarantees the repayment of capital or the performance of a Fund or makes any representation whatsoever concerning any of these matters.

6. Trustee Fees

- 6.1 The fees that ETSL will charge for the Trustee Services in respect of the Fund as at the Commencement Date are set out in Schedule 1.
- 6.2 The fees payable to ETSL for the provision of the Trustee Services will be payable out of the Assets of the Funds in accordance with the requirements of the Relevant Trust Deeds and the Relevant Law and disclosed in accordance with the requirements of the Relevant Law on the terms set out in Schedule 1.
- 6.3 ETSL must pay its own overhead costs incurred in carrying out its obligations under this Deed, unless otherwise agreed between the parties.
- 6.4 Nothing in this Agreement affects the right of ETSL to be reimbursed or indemnified from the assets of a Fund in accordance with the Fund Trust Deed and Relevant Law, including, but not limited to audit and tax related expenses, statutory fees and levies, legal expenses (including expenses associated with amendments to the Trust Deed), expenses associated with implementation of regulatory change and regulatory initiatives and other expenses incurred in the operation of the Fund. Where expenses are unbudgeted and material, the Trustee will use best endeavours to notify the Promoter in advance of incurring such expense.
- 6.5 At least 30 days before each anniversary of the Commencement Date of the Trustee Services, the parties must, in good faith, review the Trustee Fees.

6.6 Trustee Fee review – Review Notice

- 6.6.1 The Trustee may seek by written notice to the Promoter (Review Notice) a review of the Trustee Fees, if as a result of a material change in the environment external to either of them, including (without limitation), the following:
 - (a) a material regulatory change impacting the Trustee in respect of its role in connection with the Fund or the operation of the Fund; and
 - (b) the Trustee costs associated with providing the Services materially exceed the Trustee Fees.
- 6.6.2 If the Trustee seeks the review of the Trustee Fees it must include the following information in the Review Notice:
 - (a) an outline of the reasons for the request;
 - (b) the Trustee Fees change being sought; and
 - (c) information and material that is objectively reasonable and adequate to support the relevant change in Trustee Fees.
- 6.6.3 Upon receipt of a Review Notice that complies with clause 6.6.2, the parties will promptly (and within no later than 20 Business Days) get together for the purpose of consulting with each in good faith in respect of the requested review and to agree the Trustee Fees.

- 6.6.4 The Trustee Fees that are payable at the time the Review Notice is received by the Promoter shall continue to be paid until such time as a revision to the Trustee Fees is agreed by the parties. If no revision to the Trustee Fees is agreed within three (3) months, and if the reason specified in the Review Notice is that Trustee costs associated with providing the Services materially exceed the Trustee Fees, then the Trustee Fees specified in the Review Notice apply. Otherwise, if no revision to the Trustee Fees is agreed within three (3) months, then the Trustee Fees payable at the date of the relevant Review Notice shall continue to apply.

7. Confidential Information and Security of Information

- 7.1 Each party shall keep and ensure that its officers, employees, agents, advisers and subcontractors keep confidential the terms of this Deed, the content of all negotiations leading to its preparation and all other Confidential Information and take all such steps and do all such things as may be necessary, prudent or desirable in order to safeguard the confidentiality of the Confidential Information and will not disclose Confidential Information to any person, except:
- 7.1.1 with the prior written consent of the other party; or
 - 7.1.2 to the party's officers, employees, agents, advisers and subcontractors in the proper performance of the party's responsibilities and duties or the proper exercise of the party's rights under this Deed.
- 7.2 Each party acknowledges and agrees that material made available by a party to another party in the course of carrying out the terms of this is of substantial value to the providing party, and may be subject to copyright, and the receiving party agrees that it will not do anything which will infringe the copyright held by the providing party in anything provided under this Deed.
- 7.3 If completion of this Deed does not occur, each party must delete all Confidential Information that has been disclosed to it by the other party.
- 7.4 The parties will cooperate in good faith, acting reasonably to jointly develop security procedures and protocols (Security Protocols) to protect the confidentiality of information provided by ETSL to the Promoter and from the Promoter to ETSL.
- 7.5 Each party must comply with the obligations allocated to it under the Security Protocols. The parties will regularly review and update, as necessary, the Security Protocols.

8. Force Majeure

- 8.1 If a party (Notifying Party) is wholly or partially unable to perform its obligations under this Deed because of a Force Majeure Event then, as soon as reasonably practicable after the Force Majeure Event arises, that party must notify the other party of:
- 8.1.1 the extent to which the Notifying Party is unable to perform its obligations under this Deed;
 - 8.1.2 the steps the Notifying Party is taking to mitigate, minimise or manage the adverse effects of the Force Majeure Event on the performance of its obligations under this Deed;

- 8.1.3 an estimate of any additional cost, time or resources required by the Notifying Party to enable it to re-commence complete performance of its obligations under this Deed; and
 - 8.1.4 until the Notifying Party can re-commence complete performance of all of its obligations in accordance with this Deed, the Notifying Party must continue to perform its other obligations under this Deed that remain unaffected by the Force Majeure Event (if any) to the extent reasonably practicable.
 - 8.2 If the delay arising directly from the Force Majeure Event continues or is likely to continue for more than 120 days from the date it is first notified under clause 8.1, either party may terminate this Deed immediately by notice in writing.
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9. Dispute Resolution

- 9.1 A party must not institute court proceedings (except proceedings seeking interlocutory relief) unless it has complied with this clause 9.
- 9.2 A party claiming that a dispute, difference or question arising in connection with this Deed has arisen (Dispute) must give the other party notice of the details of the Dispute (Dispute Notice).
- 9.3 If a Dispute Notice is issued by a party under clause 9.2, ETSL's General Manager, Superannuation Trustee Office or their equivalent (Trustee Representative) and the Promoter's Head of Operations or their equivalent (Promoter Representative), must meet as soon as reasonably practicable and endeavour to resolve the Dispute in good faith.
- 9.4 In the event that the individuals named in clause 9.3 are unable to resolve the Dispute within 15 Business Days of a Dispute Notice being received by the other party (or such other period as is agreed between the parties), the Managing Director of ETSL and the Chief Executive Officer of the Promoter (or their respective nominees) must meet as soon as reasonably practicable and endeavour to resolve the Dispute in good faith.
- 9.5 If the individuals identified in clause 9.3 cannot resolve the Dispute within 30 Business Days of a Dispute Notice being received by the other party (or such longer period agreed between the parties), then either party may refer to the matter to mediation by written notice to the other party.
- 9.6 If a written notice is submitted under clause 9.5, then:
 - 9.6.1 the parties must refer the Dispute to mediation to be conducted by the Australian Disputes Centre in accordance with its current mediation rules and guidelines for resolution;
 - 9.6.2 any meetings organised will be held in Sydney or any other place agreed between the parties;
 - 9.6.3 the parties agree to each pay 50% of the costs of mediation;
 - 9.6.4 both parties may be represented by a duly qualified legal practitioner;
 - 9.6.5 any directions made by the mediator will be non-binding unless expressly agreed to by the parties in writing.

- 9.7 If the parties cannot resolve a Dispute within 20 Business Days after attending a mediation in accordance with clause 9.6, either party may commence court proceedings.
- 9.8 The parties must continue to perform their respective obligations under this Deed pending the resolution of a Dispute.
- 9.9 Each party must pay its own costs of complying with this clause 9.

10. Termination

10.1 Termination by either party

Either party may terminate this deed effective immediately if any of the following events occur:

- 10.1.1 if the Fund is terminated in accordance with the provisions of the Trust Deed; or
- 10.1.2 all or the majority of Members are transferred to another superannuation entity (within the meaning of Relevant Law).

10.2 Termination by the Promoter

10.2.1 The Promoter may terminate this deed by giving to the Trustee written notice with immediate effect, if:

- (a) the Trustee retires or vacates its office in accordance with the Trust Deed;
- (b) the Trustee breaches a material term of the Trust Deed;
- (c) an Insolvency Event occurs in respect of the Trustee or a related body corporate of the Trustee;
- (d) an amalgamation of the Fund with another Fund, a reconstruction of the Fund is proposed or a scheme of arrangement in relation to the Fund by the Promoter;
- (e) there is a change in Control of the Trustee or a related body corporate of the Trustee;
- (f) the Trustee fails to provide the Services and the services to the standards that a trustee providing similar services would do;
- (g) the Trustee ceases to hold any appropriate licences, authorisations or approvals required for it to provide the Trustee Services;
- (h) the Trustee or the Fund would be in breach of any Superannuation Law if the Trustee continued to perform its responsibilities and discharge its duties under this Deed;
- (i) the Trustee is guilty of dishonesty, misconduct or negligence in the performance of its obligations under the Trust Deed or this Deed;
- (j) the Trustee is in breach of any one or more of the representations and warranties in clause 5.1 of this Deed;

- (k) the terms (including, but not limited to the Trustee remuneration) on which the Trustee provides the Trustee Services become uncommercial relative to those that could be provided by a third-party provider of similar services;
 - (l) at any time the Relevant Law requires the Deed to terminate.
- 10.2.2 The parties acknowledge and agree that it is not possible to anticipate all future circumstance where the Promoter may have cause to immediately terminate this Deed. As a result, the Trustee agrees that the Promoter may terminate this deed, upon reasonable written notice being given to the Trustee, provided that the Promoter sets out the following information in the notice:
- (a) reason why the Trustee remaining trustee of the Fund is inappropriate;
 - (b) reasons (that from an objective perspective are reasonable) why the Trustee's retirement is in the best interests of members of the Fund; and
 - (c) the Trustee, acting reasonably, agrees that it is in the best interests of members of the Fund that the Trustee retire.

10.3 Termination by Trustee

- 10.3.1 The Trustee may terminate this deed by giving the Promoter written notice with immediate effect if:
- (a) the Promoter acts in a manner which is reasonably likely to injure the operation or reputation of the Trustee or the Fund;
 - (b) if the Promoter is in material breach of this Deed or the Trust Deed which is unremedied for more than 15 Business Days or such other period as is agreed by the parties;
 - (c) if an Insolvency Event occurs in respect of the Promoter;
 - (d) the Promoter has committed a material breach of its Australian Financial Services Licence which has a material adverse effect on the Fund or materially affects the Promoter's ability to perform its duties under this Deed;
 - (e) the Promoter sells or transfers or makes any agreement for the sale or transfer of its main business or undertaking or the beneficial interest therein and, in the Trustee's reasonable opinion, that sale or transfer materially adversely affects the Promoter's ability to perform its duties under this Deed provided that the Trustee must not unreasonably terminate this Deed under this clause; or
 - (f) the Promoter becomes the subject of an investigation or threatened investigation by a Regulator that is, or relates to a matter that is, reasonably likely to have a material adverse effect on the Trustee or the Fund and if the Promoter is subsequently found guilty of the matter.

10.4 Effect of termination

- 10.4.1 Upon termination of this Deed pursuant to clause 10 the parties must do everything necessary to effect the appointment of a replacement trustee (the Replacement Trustee) in accordance with the Trust Deed.

10.4.2 The Trustee must notify Members of its retirement as trustee of the Fund in accordance with the Relevant Law.

10.4.3 Subject to this Deed, the Promoter must:

- (a) return to the Trustee, on or just prior to the termination of this deed, all Confidential Information in material form, all parts of notes and other records based on or incorporating any Confidential Information, and all records kept in relation to the Trustee which originally was and remains the property of the Trustee;
- (b) co-operate with the Trustee in relation to the transfer to the Replacement Trustee or other person nominated by the Trustee;
- (c) pay to the Trustee any Trustee remuneration accrued and unpaid which relates to the Trustee Services provided in accordance with this Deed; and
- (d) reimburse the Trustee for any expenses which relate to the period up to the Date of retirement.

10.5 Rights survive termination

The obligations under this clause 10 survive termination and continue after termination of this Deed.

11. GST

11.1 GST Act

In this clause words that are defined in *A New Tax System (Goods and Services Tax) Act* 1999 have the same meaning as their definition in that Act.

11.2 Exclusive of GST

Except as otherwise provided by this clause, all consideration payable under this Agreement in relation to any supply is exclusive of GST.

11.3 Recipient must pay

If GST is payable in respect of any supply made by a supplier under this Agreement, subject to clause 11.4 the recipient will pay to the supplier an amount equal to the GST payable on the supply at the same time and in the same manner as the consideration for the supply is to be provided under this Agreement.

11.4 Tax Invoice

The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST payable under clause 11.3.

12. Privacy

Each party must:

- 12.1.1 observe the Privacy Law and any privacy protocol as agreed between the Promoter and ETSL in respect of all Personal Information;

- 12.1.2 when collecting Personal Information about an individual from the individual or someone else, make the individual aware of the matter that ETSL would be obliged to make the individual aware of pursuant to the Privacy Law (including under sub-clauses 1.3 and 1.5 of National Privacy Principle 1) and, in the case of the Promoter, by disclosing information that ETSL must provide to the Promoter for the Promoter to use to satisfy this requirement;
- 12.1.3 promptly follow any reasonable direction of the other party in relation to Personal Information;
- 12.1.4 only use Personal Information for the purposes of this Deed and not for its own purposes;
- 12.1.5 ensure that only authorised personnel have access to Personal Information and all relevant personnel are properly trained to meet the requirements of this clause;
- 12.1.6 maintain complete and accurate records of its disclosure of Personal Information and immediately produce these records and the records of the Personal Information on request to the other party or its nominee;
- 12.1.7 establish procedures which will enable it to observe the requirements of this clause;
- 12.1.8 provide reasonable assistance to the other party to enable it to resolve any inquiry or complaint relating to Personal Information; and
- 12.1.9 immediately notify the other party if:
 - (a) it knows of or suspects unauthorised use, copying or disclosure of Personal Information;
 - (b) it becomes aware that a disclosure of that Personal Information may be required by law;
 - (c) any law permits prevents or may prevent it from performing its obligations under this clause; or
 - (d) it receives a request for access by an individual to Personal Information about the individual held by the Promoter. For the avoidance of doubt, this requirement will not apply to such information which is readily available to an individual as part of their membership of the Fund.

13. Intellectual Property Rights

13.1 Pre-existing IP

Subject to clause 13.2.1, nothing in this Deed affects or in any way alters the ownership of the Intellectual Property Rights created or developed by a party before the date of this Deed.

13.2 Licence by Promoter

- 13.2.1 The parties agree and acknowledge that the Promoter owns all Fund IP.

- 13.2.2 To the extent that ETSL creates or develops any intellectual property in relation to the Fund, ETSL will own such Intellectual Property Rights, and such Intellectual Property Rights shall not form part of Fund IP.
- 13.2.3 ETSL hereby grants a non-exclusive, royalty free, non-transferable licence to the Promoter perfect use such Intellectual Property Rights developed by the Trustee referred to in clause 13.2.2 for the term of this Deed.
- 13.2.4 Subject to the applicable terms of the Trust Deed, the Promoter grants to ETSL a non-exclusive, royalty-free, non-transferrable licence, during the term of this Deed, to:
- (a) exercise the rights in the Fund IP; and
 - (b) use the Fund Brand,
- in accordance with this Deed to the extent necessary to enable ETSL to perform its obligations under this Deed and the Relevant Law.
- 13.2.5 The licence in clause 13.2.4 includes the right of ETSL to sub-licence provided ETSL obtains the Promoter's prior written approval.

13.3 Use of Fund and Promoter Brands

ETSL must not:

- 13.3.1 use a Fund Brand other than to the extent necessary to enable ETSL to perform its obligations under this Deed, including providing or promoting any goods or services in relation to the Fund Brand;
- 13.3.2 use, register, apply to register or use any trade mark, business, company, domain name or other trading names which incorporate or include a Fund Brand or Promoter Brand in any jurisdiction; or
- 13.3.3 do anything or allow anything to be done in connection with the Fund Brand or the Promoter Brand which may be disparaging or damaging to the goodwill or reputation of the Promoter, a Related Body Corporate of the Promoter, the Fund Brand or the Promoter Brand.

14. General

14.1 Amendment

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

14.2 Entire Understanding

This Deed contains the entire understanding between the parties as to the subject matter contained in it. All previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this Agreement and have no effect.

14.3 Further Assurance

Each party must promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by this Agreement.

14.4 Legal Costs and Expenses

Each party must pay all legal costs and expenses in relation to the negotiation, preparation and execution of this Deed and other documents referred to in it, unless expressly stated otherwise.

14.5 Waiver and Exercise of Rights

14.5.1 A single or partial exercise or waiver of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.

14.5.2 No party will be liable for any loss or expenses incurred by another party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

14.6 Assignment

ETSL must not:

14.6.1 sell, transfer, delegate, assign, licence; or

14.6.2 mortgage, charge or otherwise encumber,

any right under this Deed to any person (**Proposed Assignee**), or permit a Proposed Assignee to assume any obligation under this Agreement without the prior written consent of the Promoter.

15. Notices

15.1 Service of Notice

A notice or other communication required or permitted, under this Agreement, to be served on a person must be in writing and may be served:

15.1.1 personally on the person;

15.1.2 by leaving it at the person's current address for service;

15.1.3 by posting it by prepaid post addressed to that person at the person's current address for service; or

15.1.4 by email to the person's current email address for service.

15.2 Particulars for Service

15.2.1 The particulars for service of each party are set out on page one of this Agreement under the heading Parties.

15.2.2 Any party may change the address, facsimile or email number for service by giving notice to the other parties.

15.2.3 If the person to be served is a company, the notice or other communication may be served on it at the company's registered office.

15.3 Time of Service

A notice or other communication is deemed served:

- 15.3.1 if served personally or left at the person's address, upon service;
- 15.3.2 if posted within Australia to an Australian address, two Business Days after posting and in any other case, seven Business Days after posting;
- 15.3.3 if served by email, subject to clause 15.3.4 at the time the notice or other communication comes to the attention of the addressee;
- 15.3.4 if received after 6.00pm in the place of receipt or on a day which is not a Business Day, at 9.00am on the next Business Day.

16. Sub-contracting

- 16.1 ETSL may sub-contract, wholly or partially, its obligations under this Deed which are not of a material nature. Otherwise, it may only do so with the Promoter's consent which will not be unreasonably withheld.
- 16.2 The Promoter has no liability in respect of any sub-contractor and ETSL will remain responsible for its obligations under this Deed.

17. Interpretation

17.1 Governing Law and Jurisdiction

This Agreement is governed by and is to be construed in accordance with the laws of Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and waives any right to object to proceedings being brought in those courts.

17.2 Persons

In this Agreement, a reference to:

- 17.2.1 a person includes a firm, partnership, joint venture, association, corporation or other corporate body;
- 17.2.2 a person includes the legal personal representatives, successors and permitted assigns of that person; and
- 17.2.3 any body which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the first-mentioned body.

17.3 Legislation

In this Agreement, a reference to a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them.

17.4 This Agreement, Clauses and Headings

In this Agreement:

- 17.4.1 a reference to this or other document includes the document as varied or replaced regardless of any change in the identity of the parties;
- 17.4.2 a reference to a clause, schedule, appendix or annexure is a reference to a clause, schedule, appendix or annexure in or to this Agreement all of which are deemed part of this Agreement;
- 17.4.3 a reference to writing includes all modes of representing or reproducing words in a legible, permanent and visible form;
- 17.4.4 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this Agreement;
- 17.4.5 unless the context otherwise clearly indicates, words used in the singular include the plural, the plural includes the singular, and the neuter gender includes the masculine and feminine;
- 17.4.6 where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning; and
- 17.4.7 where the expression **including** or **includes** is used it means 'including but not limited to' or 'including without limitation'.

17.5 Severance

- 17.5.1 If a provision in this Agreement is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.
- 17.5.2 If it is not possible to read down a provision as required in this clause, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this Agreement.

17.6 Counterparts

This Agreement may be executed in any number of counterparts all of which taken together constitute one instrument.

17.7 Currency

In this Agreement, a reference to '\$' or 'dollars' is a reference to Australian dollars.

17.8 Business Day

If a payment or other act is required by this Agreement to be made or done on a day which is not a Business Day, the payment or act must be made or done on the next following Business Day.

17.9 Number and Gender

In this Agreement, a reference to the singular includes the plural and vice versa, and a gender includes the other genders.

17.10 Personal Knowledge

A reference to a matter being to the knowledge of a person means the matter is to the best of the knowledge and belief of the person after making proper enquiry including enquiry which a reasonable person would be prompted to make by reason of knowledge of a fact.

17.11 Governing Rules

The parties agree that this Deed does not form part of:

17.11.1 any of the Trust Deeds; or

17.11.2 the governing rules (as defined in the *Superannuation Industry (Supervision) Act 1993*) of a Fund.

Schedule 1 Trustee Fees

All Funds under Trusteeship

A. Subject to the Minimum Fee (set out in paragraph B), Trustee fees will be as follows:

The fees for Platformplus Super will be:

- 5bps on assets below \$1billion.
- 3bps on assets between \$1billion and \$2billion.
- 1.5bps on assets above \$2billion.

The calculation of assets for the purposes of determining the Trustee Fees will exclude amounts to the extent a Member's aggregate Account balance exceeds \$1million

B. The Minimum Fee (exclusive of GST) is as follows (or as otherwise agreed between the parties):

Financial Year	Commencement	Minimum Fee (per annum)
1 July 2021 to 30 June 2022	1 January 2022	\$250,000
1 July 2022 to 30 June 2023	1 July 2022	\$250,000
1 July 2023 to 30 June 2024	1 July 2023	\$250,000
1 July 2024 to 30 June 2025	1 July 2024	\$250,000

The Minimum Fee will be payable quarterly in arrears.

The Minimum Fee will be measured based on calculation of assets (as per A above) for the prior six months.

Fees commence to be paid at the end of the quarter after receipt of the first advised Member cashflow.

The Minimum Fee applies for the first 14 quarters.

Schedule 2 Trustee Services

1. Services which are included in the Trustee Fee referred to in Schedule 1

ETSL will provide services generally associated with the proper performance of the office of trustee of a regulated superannuation fund or eligible rollover fund in relation to the current and ongoing business activity and operation of the Funds, including (but not limited to) the following:

- 1.1.1 due diligence, appointment and monitoring of service providers and promoters of the Fund;
- 1.1.2 governance, due diligence and oversight of investment decisions and insurance frameworks;
- 1.1.3 management of adherence with Relevant Law and applicable regulatory requirements, and ongoing liaising with the Regulators;
- 1.1.4 complaints monitoring and resolution, and resolving insurance claims made by Members;

and such other services contemplated under the trustee powers, rights, duties, discretions, remedies or authorities provided for in the relevant Trust Deed.

2. Examples of services which are excluded from the Trustee Fee referred to in Schedule 1

The services listed in this Section 2 of Schedule 2 are examples of Services not included in the Trustee Fees referred to in Schedule 1.

This list of excluded services is indicative only and any fees or costs likely to be incurred by the Trustee in relation to any item listed in this Section 2 of Schedule 2 must obtain the Promoter's approval prior to incurring that fee or cost unless otherwise indicated.

- (a) All service provider services – Administrator, auditor, actuary, tax agent, Custodian, Fund consultants, etc.
- (b) services required for special projects such as material product enhancements, restructure, material regulator review and investigations, etc.
- (c) Material Fund restructure (excluding successor fund transfers and similar transactions), material costs for change of service providers.
- (d) Significant structural changes to the Fund initiated by the Promoter.

Signing Page

Executed by the parties as a deed

Executed by **Platformplus Pty Limited** in accordance with section 127 of the Corporations Act by being signed on behalf of the company by:

.....
Director

.....
Darren Steinhardt
Name (please print)

.....
Director/Company Secretary

.....
Michael Laffoley
Name (please print)

Executed by **Equity Trustees Superannuation Limited** in accordance with section 127 of the Corporations Act by being signed on behalf of the company by:

.....
Director

.....
Mick O'Brien (Managing Director)
Name (please print)

.....
Director/Company Secretary

.....
Mark Blair
Name (please print)