
Terms of Business

Mutual Trust Group

Mutual Trust Pty Ltd
ABN 71 004 285 330
AFSL 234590

Mutual Capital Limited
ABN 68 100 733 695
AFSL 238314

The Myer Family Company Ltd
ABN 82 006 588 727
AFSL 230143

Effective Date: 1 July 2019

Contents

Mutual Trust Group Terms of Business	4
1. Introduction	4
1.1 Application of these Terms of Business	4
1.2 Your Services Agreement	4
1.3 Terms of Business	4
2. General Terms and Conditions	4
2.1 Services	4
2.2 Your instructions to Us – Proper Instructions, and appointment of Authorised Agents	6
2.3 Fees, Expenses and amounts owing to Mutual Trust	9
2.4 Variation to Fees	12
2.5 Information and Privacy	12
2.6 Confidential Information	13
2.7 Conflicts of Interest	13
2.8 Undertakings, representations and warranties	14
2.9 Liabilities and Indemnities	15
2.10 Anti-Money Laundering and Counter Terrorism Financing	18
2.11 Amendments	18
2.12 Termination	18
2.13 Complaints and disputes	21
2.14 Administrative provisions	21
3. Tax and Accounting Compliance and Advisory Services Terms and Conditions	24
3.1 Reliance on Information	24
3.2 Your responsibilities	24
3.3 Taxation advice	24
4. Wealth Management Services Terms and Conditions	25
4.1 Instructions in relation to Wealth Management Services	25
4.2 Securities Transaction Arrangements	25
4.3 Orders and Transactions	25
4.4 Cancellation of Orders and Transactions	26
4.5 Confirmations	26
4.6 Settlement	26

4.7	Purchases	27
4.8	Sales	27
4.9	Failure to settle	28
4.10	Select offers	28
4.11	Corporate Actions	29
5.	Custody Services Terms and Conditions	29
5.1	Appointment as Custodian	30
5.2	Custody Services	30
5.3	Client Acknowledgements in relation to Custody Services	31
5.4	Sub-Custodians	32
5.5	Bank Accounts	33
5.6	Accuracy or completeness of information received from third parties	33
5.7	Entering into transactions and commitments and execution of documents	33
5.8	Non-compliance	34
5.9	Certification for superannuation funds	34
5.10	Access to information	34
6.	Managed Discretionary Account Services Terms and Conditions	35
6.1	Managed Discretionary Account Services	35
6.2	Managed Discretionary Account Portfolio Administration	35
6.3	Credit facilities	36
6.4	Risk disclosure acknowledgements	36
7.	Interpretation	36
7.1	Definitions	36
7.2	Definitions used in Corporations Act and Rules	40
7.3	Interpretation	40

Mutual Trust Group Terms of Business

1. Introduction

1.1 Application of these Terms of Business

These Terms of Business apply to all Services provided to You by Mutual Trust on and from 1 July 2019 (**Effective Date**). These Terms of Business are to be read in conjunction with, and are subject to anything to the contrary contained in:

- (a) Any Engagement Letter or Proposal in relation to specific Services to be provided to You which is:
 - i. entered into with You with an effective date on or after the Effective Date; or
 - ii. entered into with You prior to the Effective Date in relation to Services which continue to be supplied to You after the Effective Date.
- (b) For each investor in the Cash Fund, the constitution under which the Cash Fund was established and all relevant Product Disclosure Statements, FSG and other client information relating to the Cash Fund from time to time;
- (c) Information included in Your Application Forms; and
- (d) Any other communication or correspondence from Mutual Trust which is expressly stated to form part of, or apply in conjunction with, the Terms of Business, an Engagement Letter or Proposal.

1.2 Your Services Agreement

These Terms of Business and each of the documents referred to in clause 1.1 together form our contract with You for the supply of Services. These documents are referred to collectively as Your **Services Agreement**.

1.3 Terms of Business

- (a) The General Terms and Conditions contained in Section 2 of these Terms of Business and the Interpretation provisions contained in Section 7 apply to all of the Services which we provide to You.

- (b) Sections 3 - 6 inclusive provide additional terms and conditions that apply to the provision of certain types of Services, where relevant to You.

2. General Terms and Conditions

2.1 Services

2.1.1 Your Services

- (a) You have engaged us to provide the Services specified in:
 - i. each annual Engagement Letter detailing ongoing Services; and
 - ii. each Proposal which details additional or varied Services from time to time.
- (b) We will only provide the Services as agreed with You. Unless expressly stated otherwise, no Services provided by Mutual Trust are legal services, or constitute the provision of legal advice.
- (c) Where the Services include Traditional Trustee Company Services:
 - i. any appointment as Trustee (including as Your Attorney) will only be effected by and in accordance with the relevant Trust Instrument and
 - ii. Mutual Trust shall have all of the powers and be subject to all of the duties and obligations that apply or are specified in relation to its role as Trustee under the relevant Trust Instrument and by law.

2.1.2 Variation to the Services

- (a) You may at any time request us to vary the Services provided to You or to provide additional Services (**Amended Services**). Where any request for Amended Services is received, we will provide a Proposal detailing:
 - i. the scope of the proposed Amended Services;
 - ii. our estimated fees and reasonably identifiable costs for the Amended Services;
 - iii. any special terms and conditions referable to the provision of the Amended Services; and

- iv. any other information we think reasonably necessary in connection with the proposed provision of the Amended Services.
- (b) On Your acceptance of a Proposal for Amended Services, the terms of that Proposal will become part of Your Services Agreement and we will commence providing the Amended Services in accordance with that agreement. We will not be obliged to provide any Amended Services unless and until You have accepted the relevant Proposal.
- (c) You agree that we may be entitled to charge You fees at our standard hourly rates from time to time:
- i. where You request us to commence any Amended Services prior to Your acceptance of the relevant Proposal, from the time that work commences; or
 - ii. with Your agreement, where significant work is required to be undertaken to scope the proposed Amended Services or determine the manner in which the proposed Amended Services may be provided.
- (d) We may at any time give notice to You that we:
- i. wish to vary the Services provided to You, or recommend additional Services to You; or
 - ii. intend to terminate the provision of specified Services from a stated date.
- Where we give a notice that we wish to vary the Services provided to You or recommend additional Services, we will provide You with a Proposal containing details of the proposed, revised or additional Services and any resulting changes to our fees. We are not required to make any variation to the Services or provide additional Services until You have accepted a Proposal detailing those Services and relevant fees.
- (e) If either party wishes to terminate the provision of any Service, the provisions of clause 2.12.1 will apply.
- 2.1.3 Your obligations regarding the Services**
- (a) To enable us to provide the Services successfully and efficiently, we need to work collaboratively with You. To facilitate this, You commit to:
- i. perform all of Your obligations under Your Services Agreement in a timely fashion and in accordance with all relevant legal requirements;
 - ii. provide Mutual Trust in a timely fashion all information, documents and instructions that we reasonably require to provide the Services. This may include information, documents and instructions reasonably required for us to:
 - A. accept You as a client of Mutual Trust and provide Services, including Financial Services, to You;
 - B. comply with relevant Australian and overseas legislative and regulatory requirements that relate to or affect the provision of the Services; and
 - C. communicate with third parties as required in connection with the provision of the Services;
 - iii. ensure that all information and documentation provided to us is:
 - A. complete, accurate and not misleading; and
 - B. kept up to date with details of all relevant changes, including all relevant changes to Your circumstances and contact details;
 - iv. promptly notify Mutual Trust of:
 - A. the appointment or termination of any person as Your Authorised Agent, nominee, agent, investment manager, broker or relevant professional advisor;
 - B. any communication from any regulatory authority which affects the ability of Mutual Trust or a Sub-Custodian to perform its obligations and provide the Services under Your Services Agreement;
 - C. any Insolvency Event that occurs in relation to You;
 - D. any alternation to the terms of a Trust Instrument, or any proposal to terminate a Trust in relation to any Trust in respect of which we provide Services;
 - E. any other information which a reasonable person in Your circumstances would consider relevant to the proper and efficient provision of the Services; and

- F. where You are a Statutory Body, any repeal or amendment to the legislation which created, empowers or affects that body.
 - v. review and provide accurate and timely responses and instructions as requested in relation to documents, reports and lodgements provided to You for review and confirmation;
 - vi. ensure that appropriate back-up, security and virus checking procedures are in place for any computer facilities You provide or that are used by You in receiving the Services;
 - vii. be reasonably available for consultation on request;
 - viii. provide reasonable working facilities for us, if You require us to work at Your premises, or otherwise away from Mutual Trust premises; and
 - ix. provide further information and instructions when requested, and make decisions promptly to facilitate the performance of the Services.
- (b) Mutual Trust will not be responsible for any inability to provide any Service, or for any failure in the accuracy, completeness or timeliness in providing any Service, if You do not meet the commitments contained in clause 2.1.3(a).

2.1.4 Timetables, estimates and draft advice

- (a) Unless we agree otherwise in writing, timetables for the provision of Services are intended for planning and estimating purposes only and are not binding. Estimates of time for completion of the Services are given on the assumption that we are able to work with You collaboratively in accordance with clause 2.1.3. Additional fees and expenses may be incurred if this is not achieved.
- (b) In the course of providing the Services, we may provide oral comments or draft advice, reports, presentations, letters, schedules and other documents. No reliance shall be placed on this material, which may be subject to further work, revision and other factors which may mean that it is substantially different from any final report or advice issued. The final results of our work will be set out in our final report or advice.

2.1.5 Change of law

Changes in the law may occur or take effect (including in some cases having retrospective effect) before advice given as part of the Services is acted upon or implemented in full. Our advice is given and Services are provided based upon the law and relevant requirements known at the time the advice is given or Service is provided. Unless specifically stated in an Engagement Letter or Proposal, we have no responsibility to inform You of changes in the law, or of interpretations, rulings, determinations or requirements issued by any relevant regulatory body, including the ATO or ASIC.

2.1.6 Appointment of professional advisors

- (a) You agree that:
- i. Mutual Trust may appoint or engage at Your expense and with Your approval professional advisors (including, for example, accountants, auditors, legal advisors, financial, business or other advisors), where, in Mutual Trust's opinion the advice of any such person is reasonably necessary or desirable to assist in the exercise of Mutual Trust's powers and the performance of its obligations in providing the Services under Your Services Agreement; and
 - ii. neither party is liable to the other for any loss suffered or incurred as a result of any act or omission (including any negligent act or omission) of a person properly appointed or engaged under this clause.
- (b) Mutual Trust will use reasonable endeavours to ensure that any advisor appointed under this clause acknowledges that any advice given by them may be relied upon by both You and Mutual Trust.

2.2 Your instructions to Us – Proper Instructions, and appointment of Authorised Agents

2.2.1 Appointment as Custodian, agent, bare trustee or representative

- (a) Where You have appointed Mutual Trust to act on Your behalf as Custodian, agent, bare trustee or representative, that appointment:
- i. will only take effect from the time at which written notice of the appointment is received by Mutual Trust. Written notice of the appointment may be

- given in Your Engagement Letter, a Proposal, or otherwise in writing to Mutual Trust; and
 - ii. may only be revoked by written notice to Mutual Trust and will continue in force and may be used and relied upon until notice of revocation is received by Mutual Trust.
- (b) Only You may appoint Mutual Trust as Your Custodian, agent, bare trustee or representative.

2.2.2 Proper Instructions

- (a) You agree:
- i. that where You wish to instruct Mutual Trust to take any action on Your behalf, including placing any Order or completing any Transaction, You must do so with Proper Instructions communicated to Mutual Trust; and
 - ii. to be bound by any Proper Instruction given by You or on Your behalf,
in accordance with these Terms of Business;
 - iii. Mutual Trust shall not be required to comply with any Proper Instructions to the extent that:
 - A. there are insufficient funds in Your Cash Fund Account or the Bank Account for the purpose of effecting those Proper Instructions; or
 - B. it would be contrary to these Terms of Business, any relevant law, regulation, local market practice or court order to do so; and
 - iv. that any Proper Instruction received by Mutual Trust after the Close of Business on a Business Day, or on a day that is not a Business Day, will be deemed to have been received on the next Business Day.
- (b) Proper Instructions must be communicated to Mutual Trust in writing or in another manner that has been agreed to by Mutual Trust. Mutual Trust is not required to accept any instruction as a Proper Instruction unless given in a manner reasonably acceptable to Mutual Trust.
- (c) On receipt of Proper Instructions which reasonably appear to have been validly given in accordance with these Terms of Business, Mutual Trust:
- i. is entitled to accept that the person giving the instruction was duly authorised by You to do so and to act on those instructions;
 - ii. may accept the bona fides of the Proper Instructions and is not responsible for confirming the receipt of instructions or for verifying the authenticity of Your instructions;
 - iii. is entitled to assume that it is acting in compliance with the law and all relevant obligations that apply to You. Mutual Trust has no obligation to ensure that Proper Instructions have been issued in accordance with the constituent documents of the relevant Client or comply with law; and
 - iv. may require written confirmation from You before acting on Proper Instructions.
- (d) Where You provide Mutual Trust with Proper Instructions by electronic means, You:
- i. acknowledge that the security of such instructions cannot be guaranteed and such instructions may be intercepted, varied or interfered with;
 - ii. acknowledge that fraudulent or other unauthorised instructions may be transmitted electronically and acted upon by Mutual Trust as if the Proper Instructions had been made by You;
 - iii. accept all risks associated with communicating instructions under this clause; and
 - iv. without limiting any other terms of Your Services Agreement, release Mutual Trust from, and indemnify and hold Mutual Trust harmless against all Claims however arising in consequence of, or in any way related to, Mutual Trust having acted or not acted in accordance with the whole or any part of electronic instructions purportedly received from You.
- (e) Mutual Trust will not be obliged to comply with any instructions to the extent that those instructions are:
- i. not Proper Instructions;
 - ii. not within the scope of Your Services Agreement;
 - iii. contrary to the terms of Your Services Agreement, any relevant law, regulations, local market practice or court order;

- iv. in the opinion of Mutual Trust, capable of exposing Mutual Trust to any Claim or form of liability; or
 - v. in respect of the purchase of, or any Transaction involving, Assets or the incurring of any liability, if Mutual Trust is not reasonably satisfied that there is or will be sufficient funds available in Your Cash Fund Account or the Bank Account, or there are other adequate and appropriate resources in place to fund the acquisition or Transaction, meet the liability or otherwise implement the instruction.
- (f) Despite anything in Your Services Agreement, if ASIC or a court of competent jurisdiction has made a written order vesting any part of the Assets or property held by Mutual Trust or any Sub-Custodian or nominee, in another person, Mutual Trust may, on receipt of such notice:
- i. disregard any future and existing Proper Instructions communicated by You or on Your behalf, in relation to those Assets;
 - ii. act on any instruction give to it in relation to those Assets by ASIC or such other person; and
 - iii. upon termination of Your Services Agreement, act upon the instructions of ASIC or such other person with respect to the Assets to the exclusion of Your rights in relation to those Assets, and deal with the Assets and all books, records and other materials held by it in relation to them, in accordance with the instructions of ASIC or such other person to the exclusion of any instructions from You.
- (g) Mutual Trust will use reasonable endeavours to notify You:
- i. if Mutual Trust is unable to fully comply with Proper Instructions for any reason, and advise the reason why it is unable to comply; or
 - ii. to seek clarification or confirmation from You, before carrying out any Proper Instructions which appear to Mutual Trust to:
 - A. be ambiguous or unclear;
 - B. contain an error on the face of them; or
 - C. conflict with earlier Proper Instructions, unless clause 2.2.2(h) applies.
- (h) It is Your responsibility to ensure that any Proper Instructions cancelling or superseding earlier Proper Instructions are communicated to Mutual Trust in a timely manner, such that Mutual Trust has a reasonable opportunity to act upon those Proper Instructions.
- (i) Mutual Trust may:
- i. do anything which, in its reasonable opinion, is necessary, ancillary or incidental to carrying out any Proper Instructions; and
 - ii. subject to law, shall, upon receipt of Proper Instructions, have the power to act or cause any other person to act in accordance with those Proper Instructions.

2.2.3 Authorised Agent

- (a) You must give written notice to Mutual Trust of the names and specimen signatures of your Authorised Agents on or before the commencement of Your Services Agreement. You may vary Your Authorised Agents at any time by notice to Mutual Trust, including specimen signatures of new or additional Authorised Agents. No notice of any appointment or variation of Your Authorised Agents takes effect until noted by Mutual Trust in its records.
- (b) Only You can appoint an Authorised Agent for the purposes of Your Services Agreement. An Authorised Agent may not appoint any other party as Your Authorised Agent and, except where Your Authorised Agent appoints one or more Nominated Persons in accordance with clause 2.2.3(j), may not delegate any authorities which You have granted to them.
- (c) An Authorised Agent may be given:
- i. **Enquiry Authority**, authorising them to have access to information about Your Account, but not to provide Proper Instructions, transact or withdraw from Your Account; or
 - ii. **General Authority**, authorising them to provide Proper Instructions, transact, make payments and withdrawals for any purpose including settlement or investment.
- (d) You cannot authorise an Authorised Agent or any other third party to make any changes to Your Account details or close Your Account, except

where the third party is Your duly authorised attorney, and has provided evidence to Mutual Trust's satisfaction of their appointment and authority to act in that capacity.

- (e) You agree that if You appoint an Authorised Agent, You will bear responsibility for all acts or omissions of the Authorised Agent, even if the Authorised Agent acts:
 - i. outside their actual or ostensible authority; or
 - ii. in error, or is fraudulent, negligent, in breach of their fiduciary duties or criminal.
- (f) Mutual Trust will be entitled to rely upon the identity and authority of Your Authorised Agents until it receives written notice from You to the contrary. You agree that Mutual Trust may treat a communication from an Authorised Agent as having been given by You and may rely on that communication without further enquiry if it is given, or apparently given, by that Authorised Agent. However, Mutual Trust may at its discretion require confirmation from You before acting on that communication.
- (g) You acknowledge that an Authorised Agent will not be provided with copies of Confirmations of Your Financial Product dealings unless You instruct Mutual Trust in writing to do so.
- (h) Where the person You seek to appoint as an Authorised Agent holds an AFS Licence or is an authorised representative of a holder of an AFS Licence, Mutual Trust may require that person to enter into an agreement governing the arrangements between that person and Mutual Trust, before it accepts instructions from that person. If such an agreement is terminated, Mutual Trust is entitled not to accept any instructions from that Authorised Agent.
- (i) The appointment of an Authorised Agent is terminated:
 - i. if You cancel the appointment by notice in writing to Mutual Trust. Such cancellation takes effect on the date that we amend our records to note the change;
 - ii. Mutual Trust cancels the appointment by written notice to You. Such cancellation takes effect from the date of the notice of cancellation, or as otherwise specified in that notice; or

- iii. on Your death or incapacity, or the occurrence of any Insolvency Event in relation to You.
- (j) Where You appoint a company or firm such as Your stockbroking or financial advisory firm as Your Authorised Agent:
 - i. the company or firm must give us details of the individual persons authorised to transact under that authority (**Nominated Persons**). We will continue to accept instructions from Nominated Persons unless and until we receive written notice that the authorisation of a Nominated Person has been revoked by the relevant Authorised Agent;
 - ii. any appointment, or the revocation of authority, of a Nominated Person takes effect on the date that we amend our records to note that appointment or revocation;
 - iii. Mutual Trust will only act on instructions from a Nominated Person received as Proper Instructions authorised by the relevant Authorised Agent; and
 - iv. You acknowledge and agree that each Nominated Person may act on behalf of the Authorised Agent appointed by You to undertake all matters which the Authorised Agent is authorised to do on Your behalf. Mutual Trust is not obliged to enquire or confirm the identity or authorisation of any Nominated Person of whom it is advised, or reasonably believes it has been advised, by Your Authorised Agent.

2.3 Fees, Expenses and amounts owing to Mutual Trust

2.3.1 Fees

- (a) Subject to law, Mutual Trust shall be entitled to receive, and You agree to pay, the fees as detailed in each Engagement Letter and Proposal relating to the Services.
- (b) Without limiting clause 2.3.1(a), fees relating to:
 - i. the Cash Fund are as stated in the current Product Disclosure Statement for the Cash Fund from time to time; and
 - ii. Traditional Trustee Company Services are stated in the current Trustee Services Fee schedules published by Mutual Trust from time to time.

2.3.2 Reimbursements of costs and expenses

In addition to all fees payable under clause 2.3.1 from time to time, You agree to pay, and Mutual Trust shall be entitled to receive or be reimbursed in respect of, all costs and expenses properly incurred in providing the Services and carrying out its obligations under Your Services Agreement, including, but not limited to:

- (a) All reasonable out of pocket expenses and disbursements, including, for example, travel costs, third party costs required for the provision of Your Services, bank charges, postage fees, courier charges, experts' fees and all other liabilities, costs, charges and expenses reasonably incurred by us in providing the Services;
- (b) Transaction costs, such as fees, brokerage, commissions and other costs incurred in carrying out Proper Instructions;
- (c) Any amounts properly payable to any regulatory or other authority in connection with any Service provided to You, including without limitation, any fees payable to ASIC or any other body in connection with Your affairs or as a result of the provision of the Services; and
- (d) any Taxes payable or assessed in connection with or as a result of the provision of the Services, including any stamp duty payable or assessed in connection with Your Services Agreement and the transfer of any property to or by Mutual Trust or a Sub-Custodian in accordance with, and for the purposes of, Your Services Agreement.

2.3.3 Payment by You

- (a) All fees, costs and expenses are payable by You on presentation of a valid Tax Invoice. Mutual Trust's terms of payment are fourteen days from the date of invoice, unless otherwise agreed.
- (b) Subject to law, and unless You have provided written instructions to the contrary, You authorise Mutual Trust to pay:
 - i. all fees, costs and expenses invoiced to You; and
 - ii. all other amounts properly payable by You under Your Services Agreement (including, without limitation, any amounts payable by You under any indemnities in favour of Mutual Trust or any Sub-Custodian under Your Services Agreement),

by deduction from Your Cash Fund Account or the Bank Account. You agree to ensure that sufficient funds are held in Your Cash Fund Account or Bank Account to pay all amounts payable by You under Your Services Agreement as and when they become payable.

- (c) If at any time there are insufficient funds in Your Cash Fund Account and / or the Bank Account for payment of any amount payable by You under Your Services Agreement, or Mutual Trust is otherwise unable to obtain payment from Your Cash Fund Account or Bank Account in respect of such an amount, You agree to pay the outstanding balance of such an amount directly to Mutual Trust within 14 days of a written request to do so.

2.3.4 Default

- (a) Where any amount in respect of fees, costs and expenses detailed in a valid Tax Invoice remains outstanding for more than 21 days after the date of the relevant invoice, or any other amount payable by You under Your Services Agreement remains unpaid for more than 21 days after the due date for payment:
 - i. Mutual Trust may charge You interest in relation to each outstanding amount for each day until that amount is paid in full;
 - ii. interest will be calculated on a daily basis at a rate 2% higher than the 90 day bank bill swap benchmark rate published by ASX over the period during which interest is payable; and
 - iii. Mutual Trust reserves the right, and You authorise and direct Mutual Trust, to realise or sell any Assets that are held in Your Account as Mutual Trust considers necessary to pay all outstanding amounts, including all amounts of interest charged under this clause. For the purposes of this clause, Mutual Trust has a lien over all Assets and all documents and files relating to the provision of the Services, and may take all action reasonably required or incidental to the exercise of its rights under this clause.
- (b) Notwithstanding anything to the contrary in Your Services Agreement, Mutual Trust in its capacity as Custodian is prohibited from taking or granting

a charge, mortgage, lien or other encumbrance over, or in relation to, the Assets unless it is:

- i. for expenses and outlays incurred in accordance with Your Services Agreement, other than any unpaid fees of Mutual Trust; or
- ii. in accordance with Your written instructions.

2.3.5 Disputes in relation to amounts payable by You

- (a) If at any time You disagree with, or dispute that any amount is payable by You under Your Services Agreement, You must give written notice to Mutual Trust advising of the amount disputed (**Disputed Amount**) and the reasons for the dispute.
- (b) Where notice of a Disputed Amount is given under clause 2.3.5(a), then, subject to clause 2.3.5(c), Your obligation to pay the Disputed Amount is suspended. However, notwithstanding the dispute, You remain liable to pay the undisputed portion of all amounts then or in future due and payable by You under Your Services Agreement.
- (c) Unless You give notice of the Disputed Amount within sufficient time before an invoiced amount is deducted from Your Cash Fund Account or the Bank Account under clause 2.3.3(b) for us to reasonably be able to suspend that deduction, a Disputed Amount may be deducted from Your Cash Fund Account or Bank Account despite the dispute. Where this occurs, the Disputed Amount may be refunded to You or credited against other present or future invoiced amounts in the event and to the extent that the dispute is resolved in Your favour.
- (d) Pending resolution of a dispute in relation to a Disputed Amount, Mutual Trust will have no obligation to refund to You any Disputed Amount which has already been paid.
- (e) The parties will seek to resolve any dispute regarding any amount which Mutual Trust claims is payable by You under Your Services Agreement:
 - i. in the first instance through discussion between You and Your responsible client Director or Partner;

- ii. if not resolved under clause 2.3.5(e)i, through discussion with the Mutual Trust Chief Executive Officer or his or her delegate; or
- iii. otherwise, through the mechanism for resolving complaints and disputes under clause 2.13.

2.3.6 Credit checks

You agree that Mutual Trust may undertake any credit or other checks in relation to You which it considers reasonably appropriate prior to or at any time during the term of Your Services Agreement.

2.3.7 GST

- (a) All fees and expenses and other monetary amounts under Your Services Agreement have been determined without regard to the impact of the GST and are therefore stated as exclusive of GST.
- (b) To the extent that any supply of Services under Your Services Agreement is a taxable supply, the consideration for that supply is increased by an amount determined by Mutual Trust, not exceeding the amount of that consideration (or its market value) multiplied by the rate at which GST is imposed in respect of the supply.
- (c) Mutual Trust will issue a Tax Invoice to You stating the amount of GST which is payable in relation to the supply of the Services to You in accordance with GST Law.
- (d) If either party is required under this Agreement to indemnify the other, or to make a reimbursement or contribution to the other, and the other can obtain an Input Tax Credit on an acquisition associated with that indemnity, reimbursement or contribution, the amount required to be paid is reduced by the amount of that Input Tax Credit but increased by any GST payable by the other in respect of the indemnity, reimbursement or contribution.
- (e) Mutual Trust warrants that it is and will continue to be registered for Australian Business Number and GST purposes at each time a taxable supply is made.
- (f) Subject to the prior provision of an Adjustment Note, if an Adjustment Event results in the GST on a taxable supply being different from the GST recovered by the supplier, the supplier must

refund to the recipient any excess and may recover from the recipient any shortfall.

- (g) The parties agree to do everything reasonable to assist each other to comply with GST obligations relevant to Your Services Agreement.

2.4 Variation to Fees

To the extent permitted by law, Mutual Trust may vary the fees for the Services at any time:

- (a) By providing 30 days' written notice to You; or
- (b) Otherwise, by agreement with you.

2.5 Information and Privacy

2.5.1 Collection of Personal Information

All Personal Information collected from You will be collected, used, disclosed and stored by Mutual Trust in accordance with the Privacy Act and the Mutual Trust Privacy Statement.

2.5.2 Disclosure of Personal Information

Personal Information provided by You may be disclosed by Mutual Trust;

- (a) To any person where reasonably necessary for the proper provision of the Services in accordance with Your Services Agreement, including to third party service providers engaged by Mutual Trust in connection with the provision of the Services;
- (b) If required by any relevant Australian or Foreign Government or regulatory authority (including ASX, ATO and ASIC) or if authorised or required by law or applicable foreign regulations, including without limitation FATCA and CRS;
- (c) To the officers, employees, agents, associates and Related Bodies Corporate of Mutual Trust;
- (d) On a confidential basis, to a prospective purchaser of, or investor in, Mutual Trust for all or part of the business; or
- (e) To any person to whom You have authorised it to release the information or documents.

2.5.3 Use of Personal Information

- (a) You acknowledge that, unless You tell us otherwise, (which You may do at any time) Mutual Trust may use Your Personal information

to inform You of products and services that Mutual Trust wishes to offer to You. You agree that until You request otherwise, we may send to You commercial electronic messages about our products and services.

- (b) We may enter into agreements with one or more IT service providers operating outside of Australia. As a consequence, Your Personal Information may be subject to cross-border disclosure with recipients overseas, including recipients in Canada and the United States of America. You acknowledge that by consenting to us disclosing Your Personal Information to overseas recipients, Australian Privacy Principle 8.1 will not apply to the disclosure. This means we will not be obligated under the Privacy Act to take reasonable steps to ensure that an overseas recipient does not breach the Australian Privacy Principles and we will not be liable under the Privacy Act if the recipient does not act consistently with the Australian Privacy Principles.

2.5.4 Personal Information relating to or collected from a third party

- (a) You agree that You will only disclose to us Personal Information of any other person where You are duly authorized to do so, it is necessary for, or relevant to, the provision of the Services by us, and You warrant that You are not in breach of the Privacy Act in making such disclosures to us.
- (b) If, in order for Mutual Trust to provide the Services, it is necessary for Mutual Trust to collect Personal Information from a third party or Mutual Trust requires a third party to supply Your Personal Information to it, You consent to that third party disclosing to us, and our collection from the third party of, Your Personal Information.

2.5.5 FATCA

You acknowledge that:

- (a) FATCA is a United States (US) tax law relevant to financial institutions and other financial intermediaries and intended to prevent tax evasion by US citizens and US tax residents through use of non-US investments or accounts. Australia has entered into an intergovernmental agreement (IGA) with the US to implement

FATCA in Australia, via the *Australian Taxation Administration Act 1953* (Cth) administered by the ATO. Under the IGA, Reporting Australian Financial Institutions (as defined) have identification and reporting obligations for FATCA; and

- (b) Mutual Trust may have reporting obligations under the IGA and intends to fully comply with its FATCA obligations as determined by the FATCA regulation, the IGA and the ATO. These obligations include, but are not limited to, identifying and documenting the FATCA status of account holders and reporting certain information on applicable investors to the ATO which will in turn report this information to the US Internal Revenue Service.

2.5.6 Common Reporting Standard (CRS)

You acknowledge that:

- (a) CRS is the worldwide standard for the collection, reporting and exchange of financial account information on foreign tax residents, to tax authorities which have adopted the CRS. Under the CRS:
 - i. Australian financial institutions will collect and report financial account information on non-residents to the ATO; and
 - ii. the ATO will exchange this information with the participating foreign tax authorities of those non-residents and at the same time receive financial account information on Australian residents from other countries' tax authorities, with the overall purpose of deterring tax evasion.
- (b) Mutual Trust may have reporting obligations under the CRS, FATCA and Australian tax laws relating to Your Account, and the provision of Services to You.
- (c) If:
 - i. You maintain an overseas address or telephone number, including where You have a "care-of" or "hold" address overseas;
 - ii. funds are transferred to an account overseas; or
 - iii. a power of attorney or signatory authority has been granted to a person with an address overseas,

You may be required to, and You agree that You will on request, complete a self-certification form to Mutual Trust if You reside overseas or if any of the criteria for application of CRS at any time applies to You.

2.6 Confidential Information

- (a) Neither Mutual Trust nor You may disclose Confidential Information about or belonging to the other without the other's consent.
- (b) Notwithstanding clause 2.6(a), either party may disclose Confidential Information about or belonging to the other:
 - i. to its insurers or legal, financial or business advisers, provided that the Confidential Information remains confidential;
 - ii. if required to do so by law; or
 - iii. if required for the proper performance or delivery of the Services.

2.7 Conflicts of Interest

Without limiting anything else in Your Services Agreement, You acknowledge that Mutual Trust:

- (a) May provide services similar to Your Services to other persons, some of whom may be in competition with You or have interests which conflict with Your interests. Mutual Trust will not be prevented or restricted by virtue of our relationship with You under Your Services Agreement from providing services to other clients;
- (b) Is not obliged to disclose to You anything of which it becomes aware in the course of providing services to other persons;
- (c) May, in the ordinary course of its business and without reference to You, provide Services or effect transactions in which Mutual Trust has a direct or indirect material interest or relationship of any kind with another person, which may involve a potential conflict with Mutual Trust's duty to You under Your Services Agreement. Mutual Trust is not liable to account to You for any profit, commission or remuneration made or received in relation to any such transactions or any related transactions; and

- (d) Where Your Services include Wealth Management Services and or Custody Services, You acknowledge that Mutual Trust may, and You authorise Mutual Trust to, arrange for the execution of Orders and enter in to Transactions, including in the following circumstances:
 - i. acting in the same capacity for another client of Mutual Trust;
 - ii. dealing as principal in the Financial Products that You are subscribing for, buying or selling, or providing services to other persons with interests in or who are proposing to subscribe for, buy or sell such Financial Products;
 - iii. dealing as Your agent with a person connected with Mutual Trust or conducting a crossing by matching Your Order with the Order of another person (who may be a person associated with Mutual Trust);
 - iv. sponsoring or underwriting a new issue involving the Financial Products that You are subscribing for, buying or selling;
 - v. holding a principal position in the Financial Products that You are subscribing for, buying or selling;
 - vi. where permitted by law, taking the opposite position in any Transaction, acting either for You or on its own account; or
 - vii. dealing in any way with the entity or entities in which You have invested.
- (c) All information which You have supplied, or will supply, to Mutual Trust in connection with the provision of the Services:
 - i. is accurate and complete in all material respects;
 - ii. is not misleading or deceptive; and
 - iii. may be relied upon by Mutual Trust and any Sub-Custodian.
- (d) You will advise Mutual Trust as soon as possible of any new or changed information to ensure that all information required by Mutual Trust in connection with the Services remains accurate and complete, and is not misleading or deceptive;
- (e) Prior to giving any Proper Instruction in relation to any matter affecting the Services, You will:
 - i. have and maintain all necessary power, authority and consents required in connection with all matters relevant to that Proper Instruction;
 - ii. have and maintain sufficient funds in Your Cash Fund Account or Bank Account to enable the Proper Transaction to be fully implemented; and
 - iii. will duly complete all required actions and documents required on Your part to enable the Proper Instruction to be duly completed;
- (f) Where the Services include Custody Services, You have full unencumbered legal title to all relevant Assets to enable transfer of title from You and the provision of all Services relevant to those Assets in accordance with Your Services Agreement;
- (g) You have read and understood all documentation provided to You in relation to the Services including, without limitation, all relevant FSG and Product Disclosure Statements;
- (h) You are not a person with whom Mutual Trust is not lawfully entitled to deal pursuant to any statute, law, rule or regulation applicable to Your Services Agreement and that all dealings by You with Mutual Trust or a request to be carried out by Mutual Trust on Your behalf are and will be lawful in all relevant jurisdictions;
- (i) If any Services are to be provided to You acting as a Trustee, You represent and warrant that:
 - i. You have authority to be bound by Your Services Agreement in Your capacity as Trustee, and You

2.8 Undertakings, representations and warranties

2.8.1 Your Representations and warranties

You represent, warrant and undertake to Mutual Trust at the time of entering into each Engagement Letter and Proposal, and at all times during the term of Your Services Agreement that:

- (a) You have the legal right and power and are duly authorised to enter into and perform Your Services Agreement and to receive the Services in accordance with Your Services Agreement;
- (b) You will perform all of Your obligations under Your Services Agreement in accordance with the terms of that agreement and all relevant legal requirements;

agree that You are liable under Your Services Agreement both in Your capacity as Trustee and in Your personal capacity;

- ii. You are entitled to be indemnified out of the assets of each relevant Trust for all Your liabilities under Your Services Agreement in connection with Services provided to You as Trustee or in connection with the Trust; and
- iii. You have properly exercised Your trust powers in entering into Your Services Agreement and receiving the Services;
- (j) If You are a natural person, and You have not advised Mutual Trust in writing to the contrary, You represent and warrant to Mutual Trust that:
 - i. You are principally a resident in Australia and are 18 years of age or over; or
 - ii. You are otherwise principally a resident in the country specified in Your Engagement Letter, a Proposal or Your Application Form and are 18 years of age or over; and
- (k) If You are a body corporate, You are duly incorporated and validly existing.

2.8.2 Mutual Trust representations and warranties

- (a) Mutual Trust represents and warrants to You throughout the term of Your Services Agreement that it:
 - i. has the necessary powers to enter into and perform our obligations under Your Services Agreement;
 - ii. has the necessary skills, facilities, capacity, resources, staff and arrangements to properly provide the Services and comply with our obligations under Your Services Agreement;
 - iii. holds all necessary licences, authorisations and approvals required by law to provide the Services, and has materially complied with their terms and conditions; and
 - iv. holds insurance it deems appropriate for undertaking the obligations under Your Services Agreement and providing the Services.
- (b) Subject to clause 2.8.2(a), and apart from any warranties, representations and responsibilities which are implied by law and cannot be excluded, Mutual Trust makes no warranties or

representations in relation to the provision of any Service or the performance of any obligations under Your Services Agreement.

2.9 Liabilities and Indemnities

2.9.1 Limitation of liability

To the maximum extent permitted by law, and without limiting anything else contained in the remaining provisions of clause 2.9, Mutual Trust will not be liable to You for:

- (a) Any Claim of whatever nature arising from or in connection with:
 - i. the Provision of the Services to You; or
 - ii. a bona fide decision or strategy made or followed in the proper performance of its duties and obligations in providing the Services, other than to the extent that that Claim is caused or contributed to by Mutual Trust's negligence, fraud, wilful default or dishonesty or the negligence, fraud, wilful default or dishonesty of its officers, employees or agents or a Sub-Custodian; or
- (b) Any Claim relating to, or in the nature of, indirect or consequential loss, economic damage or loss of profits arising from or in connection with the provision of the Services;
- (c) Any Claim that arises from or in connection with:
 - i. events or circumstances beyond Mutual Trust's control, including currency restrictions, disruption to the normal processes and processes of any relevant market, failure of power, data or communications services;
 - ii. the general risks of investing in local or foreign jurisdictions;
 - iii. investing or holding property in local or foreign jurisdictions, or investing in a particular country's market, including the regulation of the securities or banking industries, governmental action, currency restrictions, market conditions, devaluations and fluctuations affecting the Assets;
 - iv. errors in instructions given by You or on Your behalf to Mutual Trust;
 - v. acting on Proper Instructions;

- vi. failure to carry out a Proper Instruction or otherwise perform our obligations under Your Services Agreement where it is not reasonably possible or practicable to do so for any reason, or to do so would result or may result in Mutual Trust contravening any law, order or judgment of any court or any regulatory requirement;
- vii. failure of any third party to perform or fulfil its obligations where that is reasonably necessary in connection with the provision of the Services by us (other than:
 - A. a Sub-Custodian; or
 - B. other third party engaged by Mutual Trust in the provision of the Services, and for whose performance Mutual Trust is responsible);
- viii. not acting upon any instructions purported to be from You or any Authorised Agent where Mutual Trust, in its absolute discretion, suspects that the instructions have been transmitted to it fraudulently, mistakenly or without authority or if the instructions contained material omissions or errors; or
- ix. acting upon any instructions purported to be from You or any Authorised Agent which were not genuine, provided that Mutual Trust reasonably believed those instructions were genuine.

2.9.2 Liability to Retail Clients

Nothing in Your Services Agreement excludes any liability Mutual Trust may have to You if You are a Retail Client and You suffer loss due to a failure by Mutual Trust or a Sub-Custodian to:

- (a) Comply with its duties under Your Services Agreement or any agreement with a Sub-Custodian; or
- (b) Observe a reasonable standard generally applied by providers of Services similar to the Services provided to You,

except that Mutual Trust will not be liable in respect of loss suffered as a result of a Sub-Custodian becoming insolvent, unless Mutual Trust failed to take reasonable care in engaging and monitoring compliance by the Sub-Custodian.

2.9.3 Taxation liability

- (a) Without limiting clause 2.9.1, in no event shall Mutual Trust be liable:
 - i. to account to You for any payment reasonably made by it or a Sub-Custodian either directly or indirectly to any fiscal authority for any Tax with respect to property forming any of the Assets or any transaction performed under Your Services Agreement, whether or not such payment was based on Proper Instructions;
 - ii. for any Tax imposed on:
 - A. You, Mutual Trust or a Sub-Custodian arising out of any matter undertaken by Mutual Trust or a Sub-Custodian in the provision of the Services, or in relation to any Asset; or
 - B. income or gains in respect of the Assets, which shall be Your sole responsibility.
- (b) Mutual Trust is entitled to be reimbursed, and You indemnify Mutual Trust, for all and any Taxes imposed or assessed against Mutual Trust or any Sub-Custodian (but excluding any Taxes assessable in respect of fees paid to Mutual Trust or a Sub-Custodian in relation to the Services provided to You).
- (c) Where Your Services include Custody Services, You indemnify Mutual Trust and any Sub-Custodian, for any Losses that Mutual Trust or the Sub-Custodian suffers where Mutual Trust or the Sub-Custodian has an obligation under any tax laws of any relevant jurisdiction to withhold any tax arising in connection with Your Assets. If Mutual Trust or any Sub-Custodian is required under any such laws to withhold Tax and/or pay any Tax in connection with Your Services Agreement or any action taken in providing the Services, You authorise Mutual Trust to debit Your Cash Fund Account or the Bank Account for that amount and to pay that amount to the appropriate tax authority.

2.9.4 Limitation of liability as Trustee or Custodian

To the maximum extent permitted by law, and in addition to any other limitation of liability in Your Services Agreement, where the Services include acting as Trustee or Custodian, Mutual Trust is not liable to You for any Claim:

- (a) Unless Mutual Trust acted otherwise than in accordance with, or without a belief held in good faith that it was acting in accordance with, the Services Agreement and relevant Trust Instrument(s); and
- (b) To the extent that it is indemnified out of the Assets which it holds in its capacity as Custodian or as Trustee of the relevant Trust.

2.9.5 Liability Cap

Notwithstanding anything else contained in Your Services Agreement, to the maximum extent permitted by law, Mutual Trust's total aggregate liability for:

- (a) Any single Claim arising; and
- (b) The aggregate of all Claims arising in any Financial Year in which Services are provided to You,

from or in connection with the Services or Your Services Agreement, (and whether arising from breach of contract, tort, including negligence or otherwise), is limited to an amount equal to the total amount of the fees payable by You in respect of the Services provided to You in the preceding Financial Year.

2.9.6 Your indemnity from Mutual Trust

- (a) Subject to the limitations contained in clauses 2.9.1, 2.9.2, 2.9.3, 2.9.4, 2.9.5 and 2.9.6(b), Mutual Trust indemnifies You against any Claim reasonably suffered or incurred by You directly as a result of Mutual Trust's negligence, fraud, wilful default or dishonesty or the negligence, fraud, wilful default or dishonesty of Mutual Trust's officers, employees or agents, or third-party service providers, including a Sub-Custodian, for whose conduct we are liable.
- (b) Without limiting anything else contained in Your Services Agreement, You acknowledge that the indemnity under clause 2.9.6(a) does not apply to any consequential or indirect loss suffered by You, including without limitation, any loss of profit, loss of business reputation or failure to realise any potential benefit or savings.
- (c) The indemnity contained in this clause is a continuing indemnity and will survive the termination of Your Services Agreement.

2.9.7 Mutual Trust's indemnity from You

- (a) In addition to any other indemnities given by You under Your Services Agreement, but subject to clause 2.9.7(b), You are liable for, and indemnify Mutual Trust, (including each of its officers, employees, agents and related bodies corporate, and any Sub-Custodian), in respect of any Claim which may be suffered or incurred by it as a result of or in connection with the provision of the Services and the performance of any act, matter or thing pursuant to Your Services Agreement. Without limitation, Your indemnity under this clause includes any Claim suffered or incurred directly as a result of, or arising from:
 - i. Mutual Trust or a Sub-Custodian holding Assets on Your behalf;
 - ii. Mutual Trust complying with any Proper Instruction, and any other instruction purporting to be from You or an Authorised Agent;
 - iii. any instruction given to Mutual Trust which contains any error or ambiguity;
 - iv. any negligence, fraud, or breach of Your Services Agreement by You or any of Your Authorised Agents, employees, officers, agents, delegates or representatives, or any Nominated Person;
 - v. Mutual Trust not acting on any instructions purported to be from You or Your Authorised Agent where Mutual Trust, in its absolute discretion, suspects that the instructions have been transmitted to it fraudulently, mistakenly or without authority, or if the instructions contain material omissions or errors; and
 - vi. Mutual Trust acting upon any instructions purported to be from You or Your Authorised Agent, which were not in fact genuine.
- (b) The indemnity in clause 2.9.7(a) does not apply to any Claim to the extent that it is caused or contributed to by the negligence, fraud, wilful default or dishonesty of:
 - i. Mutual Trust, its officers, employees, agents and related bodies corporate, or of a Sub-Custodian; or
 - ii. third parties that have provided Services to You in connection with the Services, or their respective officers, employees or agents.

- (c) The indemnity contained in clause 2.9.7(a) is a continuing indemnity and will survive the termination of Your Services Agreement.
- (d) Where the Services include acting as Custodian or Trustee, the indemnity contained in clause 2.9.7(a) may be exercised without notice to You against any Assets held by Mutual Trust in its capacity as Custodian or Trustee.

2.9.8 No liability for information received from third parties

Mutual Trust is not responsible for the accuracy or completeness of any information received by it from any third party and communicated to or accessed by You.

2.10 Anti-Money Laundering and Counter Terrorism Financing

- (a) You acknowledge that:
 - i. Mutual Trust is subject to the AML/CTF Legislation; and
 - ii. any dealing with funds or assets of any person or entity involved or suspected of involvement in money laundering or terrorism financing may prohibit Mutual Trust from entering or concluding transactions involving those persons or entities.
- (b) You agree that Mutual Trust may not provide, or may delay the provision of any Service, including delaying, blocking any Order or Transaction or refusing to make any payments, receive any money or deal with any Assets, if Mutual Trust believes on reasonable grounds that such an action would or might breach any AML/CTF Legislation.
- (c) For the purposes of enabling Mutual Trust to comply with all applicable AML/CTF Legislation, You agree that, notwithstanding anything else contained in Your Services Agreement, You:
 - i. will provide all information, including Personal Information, to Mutual Trust which it reasonably requires to comply with all relevant AML/CTF Legislation as it affects the provision of the Services; and
 - ii. agree that Mutual Trust may disclose information, including Personal Information, where required by any laws in Australia or any other country in

connection with anti-money laundering or criminal or terrorist activities.

- (d) You undertake and declare to Mutual Trust that to the best of Your knowledge the payment or receipt of monies and any dealing with Assets by Mutual Trust pursuant to Your Services Agreement will not breach any AML/CTF Legislation.

2.11 Amendments

- (a) Subject to clauses 2.1.2 and 2.4, Mutual Trust may amend Your Services Agreement by sending You written notice detailing the amendments. Mutual Trust will give You:
 - i. at least 7 days' notice of any amendment that is, in its reasonable opinion, to correct a manifest error or remove any inconsistency in the terms of Your Services Agreement, is of a minor or technical nature or which is not of a nature to which clause 2.11(a)i. applies; and
 - ii. at least 30 days' notice of any amendment which, in its reasonable opinion, is a material adverse change to Your Services Agreement, including any amendment which would have a material adverse effect on Your rights or obligations under Your Services Agreement.
- (b) All Services provided from the time that any amendment to Your Services Agreement takes effect will be governed, and each of You and Mutual Trust will thereafter be bound, by Your Services Agreement as amended, however, no amendment will affect any outstanding Order or Transaction or any legal rights and obligations that may have arisen before the date of that amendment.

2.12 Termination

2.12.1 Termination of Services

- (a) The provision of any particular Service may be terminated by either party by giving written notice to the other, specifying the Service or Services to be terminated and the date on which those Services are to cease being provided. Where You terminate the provision of a Service, Mutual Trust is not obliged to cease providing that Service, and You agree to continue to be liable to pay all relevant amounts under Your Services

Agreement in connection with that Service, until Mutual Trust has received Your Notice of termination and had reasonable opportunity to act upon and implement all necessary steps required to effect the termination.

- (b) If Your Services include Managed Discretionary Account Services and You cease to be a Wholesale Client, Mutual Trust will terminate the provision of those Managed Discretionary Account Services immediately on receipt of notice that You have ceased to be a Wholesale Client.

2.12.2 Termination of Your Services Agreement

- (a) Your Services Agreement shall continue until terminated in accordance with these Terms of Business.
- (b) Subject to clauses 2.12.4, 2.12.5 and 2.12.6 and any statutory provisions that apply to any of the Services, either party may terminate Your Services Agreement for any reason:
 - i. where Your Services include discretionary portfolio management or Managed Discretionary Accounts, by giving not less than 90 days' notice to the other party; or
 - ii. in any other case, by giving 30 days' prior written notice to the other party.
- (c) Either party may at any time terminate Your Services Agreement immediately by giving written notice to the other, if the other:
 - i. fails to comply in any material way with its obligations, warranties or representations under Your Services Agreement (other than because of an act or omission of the other party), and fails to rectify such failure within 7 days after receiving written notice from the other party; or
 - ii. its officers, employees or agents perpetrate or attempt to perpetrate any fraud, negligence or wilful default in connection with its obligations under Your Services Agreement.
- (d) Mutual Trust may terminate Your Services Agreement immediately by written notice to You if:
 - i. an Insolvency Event occurs in relation to You;

- ii. any Security interest is created or asserted against any funds or assets held in the name of Mutual Trust or by any nominee or Sub-Custodian appointed by Mutual Trust, except as previously agreed by us;
- iii. the continued provision of Services to You would or may in Mutual Trust's opinion (in its absolute discretion):
 - A. constitute a breach of, or non-compliance with, any relevant law or regulatory requirement in any relevant jurisdiction, or any regulatory authority, licence or approval held or required to be held by Mutual Trust in connection with the provision of the Services; or
 - B. expose Mutual Trust to any significant new cost, liability, tax, expense or risk or any material increase in any cost, liability, tax, expense or risk that arises in connection with, or is referable to, the provision of the Services.
- (e) You may terminate this agreement immediately by written notice to Mutual Trust if:
 - i. an Insolvency Event occurs in relation to Mutual Trust;
 - ii. Mutual Trust does not hold any regulatory authority, licence or approval which is required to be held in connection with the provision of the Services; or
 - iii. Mutual Trust's performance under this Agreement constitutes or causes a breach by You of Your legal or regulatory obligations.

2.12.3 Consequences of termination of Your Services Agreement

- (a) The termination of Your Services Agreement does not affect:
 - i. any Transaction properly entered into prior to termination;
 - ii. any rights or obligations of the parties which have accrued prior to termination;
 - iii. any limitation of Mutual Trust's liability or the indemnities contained in Your Services Agreement; or

- iv. any Claim which either party may have against the other, including any Claim by Mutual Trust in respect of fees accrued, up to and including the date of termination.
- (b) Without limiting the requirements of clauses 2.12.4, 2.12.5, 2.12.6, 2.12.7 and 2.12.8, on termination of Your Services Agreement, the parties will co-operate with each other and provide each other assistance to the extent reasonably necessary to give effect to the termination of Your Services Agreement in accordance with its terms.

2.12.4 Termination of Traditional Trustee Company Services

Notwithstanding any other provision of Your Services Agreement, where Mutual Trust acts as Trustee or co-trustee of any Trust, Mutual Trust will only retire as Trustee where permitted to do so by the relevant Trust Instrument and legislation, and in accordance with its fiduciary obligations to the trust beneficiaries.

2.12.5 Termination of Custody Services

- (a) Where Your Services include Custody Services, on the termination of those Custody Services (including on termination of Your Services Agreement), then, subject to clause 2.12.7, Mutual Trust shall, at Your expense, within a reasonable time of the termination of those Services, transfer or cause any Sub-Custodian to transfer, any Assets and any Title Documents in respect of the Assets to You, or to another entity lawfully directed by You.
- (b) Without limiting its rights under clause 2.12.7, Mutual Trust may deal with the Assets for up to 30 days, or such other reasonable period as agreed by the parties, from the effective termination date, for the purposes of transferring the Assets to You or at Your discretion.

2.12.6 Termination of Managed Discretionary Account Services

Where Your Services include Managed Discretionary Account Services:

- (a) If Mutual Trust receives actual knowledge of Your death, incapacity or insolvency (or, where You consist of more than one individual, the last surviving individual in the case of death), Mutual Trust will, subject only to completing or closing,

or arranging for the completion or closing of, any binding but incomplete Transactions involving the Portfolio, no longer manage and will not arrange for the execution of any further Transactions in relation to the Portfolio except in accordance with the instructions of Your duly appointed personal representative or successor in title. Mutual Trust may decide not to take instructions from Your duly appointed personal representative or successor in title unless and until it receives evidence to its satisfaction of their appointment or succession in title; and

- (b) On the termination of those services in all circumstances other than under clause 2.12.6(a), Mutual Trust will, subject only to completing or closing, or arranging for the completion or closing of, any binding but incomplete Transactions involving the Portfolio, no longer manage and will not arrange for the execution of any further Transactions in relation to the Portfolio except in accordance with Your instructions. You undertake upon termination to instruct Mutual Trust on how the Portfolio is to be transferred or otherwise dealt with, failing which Mutual Trust may or may not roll over all deposits comprised in the Portfolio upon maturity and otherwise leave the Portfolio in the state in which it may be upon termination. All acts, matters and things done by Mutual Trust prior to termination of Managed Discretionary Account Services, will be valid and binding upon You.

2.12.7 Costs relating to transfer of Assets and other matters

You acknowledge that the transfer of Assets, documentation and records to You or at Your direction and other matters required in connection with the termination of any Service or Your Services Agreement may result in costs and expenses to Mutual Trust, including the expense of staff time to undertake the necessary work. You agree that:

- (a) Mutual Trust may charge You for reasonable fees, based on the current hourly rates for Mutual Trust employees, contractors or agents required to perform all reasonably necessary work, and all related costs and expenses in connection with that work; and
- (b) The terms of clause 2.3 will apply to all fees, costs and expenses charged under this clause.

2.12.8 Retention of documents and papers

On the termination of any Service or on termination of Your Services Agreement:

- (a) If You request that any Assets, documents or records held by Mutual Trust be delivered to You or at Your direction, then, subject to law, Mutual Trust shall have no obligation to comply with that request, and may retain all of Your Assets, documents and records for so long as any amounts payable to Mutual Trust under Your Services Agreement are due and payable and remain outstanding; and
- (b) Mutual Trust may retain all working papers, documentation and software prepared by it, and any other documentation on which its Services are based to enable it to maintain a professional record of all work done. You may retain Your originals and any copies of Mutual Trust reports and letters provided in connection with the Services during the term of Your Services Agreement.

2.13 Complaints and disputes

- (a) Any complaints or dispute between the parties arising out of, or relating to, the provision of the Services or a breach or alleged breach of Your Services Agreement ("**Dispute**") must, before any party initiates any form of litigation against the other party (other than for urgent interlocutory relief) be dealt with in accordance with the complaints and dispute resolution process outlined in the FSG. (If you are a Wholesale Client and have not received our FSG, it is available on request from Mutual Trust).
- (b) Either party may at any time terminate the dispute resolution process set out in this clause 2.13 in relation to a Dispute, by giving notice of termination of that process to the other.
- (c) If in the course of the dispute resolution procedure pursuant to this clause 2.13, the parties agree to refer a Dispute for resolution by some agreed process, no party will oppose any application for a stay of any legal proceedings in respect of that Dispute pending the completion of that agreed process.
- (d) Until a Dispute is resolved, whether by agreement between the parties in Dispute or by a court

order, each party will continue to perform its obligations under this agreement.

2.14 Administrative provisions

2.14.1 Delegation by Mutual Trust

- (a) In carrying out its functions under Your Services Agreement, Mutual Trust may act through any of its directors, officers, employees, agents, contractors and third party service providers and may delegate the performance and its functions, powers, duties, discretions and privileges under Your Services Agreement to any such persons in any jurisdiction it thinks fit.
- (b) Mutual Trust shall remain liable to You for the provision of all Services and the performance of its obligations under this Agreement, notwithstanding any use of contractors or third-party service providers, or any delegation under this clause 2.14.
- (c) Except where stated otherwise in Your Engagement Letter or a Proposal or otherwise agreed with You, the costs and expenses of any third-party service provider engaged by Mutual Trust will be borne by Mutual Trust and not charged to You.

2.14.2 Tape recording

You acknowledge that Mutual Trust may record telephone conversations between You and it for the purposes of:

- (a) Having an accurate record of, and confirming, Proper Instructions You provide to Mutual Trust and Your discussions with Mutual Trust; and/or
- (b) Quality assurance and auditing, and/or any other purpose for which the recording is authorised by law.

You will be informed at the time, or before, the recording commences that the recording is being made. You consent to the recording of those conversations for the above purposes and to the recording being held by Mutual Trust and listened to by a regulatory authority having jurisdiction over Mutual Trust.

2.14.3 Joint Parties

Where You comprise two or more persons or entities, or Your Account is held in two or more names (**Joint Parties**):

- (a) The liabilities of all of the Joint Parties under this Agreement are joint and several and Mutual Trust is:
 - i. subject to written instructions to the contrary, authorised to follow the instructions of any Joint Party;
 - ii. under no obligation to enquire into the instructions of any Joint Party, including instructions relating to the application or disposal of Financial Products or money; and
 - iii. entitled to deliver any or all of the Financial Products in the joint Account to any Joint Party.
- (b) Each Joint Party agrees that all property which may be held by Mutual Trust from time to time pursuant to Your Services Agreement for any one or more of the Joint Parties will be subject to a lien in Mutual Trust's favour to discharge the obligations of all Joint Parties. Such lien will be in addition to and not in substitution of, any other rights and remedies Mutual Trust may otherwise have.
- (c) Each Joint Party agrees that Mutual Trust may discharge any obligation it has to give a notice or a document to You in connection with the Services or Your Services Agreement by giving notice to any one of the Joint Parties.

2.14.4 Notices and communications

- (a) Notices given by Mutual Trust may be:
 - i. sent to the address, facsimile or electronic address specified in Your latest Application Form, Engagement Letter or Proposal or that is later notified by You; or
 - ii. may be provided by electronic means including by digital link.
- (b) Notices given by You to Mutual Trust may be in writing and sent by post or email to the addresses specified in Your Engagement Letter, a Proposal or as later notified by Mutual Trust.
- (c) Any notice for the purposes of Your Services Agreement which is given by post is taken to be received on the Business Day following posting of the notice. Where given other than by post, the notice is taken to be received on the Business Day of transmission.

- (d) Mutual Trust may communicate with You electronically. You acknowledge that electronically transmitted information cannot be guaranteed to be secure or virus or error free and consequently such information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete or otherwise be adversely affected or unsafe to use. Mutual Trust will use commercially reasonable procedures to seek to protect its systems and communications from commonly known viruses, but we will not be liable to You in respect of any error, omission or loss of confidentiality arising from or in connection with the electronic communication of information to You. You remain responsible for protecting Your own systems and interests in relation to electronic communications. If You do not accept these risks, You should notify us in writing that You do not want us to communicate electronically with You.

2.14.5 Costs and Expenses of Your Services Agreement

Each party shall pay its own costs and expenses in respect of the negotiation, preparation, execution, delivery and stamping of Your Services Agreement and any documents entered into pursuant to or in respect of Your Services Agreement.

2.14.6 No Merger

The rights and obligations of the parties in respect of agreements, indemnities, covenants and warranties contained in Your Services Agreement shall remain in full force and effect, be continuing agreements, indemnities, covenants and warranties and not be merged or extinguished by or upon termination of, or completion of any obligations under, Your Services Agreement.

2.14.7 Waiver

- (a) The failure, delay, relaxation or indulgence on the part of a party in exercising any power, right or remedy conferred upon that party by Your Services Agreement shall not operate as a waiver of that power, right or remedy, nor shall the exercise or any single or partial exercise of any power, right or remedy preclude any other or further exercise of such power, right or remedy or the exercise of any other power, right or remedy under Your Services Agreement.

- (b) Any waiver of a breach of Your Services Agreement shall be in writing signed by the party granting the waiver and shall be effective only to the extent specifically set out in that waiver.

2.14.8 Severability

If any provision of Your Services Agreement is invalid or not enforceable in accordance with its terms in any jurisdiction, that provision is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable and shall otherwise be capable of being severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of Your Services Agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

2.14.9 Intellectual Property

- (a) All intellectual property in or arising from computer programs, patents, designs, documentation, reports, data and any other information or material used or created in connection with the provision of Services to You are to be and remain the property of Mutual Trust.
- (b) Mutual Trust may use or develop software, including spreadsheets, databases and other electronic tools (**tools**) in providing the Services. If Mutual Trust provides these tools to You, You acknowledge that (except where these tools are a specific deliverable in connection with the Services provided to You) they are:
- not Your property;
 - were developed without consideration of any purpose for which You might use them; and
 - are made available on an "as is" basis for Your use only and must not be distributed to or shared with any third party.
- (c) To the full extent permitted by law, Mutual Trust makes no representations or warranties as to the sufficiency or appropriateness of the tools for any purpose for which You or a third party may use them. Mutual Trust retains all intellectual property rights in all tools.
- (d) All of Your original documents provided to us in connection with performing the Services remain Your property but Mutual Trust may make copies as reasonably required to perform the Services

and for its records. For the avoidance of doubt, working papers in connection with the Services, including electronic documents and files, are and remain Mutual Trust's property and constitute Confidential Information.

- (e) You must not use Mutual Trust's name or logo on any website or in any public statement, (including filing all or part of a report with a regulator or including all or part of a report in any public document) without obtaining our prior written consent.
- (f) You agree that You will, upon request, execute any necessary documentation to give effect to this clause 2.14.9.

2.14.10 Assignment and novation

- (a) Subject to law, You consent to Mutual Trust, at its absolute discretion, assigning the benefit of, or novating, Your Services Agreement to:
- any Related Body Corporate, or any other party for the purposes of corporate reconstruction; or
 - to any third party, where Mutual Trust determines (in its absolute discretion) that such assignment or novation would not be materially adverse to Your interests.

Mutual Trust will advise You of any assignment or novation of Your Services Agreement under this clause 2.14.10(a).

- (b) Your Services Agreement is personal to each Client to whom it applies. No Client may assign or novate any of its rights and obligations under Your Services Agreement without Mutual Trust's prior written consent.

2.14.11 Audits and reviews

Mutual Trust regularly undertakes quality control reviews that may be performed by independent consultants and examiners or professional bodies. Mutual Trust is also subject to external audit for financial accounting purposes and compliance with regulations and ethical and professional standards. The work we perform for You may be selected by auditors, professional bodies or examiners for review. You acknowledge that, if requested, our files relating to the Services, which may include Your Personal Information, will be made available for the purposes of such reviews and audits. If You object to being included in a quality

control review or audit, You must advise us in writing and, subject to law, we will use reasonable endeavours to exclude files relating to the Services from such review or audit so far as it is reasonably practicable to do so.

2.14.12 Entire Agreement

Your Services Agreement contains the entire understanding between You and Mutual Trust concerning the provision of the Services to which the agreement applies.

2.14.13 Governing Law

- (a) Your Services Agreement is governed by and construed in accordance with the laws of Victoria. The parties submit to the non-exclusive jurisdiction of the courts of Victoria (including courts competent to hear appeals from such courts).
- (b) Any document in a court action may be served on any party to Your Services Agreement by delivering it to, or leaving it at, the address given to the party taking the action, or such other address as is agreed by the party being served. This clause does not prevent any other method of service.

2.14.14 No Agency

Nothing in Your Services Agreement causes You to be an agent or representative of Mutual Trust or authorises You to make any representations or do any acts on behalf of Mutual Trust.

3. Tax and Accounting Compliance and Advisory Services Terms and Conditions

The following additional terms and conditions apply in relation to Services comprising Tax and Accounting Compliance and Advisory Services.

3.1 Reliance on Information

Services comprising Tax and Accounting Compliance and Advisory Services will be provided based on the documentation and information provided to Mutual Trust by You. We rely on You:

- (a) Bringing to our attention any changes in the documentation and information as originally presented, as it may affect our Services; and

- (b) You complying with all of Your obligations under clause 2.1.3,

to enable us to provide the Services in an accurate, efficient and timely manner. Unless otherwise stated in the relevant Letter of Engagement or Proposal, Mutual Trust will not audit or independently verify the accuracy and completeness of such documentation or information.

3.2 Your responsibilities

Without limiting any other terms of Your Services Agreement, where the Services include compiling management and annual financial reports:

- (a) Mutual Trust does not accept any liability to third parties in respect of any loss arising from the use of or reliance on any management and annual financial reports compiled in performing the Services;
- (b) Except as specified in Your Engagement Letter or a Proposal, You will remain responsible and liable for:
 - i. the maintenance of adequate accounting records and preparation of relevant accounts including complying with all statutory requirements and providing true and fair views of results;
 - ii. the completeness and accuracy of all details supplied to Mutual Trust including details required for financial reporting and information relating to employee details; and
 - iii. the selection and application of appropriate accounting policies and adoption of accounting standards and classification of reporting entities.

3.3 Taxation advice

- (a) In relation to Services comprising taxation advice or work, Mutual Trust does not guarantee that its interpretation of tax law will not be challenged by the ATO, or that its interpretation will be sustained in the event of such a challenge.
- (b) Mutual Trust will not verify that the particulars in income tax returns prepared are true and correct and You acknowledge it is Your responsibility to verify all particulars. You are responsible for all declarations made to any taxation authorities. Any preparation and review of tax returns by

Mutual Trust does not constitute a tax audit and cannot be relied upon as such.

- (c) Mutual Trust will not provide tax advice relating to jurisdictions outside Australia. If Mutual Trust provides information on a matter that relates to countries other than Australia, such information does not constitute advice or Services to You. Mutual Trust may, upon Your request, assist You to seek advice from an appropriately qualified person in another jurisdiction.

4. Wealth Management Services Terms and Conditions

The following additional terms and conditions apply in relation to Services comprising Wealth Management Services.

4.1 Instructions in relation to Wealth Management Services

All instructions given by You or on Your behalf in relation to Wealth Management Services must be given by Proper Instructions given by You or by Your Authorised Agents.

4.2 Securities Transaction Arrangements

- (a) You appoint Mutual Trust as:
- i. Your agent; or
 - ii. where specified in an Engagement Letter or Proposal and relevant Trust Instruments, Trustee (including as a bare trustee where Custody Services are supplied), for the purpose of execution or arranging for the execution of Orders in relation to Transactions. In that capacity, You authorise Mutual Trust to:
 - iii. open appropriate accounts in Your name;
 - iv. act on Your, or Your Authorised Agent's, instructions; and
 - v. effect Transactions on Your behalf in accordance with those instructions.
- (b) In providing execution and arranging services under clause 4.2(a) in respect of Transactions, including ASX Transactions, Mutual Trust:
- i. may arrange for execution of Transactions under Your name or under Mutual Trust's name; or

- ii. will, unless agreed otherwise, arrange for execution of ASX Transactions under Mutual Trust's HIN;

- (c) Mutual Trust may place trades in its own name or in Your name through a broker of its choice. Where trades are placed or Transactions are entered into under Mutual Trust's name, Mutual Trust will hold the relevant Financial Products on bare trust for You in accordance with Your Services Agreement.

4.3 Orders and Transactions

- (a) If You wish to place any Order, You must do so with Proper Instructions. If Your Order relates to a Transaction, Mutual Trust as Your agent will communicate Your Order and other instructions or information to Your broker.
- (b) Each Order arranged for You will be transacted in accordance with Your Services Agreement and Mutual Trust and You will be bound by the Corporations Act and (if applicable) the Rules in relation to that Order.
- (c) All currency exchange risks regarding any Order or Transaction will be at Your cost. Any conversion from one currency to another entered into or arranged for You by Mutual Trust to perform or enforce an Order or Transaction will be settled immediately.
- (d) Subject to Your Proper Instructions, Mutual Trust will arrange or communicate Your Orders for execution in the sequence in which they are received.
- (e) Mutual Trust will use its reasonable endeavours to ensure that Your Orders are arranged as soon as practicable after receipt. You may decide to give Mutual Trust discretion as to when to place or arrange for execution of an Order. Orders received after market close will be deemed to have been received on the next Business Day. Mutual Trust will not be responsible for delays or errors in the transmission or execution of Your Orders (except to the extent that responsibility cannot be excluded by law).

- (f) A Proper Instruction:
 - i. in relation to a Corporate Notice must be received no later than the time specified by Mutual Trust; and
 - ii. received after the Close of Business will be deemed to have been received the next Business Day.
- (g) If Mutual Trust uses a client Order processing system and one or more Mutual Trust officers are appointed as being authorised in respect of that system, You authorise each of those officers to enter Your Orders into that system as Your agent.

4.4 Cancellation of Orders and Transactions

- (a) You acknowledge and agree that Mutual Trust may request or agree to, and effect, the cancellation or amendment of any Order or Transaction without Your consent in any of the following circumstances:
 - i. where Mutual Trust considers the cancellation or amendment appropriate, having regard to the desirability of maintaining a fair and orderly market;
 - ii. where ASX or ASX Settlement requests or directs that the Transaction be cancelled or amended;
 - iii. where the Rules require or contemplate that the Transaction will be cancelled or amended; and
 - iv. where the Financial Product to which the Transaction relates has been subject to a trading halt and You have not reconfirmed Your instructions.
- (b) The obligations of the parties under Your Services Agreement in relation to the settlement of a Transaction which is cancelled in accordance with this clause cease to apply in respect of that cancelled Transaction from the time it is cancelled (whether or not You have been given a Confirmation in respect of the affected Transaction).

4.5 Confirmations

- (a) You acknowledge that any Confirmations You may receive will be subject to:
 - i. the Rules (if applicable) and the Corporations Act; and

- ii. any required correction of errors and omissions.
- (b) You must check the accuracy of every report sent to You by or on behalf of Mutual Trust and notify us immediately of any error You consider may have occurred. If Mutual Trust does not receive any such notification from You within 3 months of the date of the relevant report, You will be taken to have accepted the accuracy of that report.
- (c) You agree that Mutual Trust may from time to time confirm Transactions by:
 - i. notifying You that Transaction confirmations will be available on a particular facility; and
 - ii. giving You access to that facility to review the Transaction.
- (d) You acknowledge that where Mutual Trust confirms Transactions with You using a facility as permitted by clause 4.5(c), You will not be provided with any other form of Confirmation for the Transaction.

4.6 Settlement

- (a) If Your Services include Custody Services, Your settlement obligations in relation to each Order or Transaction placed or requested are owed to Mutual Trust or a Sub-Custodian. This applies whether the Order or Transaction is executed by Mutual Trust or by a broker.
- (b) You agree to settle Your payment obligations to Mutual Trust or a Sub-Custodian in respect of a Transaction by the time and date for settlement shown on the Transaction Confirmation, or as otherwise directed by Mutual Trust or the Sub-Custodian. Unless otherwise agreed, You will deposit into Your Cash Fund Account or the Bank Account all sums necessary to meet all of Your payment obligations in relation to Transactions, including all sums necessary to meet:
 - i. settlement of any purchase transaction entered into on Your behalf;
 - ii. all costs, charges and Taxes; and
 - iii. any interest determined in accordance with clause 2.3.4.
- (c) If Your Services do not include Custody Services, You are required to directly settle Your obligations in respect of each Order or

- Transaction from Your Cash Fund Account or as otherwise agreed with Mutual Trust.
- (d) You agree that unless otherwise agreed, ASX Transactions will be settled into Mutual Trust HIN. Mutual Trust will be the legal title holder of the relevant Financial Product and You will have the beneficial entitlements to that Financial Product.
 - (e) You acknowledge that, without limiting other rights under this agreement, where Mutual Trust or a Sub-Custodian has settled an Order or Transaction on Your behalf using its own funds, Mutual Trust shall have a lien over all Assets held on Your behalf by Mutual Trust or the Sub-Custodian equal to the amount required to settle the Order or Transaction.
 - (f) Pending settlement by You in accordance with all relevant legal requirements, the relevant Confirmation constitutes notice to You that Mutual Trust may deposit the Financial Products described in the Confirmation as security for a loan if it has received and paid for them on Your behalf.
 - (g) In settling Transactions, Mutual Trust may affect payment and receive and deliver Assets in accordance with accepted industry practice in the jurisdiction where the Transaction is settled.
- (c) If Your Order or Transaction relates to an ASX Transaction executed by a broker for You, and Your Services do not include Custody Services, You must pay or otherwise make available to Mutual Trust all monies required to settle any payment due or any payment that will be due between the date of placing Your Order or entering into a Transaction and any of the days immediately preceding the date shown on the Confirmation or as otherwise directed by Mutual Trust (in both cases, the money required to settle Your payment obligations will be "due" when those amounts accrue for the purposes of this Agreement).
 - (d) Payment in cash (including any form of currency) will not be accepted.
 - (e) Mutual Trust may establish direct debit facilities for the settlement of purchases.

4.8 Sales

4.7 Purchases

- (a) Where Your Services include Custody Services, if Your Order or Transaction does not relate to an ASX Transaction arranged by Mutual Trust, You must pay or otherwise make available to Mutual Trust money to settle any payment due or any payment that will be due between the date of placing Your Order or entering into the Transaction and any of the days immediately preceding the date shown on the Confirmation or as otherwise directed by Mutual Trust (in both cases, the money required to settle Your payment obligations will be "due" when those amounts accrue for the purposes of Your Services Agreement).
 - (b) Where Your Services do not include Custody Services, You are required to directly settle any Order from Your Cash Fund Account or otherwise as agreed with Mutual Trust.
- (a) Where Your Services include Custody Services, You must deliver all Title Documents and any other documents or requirements reasonably requested by Mutual Trust to meet Your settlement obligations to Mutual Trust in respect of all Transactions (including ASX Transactions) as and when required by Mutual Trust. Where a Transaction is not an ASX Transaction, where necessary, You must make the relevant Financial Product available as and when required to meet Your settlement obligations.
 - (b) Proceeds from sale Transactions will not be available to You until the latest of:
 - i. the time and date for settlement shown on the Transaction Confirmation or as otherwise directed by Mutual Trust;
 - ii. the time at which all Title Documents and requirements under clauses 4.8(a) have been received by Mutual Trust in a form acceptable to Mutual Trust; and
 - iii. all amounts due and payable by You to Mutual Trust have been paid.
 - (c) Mutual Trust may establish direct credit facilities for the settlement of sales.

4.9 Failure to settle

- (a) If You fail to satisfy any of Your settlement obligations under Your Services Agreement or You breach any requirement in connection with Your Services Agreement, Mutual Trust may do one or more of the following:
- i. pass on to You all Loss suffered or incurred by Mutual Trust relating to brokerage, stamp duty, taxes, penalties, interest and legal costs and expenses (on a full indemnity basis) as a result of Your failure;
 - ii. charge You an administration fee calculated by reference to the additional cost incurred by Mutual Trust as a result of Your failure;
 - iii. levy interest on the amount from time to time outstanding in accordance with clause 2.3.4;
 - iv. use Financial Products owned by Mutual Trust, or obtain Financial Products from third parties, to settle any sale arranged on Your behalf to meet Your obligations referred to in clause 4.9(b);
 - v. apply any cash held by Mutual Trust to which it has access or payments received for or from You, to reduce Your liability to Mutual Trust;
 - vi. cancel any unexecuted Orders of Yours;
 - vii. retain:
 - A. any Financial Products held for You;
 - B. money received on the sale of Financial Products for You; or
 - C. money due to Your pending settlement of any Order or Transaction; and
 - viii. set off money due to it against:
 - A. money held in any of Your Cash Fund Account, the Bank Account or any other accounts deposits from which Mutual Trust is authorised to transfer funds on Your behalf; and
 - B. any money which Mutual Trust owes You under Your Services Agreement or any other agreement.
- (b) You acknowledge that where You have failed to:
- i. pay for Financial Products in certified form, Mutual Trust has a general lien over and, after making a demand on You, in its absolute discretion, has power to sell or realise sufficient Financial Products which it holds for You or has agreed to purchase for you at Your risk and expense;
 - ii. pay for Financial Products in uncertified form, Mutual Trust is not obliged to transfer the Financial Products into Your holding until it receives payment in full for those Financial Products, and all Financial Products which it holds for You or has agreed to purchase for You at your risk and expense; or
 - iii. deliver Title Documents, Mutual Trust has the power to purchase equivalent Financial Products at Your risk and expense, including brokerage, stamp duty, taxes and any administrative fee to rectify the default.
- (c) You are responsible for and You indemnify Mutual Trust against all Loss arising in connection with any settlement failure referred to in this clause 4.9 including, without limitation, any consequential loss, brokerage, stamp duty, taxes, penalties, interest and legal costs and expenses (on a full indemnity basis).
- (d) You acknowledge that Mutual Trust may (by notice to You) assign to Mutual Trust any debt owed by You in connection with the Settlement of any Order or Transaction, in which case You will owe that debt to Mutual Trust, which will have the rights and powers (and may do any of the things) set out in this clause 4.9.

4.10 Select offers

Mutual Trust may, from time to time, inform You of Select Offer investment opportunities. Where we do so, the following terms and conditions apply:

- (a) Mutual Trust may give You information on the Select Offer provided by the issuer. Except where agreed with You, the provision of information to You in relation to Select Offers does not take account of Your personal circumstances or consider the suitability of the Select Offer investment for You;
- (b) It is Your responsibility to consider the risks and your personal investment strategy and determine if the Select Offer is a suitable investment for You.

Your decision to invest in a Select Offer investment is at Your discretion and Your risk;

- (c) We make no warranty or representation in relation to the availability or performance of Select Offers, or the suitability of any Select Offer investment for You;
- (d) We may determine, at our absolute discretion, an allocation of a Select Offer investment across all interested clients;
- (e) You are under no obligation to accept a Select Offer; and
- (f) Some Select Offers may be available only to Wholesale Clients or Professional Investors. You will not be able to invest in such a Select Offer, unless You satisfy the definition of a Wholesale Client or Professional Investor.

4.11 Corporate Actions

- (a) With respect to rights issues, takeovers, Placements and Initial Public Offers, where:
 - i. Mutual Trust has acquired Financial Products on Your behalf but the legal interest in those Financial Products has not been transferred to You; and
 - ii. You would, on settlement, or transfer to You by Mutual Trust be entitled to elect to take up rights attributable to those Financial Products (for example, where there is a rights issue or a takeover offer).
Mutual Trust will elect to take up those rights on Your behalf unless clause 4.11(b) applies.
- (b) Mutual Trust will not elect to take up rights under clause 4.11(a) if You either:
 - i. notify Mutual Trust that You do not wish to take up those rights by the date advised by Mutual Trust; or
 - ii. do not have sufficient funds in Your Cash Fund Account or the Bank Account to cover the take up of those rights.
- (c) With respect to Benefits including dividends, interest and capital returns, where:
 - i. Mutual Trust has acquired Financial Products on Your behalf but the legal interest in those

Financial Products has not been transferred to You;

- ii. a Benefit has been declared or is payable in respect of those Financial Products; and
- iii. You would, on settlement or transfer to You by Mutual Trust, be entitled to make an election in relation to the Benefits declared or payable (for example where there is a dividend/distribution reinvestment plan or a bonus share plan) prior to the relevant record date, then Mutual Trust will make an election on Your behalf in respect of a Benefit, declared or payable in respect of those Financial Products, to receive such Benefit in cash unless otherwise instructed by you or unless clause 4.11(d) applies.
- (d) With respect to clause 4.11(c), Mutual Trust will make an election on Your behalf if Mutual Trust receives notice of Your election by the date advised by Mutual Trust.
- (e) With respect to Benefits including dividends, interest and capital returns, where:
 - i. Mutual Trust has sold Financial Products on Your behalf but the legal interest in those Financial Products has not yet transferred to the purchaser;
 - ii. a Benefit has been declared or is payable in respect of those Financial Products; and
 - iii. You previously elected to receive the Benefit declared or payable in a form other than cash (for example where there is a dividend/distribution reinvestment plan or a bonus share plan), then:
 - iv. Mutual Trust will pay or credit the purchaser of those Financial Products an amount equal to the amount of the Benefit declared or payable; and
 - v. You must pay to Mutual Trust the amount referred to in clause 4.11(e)iv.
- (f) Mutual Trust may establish direct credit facilities for the settlement of dividends, interest and capital returns.

5. Custody Services Terms and Conditions

The following additional terms and conditions apply in relation to Services comprising Custody Services.

5.1 Appointment as Custodian

You appoint Mutual Trust as Custodian to provide the Custody Services in respect of Your Assets on the terms and conditions of Your Services Agreement, and Mutual Trust accepts that appointment.

5.2 Custody Services

5.2.1 Mutual Trust's authorities and powers as Custodian

Subject to the law and Your Services Agreement, Mutual Trust:

- (a) Will hold the Assets for Your Account and on Your behalf;
- (b) May be registered in respect of the Assets in accordance with the Title Description or in the name of Mutual Trust, any Sub-Custodian or any other names or designation determined by Mutual Trust or a Sub-Custodian from time to time. You authorise Mutual Trust or a Sub-Custodian to complete all necessary documentation to obtain and maintain such registration;
- (c) May pool Assets and cash holdings within omnibus accounts or segregate assets in different accounts provided that, at all times, it acts in accordance with the relevant regulatory requirements;
- (d) Notwithstanding clause 5.2.1(b), except as otherwise permitted by You and ASIC, and in accordance with law, Mutual Trust will ensure that all securities forming part of the Assets (other than bearer securities or securities held in a Securities System) are:
 - i. registered in Your name or the name of Mutual Trust or a Sub-Custodian or nominee appointed under Your Services Agreement; and
 - ii. under the address of Mutual Trust or the relevant Sub-Custodian;
- (e) May do any other thing which it considers necessary, desirable or incidental in order to complete, execute or implement all matters relating to the Custody Services;
- (f) Subject to its obligations as Custodian under Your Services Agreement, has absolute discretion in the exercise of all powers, authorities and discretion which it holds, enjoys and exercises as Custodian;
- (g) Will, on request by You, acknowledge the manner in which it holds the Assets;
- (h) Warrants that it has and must maintain adequate arrangements to enable it to provide the services under Your Services Agreement in any contingency for which it should reasonably plan; and
- (i) Will comply with its obligations of confidentiality under this Services Agreement in relation to all Confidential Information.

5.2.2 Proper Instructions in relation to Custody Services

- (a) Subject to this clause, all instructions to take any action in respect of or to in any way deal with Assets held as Custodian must be received by Proper Instructions given by You or Your Authorised Agent in accordance with these Terms of Business.
- (b) Notwithstanding any other provision of Your Services Agreement, You authorise Mutual Trust to do any of the following without Proper Instructions:
 - i. make deductions from Your Cash Fund Account or the Bank Account or make funds available to the relevant Sub-Custodian to satisfy any obligation entered into in order to give effect to, or in accordance with, Your Proper Instructions or the terms of Your Services Agreement;
 - ii. receive and hold, or procure the receipt and holding of, the Assets;
 - iii. settle the purchase, application, sale or redemption of any Assets;
 - iv. credit all monies received in respect of the Assets, including the proceeds of sales and rent from Property to Your Cash Fund Account or the Bank Account, unless You provide instructions to the contrary;
 - v. do any other act which is reasonably required in order for Mutual Trust to discharge its obligations in relation to the provision of Custody Services; and

- vi. use or disclose your Personal Information held by Mutual Trust for or in connection with any of the purposes provided for in this clause.

5.2.3 Proper Instructions for proxy services

- (a) If You request Mutual Trust to lodge proxy votes on Your behalf, it is not obliged to do so unless You give Mutual Trust Proper Instructions detailing voting instructions.
- (b) For the avoidance of doubt, Mutual Trust is not required to attend any meeting to act as a proxy.

5.3 Client Acknowledgements in relation to Custody Services

Without limiting anything else contained in Your Services Agreement, You acknowledge and agree:

- (a) Mutual Trust, in its capacity as Custodian, will not be responsible for:
 - i. reviewing or advising You on any part of the Assets;
 - ii. monitoring compliance with any Trust Instrument; or
 - iii. any requirements relating to the operation or management of any Financial Product;
- (b) Where the Financial Products or any part of them are not registered in Mutual Trust's name as Custodian, but are held in names such as a third party company, such as a subsidiary of the broker, but not a licensed nominee, Mutual Trust will have no duty to request payment of or to receive interest, dividends, other payments or distributions in respect of the unregistered Financial Products and Mutual Trust will not be liable to You for any Claims arising from the unregistered Financial Products not being genuine nor for any interest, dividends, other payments or distributions in respect of the unregistered Financial Products;
- (c) Where Mutual Trust holds Financial Products which are not listed on a recognised securities exchange, Mutual Trust will endeavour to notify You of any relevant corporate actions, but it is not responsible for failure to notify You;
- (d) Mutual Trust is authorised and empowered only in respect of any of the Financial Products

registered in its name or in the name of a Sub-Custodian:

- i. to request payment of and to receive all interest, dividends and other payments or distributions in respect of the Financial Products and, in connections with those Financial Products, to provide such indemnities as Mutual Trust may in its sole discretion think fit;
- ii. to surrender any of the Financial Products against receipt of money payable at maturity on sale, or on redemption if called prior to maturity, and to credit the proceeds to Your Cash Fund Account, the Bank Account or other account instructed by You;
- iii. where money is payable in respect of any of the Financial Products in more than one currency, to collect them in such currency as Mutual Trust may be permitted by law and as Mutual Trust may, in its absolute discretion, determine;
- iv. to comply with the provisions of any law, regulation or order now or hereafter in force which purports to impose on a holder of any Financial Products a duty to take or refrain from taking any action in connection with any of the Financial Products or with any payment, distribution or money payable in respect of any of the Financial Products including but not limited to the provision of information to the ATO;
- v. to exchange any of the Financial Products in interim or temporary form for Financial Products in definitive form;
- vi. unless otherwise requested by You, to dispose of any money received or collected, including received as proceeds of sale of any of the Financial Products by Mutual Trust, by crediting Your Cash Fund Account, the Bank Account or other account nominated by You;
- vii. at Mutual Trust's discretion, to take up, call for, receive, hold, sell or dispose of fractional Financial Products which may accrue from the Holding of the Financial Products for its own account and benefit; and
- viii. to debit Your Cash Fund Account or the Bank Account for the Total Liabilities and any other amount owing under Your Services Agreement;

- (e) Mutual Trust is not liable to pay to You any such proceeds of sale or be liable to You in any other way if any such payment to Mutual Trust by any purchaser (or its agent) is not honoured by the banker upon whom that payment is drawn or otherwise not good and valid payment by that purchaser;
- (f) Mutual Trust may make delivery of the relevant Financial Products contemporaneously with the receipt of such payment or purported payment in any case;
- (g) Mutual Trust is authorised and may retain and accept for its sole benefit any rebate (as authorised by law, under the rules of any operator of a financial market or any other relevant regulatory body) paid to it by any broker, dealer or underwriter in connection with any Financial Products transaction for You;
- (h) Mutual Trust may return Financial Products of the same class, denomination and nominal amount as the Financial Products held in custody but will not be obliged to return Financial Products bearing serial numbers (if any) identical to those delivered to Mutual Trust. Delivery will be made to such location and at such time as may be agreed at Your sole risk and expense. Where necessary or appropriate, Mutual Trust will Transfer such Financial Products into Your name or to Your nominee;
- (i) in respect of Your credit facilities secured by Assets or any part thereof, You acknowledge and agree to be bound by any requirement to maintain sufficient collateral in respect of those facilities;
- (j) Mutual Trust may decline to accept delivery or custody of any Asset which it deems in good faith to carry onerous or contingent liabilities. Mutual Trust will notify You in writing in the event that it declines to accept delivery or custody of Assets. You acknowledge that Mutual Trust is not liable for any loss arising from it declining to accept Assets;
- (k) Mutual Trust or a Sub-Custodian may be required by Australian or foreign law to enter into tax withholding arrangements with the Australian or foreign taxation authorities or withhold and remit certain amounts to Australian or foreign taxation authorities. Withholding may occur at the Portfolio level or specifically in relation to Assets which belong to You. Unless otherwise permitted by law, You will have no entitlement to reclaim the withheld amount from the Australian or foreign taxation authority. Under no circumstances will You have the right to be reimbursed the withheld amount from Mutual Trust or the Sub-Custodian;
- (l) where withholding occurs under clause 5.3(k), any payments to You will be net of any amount withheld;
- (m) Mutual Trust does not have any liability for tax imposed on You or income on Your Assets. Mutual Trust as Custodian is not responsible for advising You on Your taxation status and Your taxation residency, nor is Mutual Trust responsible where the holding of and dealing with Assets on Your behalf under Your Services Agreement causes You to be liable for tax or results in a change in Your tax residency or tax status.

5.4 Sub-Custodians

5.4.1 Appointment of Sub-Custodian, agents and nominees

Mutual Trust may at its discretion appoint, replace and remove any Sub-Custodian, agent or nominee to perform any of its duties, obligations and functions as Custodian under Your Services Agreement from time to time.

5.4.2 Terms of appointment of Sub-Custodian

Any appointment of a Sub-Custodian by Mutual Trust shall be effected by a Sub-Custodian Agreement between Mutual Trust and the Sub-Custodian which:

- (a) Requires the Sub-Custodian to indemnify Mutual Trust for losses arising from the negligence, wilful, default, or fraud of the Sub-Custodian and that the Sub-Custodian maintain insurance required of a prudent provider of custody services;
- (b) To the extent practicable and relevant, is on the same terms as Your Services Agreement in relation to Custody Services; and
- (c) Covers any other conditions required by law or under Mutual Trust's AFS Licence.

This clause does not apply where You select, or direct Mutual Trust to appoint, a particular Sub-Custodian.

5.4.3 Notification

- (a) Where Mutual Trust provides Custody Services to You as a Retail Client, it will, where practicable, before arranging for any Assets to be held by a Sub-Custodian, and in any event, before Assets are held by a Sub-Custodian, provide written notice to You of the identity of, and contact details for, the Sub-Custodian. Without limitation, Mutual Trust is not required to comply with this requirement where it reasonably believes that immediate action is required to change the Sub-Custodian in order to protect the Assets.
- (b) Mutual Trust shall at Your request, provide You with a description of the Assets which are held by, or registered in the name of a Sub-Custodian.

5.4.4 Your authorisations and consents

You:

- (a) Authorise Mutual Trust and its Sub-Custodians, agents or nominees, to appoint and deposit all or any part of the Assets with a Securities System;
- (b) Understand and agree that any securities depository or clearing agency operating the Securities System is not an agent of Mutual Trust; and
- (c) Agree that neither Mutual Trust nor any Sub-Custodian, agent or nominee is liable to You for the solvency, acts or omissions of any securities depository or clearing agency or the Securities System. You consent to Mutual Trust appointing any agent, broker or securities dealer which Mutual Trust considers necessary or reasonably required to discharge its responsibilities to provide Custody Services in accordance with Your Services Agreement.

5.5 Bank Accounts

Mutual Trust shall:

- (a) Establish and maintain one or more Bank Accounts in the name of the Title Description, Mutual Trust, the Sub-Custodian or any other name or designation determined by Mutual Trust or the Sub-Custodian, at their absolute discretion, from time to time, with any Bank and

hold in such accounts all cash received on Your behalf under Your Services Agreement or as otherwise agreed with You;

- (b) Have the power to deduct any amount, including any fees, taxes, duties, imposts, costs and disbursements which are due and payable from the Bank Account in accordance with Your Services Agreement and any liability incurred by Mutual Trust in respect of any part of the Assets (including the acquisition thereof); and
- (c) Not withdraw any amount from any Bank Account except in accordance with these Terms of Business.

5.6 Accuracy or completeness of information received from third parties

Mutual Trust is not responsible for the accuracy or completeness of any information received by it from any third party and communicated to or accessed by You.

5.7 Entering into transactions and commitments and execution of documents

5.7.1 Entering into transfers, assurances, contracts and other documents

Notwithstanding any other provision of Your Services Agreement, Mutual Trust is not obliged to enter into or arrange any transfer, assurances, contracts or other documents in its capacity as Custodian unless and until:

- (a) It has obtained independent advice on its obligation under such documents, where necessary, in the reasonable opinion of Mutual Trust;
- (b) Its liability under the documents is, in its reasonable opinion, sufficiently protected;
- (c) It is reasonably satisfied that sufficient funds are available to meet any financial obligations under the documents; and
- (d) It is reasonably satisfied that there is or will be adequate insurances in place in respect of all relevant Assets and that, where appropriate, such insurance policies note Mutual Trust as an insured party,

and Mutual Trust shall not be responsible for the title, validity or genuineness of any property, or Title

Document to any Asset received by it or delivered by it under Your Services Agreement.

5.7.2 Execution of Leases

Where Property forming part of the Assets is registered in the name of Mutual Trust or in accordance with the Title Description:

- (a) Mutual Trust may appoint You and / or Your nominated officers as its attorney for the execution of all Leases and associated documentation in respect of the Property on its behalf;
- (b) Any Leases executed pursuant to clause 5.7 2(a) must contain Mutual Trust's limitation of liability clause as determined by Mutual Trust from time to time; and
- (c) You will be responsible for the acts and omissions of Your officers, employees, agents or nominees resulting from the execution of Leases under this clause and Mutual Trust shall in no way be liable under the provisions of Your Services Agreement for the acts of You or Your officers, employees, agents or nominees in relation to Property.

5.8 Non-compliance

If Mutual Trust becomes aware that it will, or it reasonably considers that it may, not comply with any representation and warranty provided in relation to Custody Services, or that it has or may breach a material term of Your Services Agreement in relation to Custody Services, Mutual Trust will:

- (a) Provide a written report notifying You of that non-compliance or breach; and
- (b) Use reasonable endeavours to comply with Your Proper Instructions in relation to it.

5.9 Certification for superannuation funds

Where You are the trustee of a superannuation fund, Mutual Trust will:

- (a) Notify You if at any time Mutual Trust becomes aware that Mutual Trust no longer satisfies the requirements of Part 15 of the SIS Act as applicable to custodians of superannuation entities; and
- (b) At Your request, and at Your cost, provide to You a certificate by an independent registered

company auditor certifying that Mutual Trust has met the requirements of section 123 of the SIS Act for a financial reporting period.

5.10 Access to information

- (a) Mutual Trust will, at Your expense:
 - i. allow You and Your auditors reasonable access during normal business hours to the books, records and internal accounting procedures and controls of Mutual Trust; and
 - ii. provide reasonable assistance to Your auditors to enable them to perform their duties, in connection with any reasonable audit or review of the Assets and the provision of Custody Services to You.
- (b) Mutual Trust:
 - i. will maintain complete records relating to the Custody Services provided to You, including, Services provided by a Sub-Custodian. Without limitation records will include records of:
 - A. the Assets held; and
 - B. all transactions and how, by whom and when they were authorised;
 - ii. will on reasonable notice from You, make those records available during normal business hours to You, Your officers, agents or employees, and by ASIC and any person authorised by You or ASIC;
 - iii. will apply verification procedures for appropriately frequent reconciliation and checking of the Assets; and
 - iv. will provide quarterly reports to You, unless agreed otherwise.
- (c) Mutual Trust agrees that all records will be maintained in accordance with any relevant statutory or audit requirements that apply to Mutual Trust.

6. Managed Discretionary Account Services Terms and Conditions

The following additional terms and conditions apply where You are a Wholesale Client and Your Services include a Managed Discretionary Account.

6.1 Managed Discretionary Account Services

- (a) Managed Discretionary Account Services may only be supplied to You if You are a Wholesale Client. You undertake and warrant to Mutual Trust that:
- i. upon electing to receive Managed Discretionary Account Services, and all times while You receive Managed Discretionary Account Services, You are and will remain a Wholesale Client and have elected to receive wholesale Managed Discretionary Account Services from Mutual Trust; and
 - ii. if at any time You cease to be a Wholesale Client You will immediately notify Mutual Trust of that fact and terminate Your Managed Discretionary Account Services.
- (b) You acknowledge that Mutual Trust does not operate a retail Managed Discretionary Account service or a managed investment scheme (other than the Cash Fund) and is not required to, and does not, comply with regulatory requirements relating to the operation of retail Managed Discretionary Account services.

6.2 Managed Discretionary Account Portfolio Administration

- (a) You appoint and authorise Mutual Trust to manage the Portfolio on Your behalf with full authority, subject to any special written instructions which You may from time to time give to, and which are accepted by, Mutual Trust, to:
- i. deal with all or part of the Portfolio (including acquire, realise, sell, subscribe for, purchase, withdraw or otherwise dispose of the Portfolio's assets);
 - ii. exercise (or not exercise) any rights attached to the Portfolio;
 - iii. establish, operate or access any accounts in connection with the Portfolio;
 - iv. reinvest distributions received in connection with the Portfolio; and
 - v. do anything else in connection with the Portfolio which Mutual Trust considers proper, necessary or convenient.
- (b) Mutual Trust will provide the Managed Discretionary Account Services in accordance with the criteria laid down in the Investment Mandate.
- (c) Without limiting the discretion or authority of Mutual Trust under clause 6.2, but having regard to the Investment Mandate, You authorise Mutual Trust to:
- i. place funds in Your Cash Fund Account, the Bank Account and/or deposits of any kind with any financial institution in any jurisdiction and on such terms as Mutual Trust deems appropriate including to place any such funds on any account jointly with the money of any other client or clients and to enter into any transaction jointly on Your behalf for Your account and for any other account of any other client or clients for Mutual Trust, provided that such transactions will be recorded in Mutual Trust's books in such manner as to distinguish the portion attributable to the Portfolio and provided also that all interests on such deposits and all money, rights or property which may at any time accrue or be offered (whether by way of bonus, redemption, dividends, conversion, preference, option or otherwise) in respect of such property will be apportioned proportionally amongst You and such other client or clients of Mutual Trust;
 - ii. arrange on Your behalf for a broker to execute ASX Transactions in relation to the Portfolio;
 - iii. deposit for safe custody any certificate, scrip or other Title Documents in relation to any investments in the Portfolio with such persons or institutions including Mutual Trust and/or its affiliates and associates in any jurisdiction and on such terms as Mutual Trust deems appropriate; and
 - iv. enforce rights in or in connection with the Portfolio with full power to instigate or discontinue any such proceedings, make any settlement and comply with or submit to arbitration any matter in dispute or doubt and

recover any expenses in enforcing such rights from any cash held in the Portfolio or by selling or disposing of any assets in the Portfolio to fund the payment of these expenses.

6.3 Credit facilities

- (a) In providing Managed Discretionary Account Services to You, Mutual Trust will not enter into any credit facility on Your behalf in connection with or to fund Your Portfolio without Your prior consent.
- (b) If You seek a credit facility in connection with or to fund Your Portfolio, You acknowledge that:
 - i. You will inform Mutual Trust of the existence of any such facility;
 - ii. the credit facility will be subject to separate documentation and You will provide a copy of this documentation on request to Mutual Trust; and
 - iii. the provision of any collateral in connection with the credit facility may affect investment decisions of Mutual Trust in providing the Managed Discretionary Account Services. If Mutual Trust, in its absolute discretion, determines that there is insufficient collateral, Mutual Trust may, without notice to or consent from You, liquidate part or the whole of the Portfolio to the extent Mutual Trust considers appropriate and apply the proceeds to reduce Your liability to Mutual Trust.
- (c) Without limiting anything else in this clause 6.3, if You choose to use funds drawn under a margin loan facility with a margin loan provider to gear Your portfolio, then You agree that:
 - i. You will establish a margin loan facility with a provider approved by Mutual Trust using standard margin lending documents; and
 - ii. You authorise Mutual Trust in its absolute discretion to exercise Your rights and perform on Your behalf Your obligations under that loan facility in whatever way Mutual Trust considers appropriate.

You acknowledge that the terms of the margin loan, as well as some additional risks associated with it, are described in the Investment Mandate. You agree to be bound by those terms.

6.4 Risk disclosure acknowledgements

You acknowledge that:

- (a) You understand that there are risks involved in Mutual Trust managing Your Portfolio;
- (b) You have read and understood the FSG (where you are a Retail Client), any financial advice and all other risk disclosure materials or statements given or made to You by Mutual Trust in connection with Your Portfolio or in the Investment Mandate;
- (c) the value of Your Portfolio, particular Assets and investments within Your Portfolio and liabilities incurred in connection with Your Portfolio may increase or decrease;
- (d) Mutual Trust does not guarantee that any actions taken or omitted by it in connection with the investment and management of Your Portfolio will produce the result You desire; and
- (e) You are willing and able to assume the financial and other risks involved in the management of Your Portfolio and that Mutual Trust has not made any representations or warranties regarding the performance or profitability of Your Portfolio or the implementation of the Investment Mandate.

7. Interpretation

7.1 Definitions

In Your Services Agreement the following words and phrases have the following meanings:

Account means and may be used as a descriptor by Mutual Trust for the totality of Your dealings with and the Services which You receive from Mutual Trust, including where applicable, all Assets held on Your behalf and Your Portfolio;

AFS Licence means an Australian Financial Services Licence issued under the Corporations Act;

Amended Services has the meaning given in clause 2.1.2;

AML/CTF Legislation means the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) and any associated act, rules or regulations, and any legislation in any relevant jurisdiction in relation to anti-money laundering and counter-terrorism financing;

Application Form means the application form completed by You in connection with the provision of Services under Your Services Agreement;

ASIC means the Australian Securities and Investments Commission;

Assets means assets of any nature, including Property, which are owned or held by You in any capacity, including as Trustee, and all Title Documents and all income and accretions in respect of those assets, which are transferred or delivered to, or received by, Mutual Trust and accepted by Mutual Trust pursuant to Your Services Agreement;

ASX Settlement means ASX Settlement Pty Limited (ABN 49 008 504 532) or another clearing and settlement facility approved to settle transactions in Financial Products effected on a market operated by ASX;

ASX means Australian Securities Exchange Ltd;

ASX Transaction means a Transaction arranged through a trading system operated by ASX for the trading of Financial Products;

ATO means the Australian Taxation Office;

Authorised Agent means:

- (a) each person identified by You and notified in writing by You to Mutual Trust from time to time; and
- (b) each of Your officers, employees or agents identified as an Authorised Agent in Your Application Form,

for the purposes of clause 2.2.3;

Bank means an Australian authorised deposit taking institution as defined in the Corporations Act;

Bank Account means the Bank account or accounts opened by Mutual Trust pursuant to clause 5.5;

Benefit means a dividend, interest payment, capital return, distribution or other similar payment made in relation to a Financial Product;

Business Day means a day (other than a Saturday, Sunday, public holiday or bank holiday) when banks are open for general banking business in Melbourne, unless another place is specified by Mutual Trust;

Cash Fund means, as the context requires, either or both of:

- (a) Mutual Trust Cash Fund, ARSN 108 504 098; and

- (b) M F Cash Management Fund, ARSN 093 339 578,

Cash Fund Account means Your account from time to time in a Cash Fund;

CHESS means the Clearing House Electronic Sub-Register System;

Claim means a claim, action, proceeding, judgement or demand made or brought by or against a party, however arising and whether present, unascertained, future or contingent, in relation to any Loss;

Client or You:

- (a) means and refers to each of the persons (whether an individual, body corporate, trustee, partnership, association, joint venture, alliance or other entity of whatever nature) named or identified in an Engagement Letter or Proposal as a client to whom or in relation to which Mutual Trust will provide Services pursuant to Your Services Agreement, and **Yours** has a corresponding meaning;
- (b) means where the Client comprises more than one person or entity, as the context requires, each of those persons or entities separately; every two or more of them severally; and all of them collectively; and
- (c) includes the successors and assignees of each of those persons and entities;

Close of Business means 5.00 p.m. Melbourne time on a Business Day unless another time is specified by Mutual Trust;

Common Reporting Standard or CRS means the worldwide standard that governs the collection, reporting and exchange of tax information to tax authorities in countries which have adopted the CRS;

Confidential Information means all non-public information or documents which either party receives or produces in connection with the Services and includes working papers, any proposal or tender document, information and methodologies, but does not include any information which is:

- (a) or becomes generally available to the public other than as a result of a breach of this Agreement;
- (b) known to either party prior to the commencement of the provision of Services;
- (c) received from a third party who owes no obligation of confidence in respect of the information; or

(d) developed by either party independently of the Services to which this Agreement relates;

Confirmation means a written document confirming a Transaction and alternatively referred to as a contract note which may be provided in accordance with the terms in clause 4.5;

Corporate Notice means an official notice, report or announcement issued to Mutual Trust, a Sub-Custodian or an agent in respect of an Asset as holder of that Asset and which requires discretionary action;

Corporations Act means the *Corporations Act 2001* (Cth) and any associated legislation or regulation;

Custodian means acting as bare trustee, nominee or custodian for You in accordance with Your Services Agreement to hold Assets in safe keeping and providing custody services to You;

Custody Services means custodial or depository services as that term is defined in section 766E of the Corporations Act;

Dispute has the meaning given in clause 2.13(a);

Disputed Amount has the meaning given in clause 2.3.5(a);

Engagement Letter means each annual engagement letter provided to and agreed by You detailing the ongoing Services provided to You by Mutual Trust. Engagement Letters may be renewed on an annual basis;

FATCA means *Foreign Account Tax Compliance Act* (US) being the withholding tax and reporting regime imposed by the United States;

Financial Product has the same meaning given to it in the Corporations Act;

Financial Year means, unless otherwise agreed with You, a period of 12 calendar months running from 1 July in one year to 30 June in the next year;

FSG means the financial services guide (including any supplementary financial services guides) issued by Mutual Trust, as applicable and in accordance with the Corporations Act from time to time;

GST means GST as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth),

HIN means a holder identification number used to identify a person in CHESS;

Insolvency Event means for an individual, committing an act of bankruptcy within the meaning of the *Bankruptcy Act 1966* (Cth); for corporations, the appointment of a controller, administrator, receiver or liquidator or commencement of winding-up under the Corporations Act; or other cases where a person or entity is unable to pay their debts when they fall due;

Initial Public Offering or IPO means the first sale of shares of a company to the public;

Investment Mandate means the criteria, investment strategy or investment policy agreed with You for the purposes of the management and investment of Your Portfolio by Mutual Trust under the Managed Discretionary Account Services;

Lease means a lease, license or other right to occupy Property;

Loss means any damage, loss, cost, outgoing, payment, expense, liability, Tax, charge or impost of any nature whatsoever incurred by a person, however it arises and whether it is present or future, fixed or unascertained, actual or contingent;

Managed Discretionary Account Services means a discretionary investment portfolio management service that may be provided to You as a Wholesale Client;

MFCo means The Myer Family Company Ltd ABN 82 006 588 727;

Mutual Capital means Mutual Capital Limited ABN 68 100 733 695;

Mutual Trust means any one or more of Mutual Trust Pty Ltd ABN 71 004 285 330 and each of its Related Bodies Corporate, including without limitation Mutual Capital and MFCo, as provide any of the Services to You under Your Services Agreement from time to time. As at 1 July 2018 all of the Services provided to You are provided by Mutual Trust Pty Ltd, except as described in Your Engagement Letter;

Mutual Trust Privacy Statement means the statement published from time to time by Mutual Trust which sets out information about how You can access or seek correction of the Personal Information held by Mutual Trust in relation to You, or complain to Mutual Trust about a breach of the Australian Privacy Principles. The Mutual Trust Privacy Statement is available on the Mutual Trust website or on request by contacting the Privacy Officer at Mutual Trust;

Nominated Persons has the meaning given in clause 2.2.3(j);

Order means:

- (a) any instructions placed by You with Mutual Trust to buy, sell, subscribe for or otherwise deal in Financial Products; or
- (b) an instruction placed by Mutual Trust in providing Managed Discretionary Account Services to You;

Personal Information means "personal information" as defined in the *Privacy Act 1988* (Cth);

Placement means an issue of newly created securities by a company that is already established, as a means of raising capital;

Portfolio means all investments, assets, rights, interests and other property from time to time:

- (a) deposited by or on Your behalf in Your Account with Mutual Trust; and
- (b) acquired by Mutual Trust (including money arising and interest accruing therefrom) on Your behalf pursuant to Your Services Agreement;

Privacy Act means the *Privacy Act 1988* (Cth), and any associated act or regulation, as amended from time to time;

Proper Instruction means an instruction given to Mutual Trust in relation to Your Services for the purpose of and in accordance with Your Services Agreement. Proper Instructions may include standing instructions;

Property means any interest in real property whether vested or contingent, freehold or leasehold and whether at law or in equity;

Proposal means a proposal in relation to Amended Services given in accordance with clauses 2.1.2(a) or 2.1.2(e);

Related Body Corporate has the same meaning as given to that expression in the Corporations Act;

Retail Client has the same meaning as given to that expression in the Corporations Act;

Rules means the operating rules, procedures, directions, decisions, requirements, customs, usages and practices of the ASX Settlement or another clearing facility approved to clear transactions in Financial Products effected on a market operated by ASX;

Securities System means a securities depository system or any other system for the central handling of securities established for the purpose of facilitating the settlement of transactions;

Services means all services to be provided by Mutual Trust to You under Your Services Agreement as detailed in each Engagement Letter and Proposal;

Services Agreement means our agreement to supply the Services to You as defined in clause 1.2;

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

Statutory Body means an organisation created under legislation of an Australian state or the Commonwealth of Australia;

Sub-Custodian means any sub-custodian, depository, clearing agency, nominee, correspondent, or other similar person appointed by the Mutual Trust Entity until its appointment terminates;

Sub-Custodian Agreement means a written agreement entered into between Mutual Trust and any Sub-Custodian, referred to in clause 5.4;

Tax means any income tax, stamp duty, financial institutions duty (including financial institutions duty paid or reimbursed), bank accounts debits tax or any other taxes, charges, duties, imposts and levies assessed or charged or assessable or chargeable by or payable to any national, federal, state or municipal taxation or excise authority, including any interest, penalty, charge, fee or other amount imposed on or in respect of any of them;

Tax and Accounting Compliance and Advisory Services means services in connection with taxation, accounting and financial management compliance and advice as detailed in Your Engagement Letter and any relevant Proposal;

Title Description means the title "Mutual Trust as Custodian for [name of trust, self-managed superannuation fund, statutory body, company or individual]" as the case may be;

Title Documents includes documents of title, documents evidencing a security holder reference number;

Total Liabilities means for the purposes of clause 5.3(d)viii, all fees payable by You in relation to Custody Services plus any applicable taxes (including GST) together with any other reasonable costs, charges, fees

or expenses incurred or charged by any Sub-Custodian or other service provider together with any other amounts owing under this Your Services Agreement;

Traditional Trustee Company Services has the meaning given in the Corporations Act;

Transaction means a transaction formed on execution of or pursuant to an application for an Order;

Trust means as the context requires:

- (a) each trust (including any form of trust, superannuation scheme, or managed investment scheme) in relation to which Services are provided; and
- (b) any form of trust in relation to which Mutual Trust provides Traditional Trustee Company Services, including where Mutual Trust acts as trustee of that trust or as Your attorney under power;

Trust Instrument means a deed or other document establishing a Trust, including any deed or document which appoints an attorney or which amends any trust instrument;

Trustee means the person or persons for the time being acting as trustee of any Trust under a Trust Instrument, and where Mutual Trust provides Traditional Trustee Company Services, includes Mutual Trust when acting as a trustee or attorney for or in connection with the affairs of any Client;

Trustee Services Fee Schedule means Mutual Trust's schedule of fees in relation to Traditional Trustee Company Services which Mutual Trust is required to publish pursuant to the Corporations Act, and which is available on Mutual Trust's website;

Wealth Management Service means services provided by Mutual Trust to You in relation to Financial Products, including as applicable advisory, dealing, execution, settlement, Custody and Managed Discretionary Account Services, as detailed in Your Letter of Engagement and any relevant Proposal;

Wholesale Client has the same meaning as in the Corporations Act; and

You and **Yours**: have the same meaning as in **Client**.

7.2 Definitions used in Corporations Act and Rules

Terms and expressions that are defined in the Corporations Act and the Rules have the same meaning when used in Your Services Agreement, unless a contrary definition is provided in Your Services Agreement or the context otherwise requires, You should refer to the Corporations Act and the Rules for the meaning of those terms and expressions.

7.3 Interpretation

- (a) Headings are inserted for convenience only and do not affect the interpretation of Your Services Agreement.
- (b) Unless the context otherwise requires:
 - i. words importing the singular include the plural and vice versa;
 - ii. a word importing a gender includes the other gender;
 - iii. a reference to a person includes an individual, a partnership, a body corporate, a joint venture, an association (whether incorporated or not), a government and a government authority or agency;
 - iv. a reference to a party or a person includes the party's or the person's executors, legal personal representatives, successors, transferees and assigns;
 - v. a reference to a part, clause or party is a reference to a part or clause of, or a party to, this Agreement;
 - vi. a reference to Your Services Agreement includes the recitals and any schedules, annexures, exhibits or attachments to that agreement;
 - vii. a reference to legislation includes any statutory modification or replacement and any subordinate or delegated legislation issued under such legislation;
 - viii. if the day on which anything is to be done is not a Business Day it shall be done on the next Business Day; and
 - ix. a reference to "\$" or dollars means Australian dollars and a reference to payment means payment in Australian dollar