



HERBERT
SMITH
FREEHILLS

Deed

Execution version

Amending deed – Scheme Implementation Agreement

The Trust Company Limited

Perpetual Limited



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Amending deed

Date ► **9 September 2013**

Between the parties

The Trust Company **The Trust Company Limited**
ABN 59 004 027 749 of Level 15
20 Bond Street
Sydney NSW 2000
(The Trust Company)

Perpetual **Perpetual Limited**
ABN 86 000 431 827 of Level 12
123 Pitt Street
Sydney NSW 2000
(Perpetual)

Recitals

- 1 The parties entered into the Scheme Implementation Agreement on 7 May 2013 (**Principal Agreement**).
- 2 Clause 19.7 of the Principal Agreement provides that a variation of any term of the Principal Agreement must be in writing and executed by the parties.
- 3 The parties wish to amend the Principal Agreement in the manner set out in this deed.

This deed witnesses as follows:



1 Definitions, interpretation and deed components

1.1 Definitions

In this deed, a word or phrase defined in the Principal Agreement has the same meaning as in the Principal Agreement.

1.2 Interpretation

Clause 1 of the Principal Agreement applies to this deed.

1.3 Deed components

This deed includes any schedule.

2 Amendment to Principal Agreement

2.1 Amendment

- (a) The Principal Agreement is amended as set out in Schedule 1 by:
 - (1) deleting the text that has been struck out in Schedule 1; and
 - (2) inserting the text that has been underlined in Schedule 1.
- (b) The amendments to the Principal Agreement take effect on and from the date of this deed.

2.2 Amendments not to affect validity, rights, obligations

- (a) The amendments to the Principal Agreement do not affect the validity or enforceability of the Principal Agreement.
- (b) Nothing in this deed:
 - (1) prejudices or adversely affects any right, power, authority, discretion or remedy which arose under or in connection with the Principal Agreement before the date of this deed; or
 - (2) discharges, releases or otherwise affects any liability or obligation which arose under or in connection with the Principal Agreement before the date of this deed.

2.3 Confirmation

On and with effect from the date of this deed, each party is bound by the Principal Agreement as amended by this deed.



2.4 Acknowledgement

Each party acknowledges that this deed is issued in accordance with the Principal Agreement.

3 General

3.1 Governing law and jurisdiction

- (a) This deed is governed by the law in force in New South Wales.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales and courts of appeal from them in respect of any proceedings arising out of or in connection with this deed.
- (c) Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

3.2 Further action to be taken at each party's own expense

Each party must, at its own expense, do all things and execute all documents necessary to give full effect to this deed and the transactions contemplated by it.

3.3 Counterparts

- (a) This deed may be executed in any number of counterparts.
- (b) All counterparts, taken together, constitute one instrument.
- (c) A party may execute this deed by signing any counterpart.

3.4 Attorneys

Each of the attorneys executing this deed states that the attorney has no notice of the revocation of the power of attorney appointing that attorney.



Signing page

Executed as a deed

Signed sealed and delivered by
The Trust Company Limited
by

sign here ▶

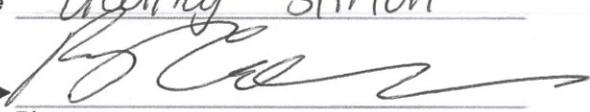


Company Secretary/Director

print name

Geoffrey Stirton

sign here ▶



Director

print name

R B Corlett

Signed sealed and delivered by
Perpetual Limited
by

sign here ▶

Company Secretary/Director

print name

sign here ▶

Director

print name



Signing page

Executed as a deed

Signed sealed and delivered by
The Trust Company Limited
by

sign here ► _____
Company Secretary/Director

print name _____

sign here ► _____
Director

print name _____

Signed sealed and delivered by
Perpetual Limited
by

sign here ► _____
Company Secretary/Director

print name _____

sign here ► _____
Director

print name _____



Schedule 1

Amendments to Principal Agreement

Clause 2.1 – Amendment

Scheme Implementation Agreement

Dated

The Trust Company Limited ABN 59 004 027 749 ("**The Trust Company**")
Perpetual Limited ABN 86 000 431 827 ("**Perpetual**")

King & Wood Mallesons
Level 50
Bourke Place
600 Bourke Street
Melbourne VIC 3000
Australia
T +61 3 9643 4000
F +61 3 9643 5999
DX 101 Melbourne
www.kwm.com

Scheme Implementation Agreement

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Scheme Implementation Agreement

Details

Parties	Perpetual and The Trust Company	
Perpetual	Name	Perpetual Limited
	ABN	86 000 431 827
	Address	Level 12, 123 Pitt Street, Sydney, NSW, 2000
	Email	joanne.hawkins@perpetual.com.au
	Fax	02 8256 1461
	Attention	Joanne Hawkins
The Trust Company	Name	The Trust Company Limited
	ABN	59 004 027 749
	Address	Level 15 20 Bond Street Sydney NSW 2000
	Email	pbryant@thetrustcompany.com.au
	Fax	(02) 8295 8692
	Attention	Peter Bryant
Recitals	A	The Trust Company and Perpetual have agreed to undertake the Transaction by means of a members' scheme of arrangement under Part 5.1 of the Corporations Act.
	B	At the request of Perpetual, The Trust Company intends to propose the Scheme and issue the Scheme Booklet.
	C	The Trust Company and Perpetual have agreed to implement the Scheme on the terms and conditions of this agreement.
Governing law	New South Wales	
Date of agreement	See Signing page	

Scheme Implementation Agreement

General terms

1 Definitions and interpretation

1.1 Definitions

These meanings apply unless the contrary intention appears.

ACCC means the Australian Competition and Consumer Commission.

Adjusted Number means the number determined in accordance with the following formula:

$$\text{Adjusted Number} = 0.1495 \times \left(1 + \frac{D}{\text{Perpetual VWAP}} \right)$$

$$\text{Adjusted Number} = 0.182 \times \left(1 + \frac{D}{\text{Perpetual VWAP}} \right)$$

Where:

D is the cash amount per Perpetual Share (expressed in dollars and excluding, for the avoidance of doubt, any franking credit) of any dividend (other than the Excluded Dividend) declared or paid by Perpetual the record date for which occurs after the date of this agreement and before the Implementation Date.

ASIC means the Australian Securities & Investments Commission.

Associates has the meaning set out in section 12 of the Corporations Act, as if section 12(1) of the Corporations Act included a reference to this agreement.

ASX means ASX Limited or Australian Securities Exchange, as appropriate.

ASX Operating Rules means the market operating rules of ASX as amended, varied or waived from time to time.

Authorised Officer means, in respect of a party, a director or secretary of the party or any other person appointed by a party to act as an Authorised Officer under this agreement.

Business Day means a business day as defined in the Listing Rules.

Cash Consideration means:

- (a) if after the date of this agreement but before the Implementation Date no dividend (other than the Excluded Dividend) is paid on Perpetual Shares and no record date for any Perpetual dividend (other than the Excluded Dividend) occurs, the amount calculated as the Perpetual VWAP multiplied by 0.1495-0.182 for each Share in The Trust Company held by a Scheme Participant electing to receive Cash Consideration in accordance with the terms of the Scheme; or
- (b) if after the date of this agreement but before the Implementation Date a dividend (other than the Excluded Dividend) is paid on Perpetual Shares or the record date for any Perpetual dividend (other than the Excluded Dividend) occurs, the amount calculated as the Perpetual VWAP multiplied by the Adjusted Number for each Share in The Trust Company

held by a Scheme Participant electing to receive Cash Consideration in accordance with the terms of the Scheme,

subject in any event to the Cash Consideration for each Share in The Trust Company being not less than \$6.29.

Claim means any claim, demand, legal proceedings or cause of action, including any claim, demand, legal proceedings or cause of action:

- (b) based in contract (including breach of warranty);
- (c) based in tort (including misrepresentation or negligence);
- (d) under common law or equity; or
- (e) under statute (including the Australian Consumer Law (being Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (**CCA**)) or Part VI of the CCA, or like provision in any state or territory legislation),

in any way relating to this deed or the Transaction, and includes a claim, demand, legal proceedings or cause of action arising under an indemnity in this agreement.

Competing Transaction means a transaction which, if completed, would mean a person (other than Perpetual or its Related Bodies Corporate or Representatives) would (alone or together with its Associates):

- (a) directly or indirectly:
 - (i) acquire or become the registered holder of 20% or more of the Shares in The Trust Company; or
 - (ii) acquire an interest or Relevant Interest in or become the holder of 50% or more of the Shares in The Trust Company; or
- (b) otherwise acquire (whether directly or indirectly) or have a right to acquire or have an economic interest in all or a substantial part or a material part of the business conducted by The Trust Company Group, including by way of sale of assets, sale of shares or joint venture, but not as a custodian, nominee or bare trustee;
- (c) acquire Control of The Trust Company; or
- (d) otherwise acquire or merge (including by a reverse takeover bid, dual listed company structure or other synthetic merger) with The Trust Company; or
- (e) enter into any agreement, arrangement or understanding requiring The Trust Company to abandon, or otherwise fail to proceed with, the Transaction,

and includes a Revised EQT Proposal.

Conditions Precedent means the conditions precedent set out in Schedule 3.

Confidentiality Agreements means the confidentiality deed between The Trust Company (as discloser) and Perpetual (as recipient) dated 3 April 2013 and the reciprocal confidentiality deed between Perpetual (as discloser) and The Trust Company (as recipient) dated 9 April 2013.

Control has the meaning given in section 50AA of the Corporations Act.

Controller has the meaning it has in the Corporations Act.

Corporations Act means the Corporations Act 2001 (Cwth).

Corporations Regulations means the Corporations Regulations 2001 (Cwth).

Court means a court of competent jurisdiction under the Corporations Act.

Deed Poll means a deed poll substantially in the form of Annexure C to this agreement.

Details means the section of this agreement headed "Details".

Disclosure Materials means the electronic data room (including the folder within that data room entitled "Black Box") provided by The Trust Company to Perpetual for the purposes of due diligence as at 9:00 pm on 6 May 2013.

EBITDA means earnings from ordinary, continuing activities of The Trust Company Group or Perpetual Group (as applicable) before interest, tax, depreciation and amortisation calculated in accordance with the accounting policies and practices applied by The Trust Company Group or Perpetual Group (as applicable) as at the date of this agreement (and, in the case of The Trust Company Group, calculated in the same manner as the "Reported EBITDA" referred to in The Trust Company's FY13 results presentation disclosed to the ASX on 15 April 2013).

Effective, when used in relation to the Scheme, means the coming into effect, pursuant to section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) in relation to the Scheme, but in any event at no time before an office copy of the order of the Court is lodged with ASIC.

Effective Date means the date on which the Scheme becomes Effective.

Election means an election or deemed election by a Scheme Participant in accordance with clause 4.3.

Election Date means 7:00pm on the date that is 3 Business Days after the Scheme Meeting in respect of the Scheme or such other date as the parties agree in writing.

Encumbrance means any mortgage, lien, charge, pledge, assignment by way of security, security interest, title retention, preferential right or trust arrangement, Claim, covenant, profit a prendre, easement or any other security arrangement or any other arrangement having the same effect.

End Date means 31 December 2013 or such other date as is agreed by Perpetual and The Trust Company.

EQT Proposal means the Competing Transaction set out in the replacement bidder's statement dated 27 March 2013 attached to the ASX announcement of Equity Trustees Limited dated 5 April 2013.

Excluded Dividend means the 80 cents per Perpetual Share dividend determined by Perpetual and scheduled for payment on or about 4 October 2013.

Exclusivity Period means the period from and including the date of this agreement to the earlier of:

- (a) the termination of this agreement in accordance with its terms; and

- (b) the End Date.

Financial Advisor means any financial advisor retained by a party in relation to the Transaction or a Competing Transaction from time to time.

Financial Indebtedness means any debt or other monetary liability (whether actual or contingent) in respect of money borrowed or raised or any financial accommodation including under or in respect of any:

- (a) bill, bond, debenture, note or similar instrument;
- (b) acceptance, endorsement or discounting arrangement;
- (c) guarantee;
- (d) finance or capital lease;
- (e) agreement for the deferral of a purchase price or other payment in relation to the acquisition of any asset or service; or
- (f) obligation to deliver goods or provide services paid for in advance by any financier.

First Court Date means the first day on which an application made to the Court, in accordance with paragraph 10 of Schedule 5, for orders under section 411(1) of the Corporations Act convening the Scheme Meeting to consider the Scheme is heard.

Foreign Shareholder in The Trust Company means a Shareholder in The Trust Company:

- (a) who is (or is acting on behalf of) a citizen or resident of a jurisdiction other than residents of Australia and its external territories or New Zealand; or
- (b) whose address shown in the Register is a place outside Australia and its external territories or New Zealand or who is acting on behalf of such a person,

unless Perpetual determines that:

- (c) it is lawful and not unduly onerous or unduly impracticable to issue that Shareholder in The Trust Company with the New Perpetual Shares on implementation of the Transaction; and
- (d) it is lawful for that Shareholder in The Trust Company to participate in the Transaction by the law of the relevant place outside Australia and its external territories or New Zealand.

Implementation Date means the third Business Day following the Record Date.

Incoming Directors means up to 2 persons nominated by Perpetual to The Trust Company Board.

Independent Expert means the independent expert appointed by The Trust Company under paragraph 3 of Schedule 5.

A person is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act); or

- (b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a Controller appointed to any part of its property (other than in its capacity as professional custodian for property in which it does not have an ultimate beneficial title); or
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this agreement); or
- (d) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above; or
- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand; or
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this agreement reasonably deduces it is so subject); or
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to (a) to (g) happens in connection with that person under the law of any jurisdiction.

Listing Rules means the Listing Rules of ASX Limited.

Losses means all claims, demands, damages, losses, costs, expenses and liabilities.

LTI Plan means The Trust Company Long Term Incentive Plan dated 30 June 2010.

Minister has the meaning given to it in the Corporations Act.

Ministerial Approval means the approval of the Minister required to be granted to the Perpetual Group (or a member of the Perpetual Group) in accordance with section 601VBA of the Corporations Act in order to implement the Scheme.

New Perpetual Shares means fully paid ordinary shares in the capital of Perpetual to be issued under the Scheme.

Outgoing Directors means all directors on The Trust Company Board other than the Incoming Directors.

Performance Right means a right to acquire a Share in The Trust Company issued under the LTI Plan or STI Plan.

Perpetual means Perpetual Limited ABN 86 000 431 827.

Perpetual Board means the board of directors of Perpetual.

Perpetual Group means Perpetual and its Subsidiaries.

Perpetual Indemnified Parties means Perpetual, its officers, employees and advisers, its Related Bodies Corporate and the officers, employees and advisers of each of its Related Bodies Corporate.

Perpetual Information means the information regarding Perpetual provided by Perpetual to The Trust Company for inclusion in the Scheme Booklet, being the information about Perpetual required to be included in the Scheme Booklet under the Corporations Act, Corporations Regulations or ASIC Regulatory Guide 60. For the avoidance of doubt, the Perpetual Information does not include information about The Trust Company Group (except to the extent it relates to any statement of intention relating to The Trust Company Group following the Effective Date).

Perpetual Material Adverse Change means Specified Events which individually or when aggregated with all such events, has, had or may be considered reasonably likely to have:

- (a) a material adverse effect on the assets, liabilities, business, results, operations, trading or financial position of the Perpetual Group; or
- (b) the effect of a diminution in the total consolidated net assets of the Perpetual Group, taken as a whole, of at least \$30,700,000 against what it would reasonably have been expected to have been but for such Specified Event (other than any diminution as a result of any dividend payment which is not a Perpetual Prescribed Event); or
- (c) the effect of a diminution in the consolidated underlying annual EBITDA of the Perpetual Group, taken as a whole, of at least \$13,300,000 in each of the 2013/14 and 2014/15 financial years against what it would reasonably have been expected to have been but for such Specified Event; or
- (d) the result that the Perpetual Group is unable to carry on its business in substantially the same manner as carried on as at the date of this agreement, or which otherwise materially and adversely affects the prospects of the Perpetual Group,

but does not include:

- (a) any matter to the extent fairly disclosed to The Trust Company or its Representatives on or before the date of this agreement (including as a result of disclosures made to ASX or during the course of due diligence);
- (b) any matter, event or circumstance arising from changes in general economic or business conditions in Australia;
- (c) any change in taxation, interest rates generally or general economic conditions which impact on The Trust Company and Perpetual in a similar manner;
- (d) any change in accounting policy required by law;
- (e) any change occurring directly as a result of a general deterioration in equity markets, interest rates, exchange rates or credit spreads; or
- (f) any change occurring directly or indirectly as a result of any matter, event or circumstance required by this agreement, the Scheme or the transactions contemplated by them.

Perpetual Prescribed Event means, except to the extent contemplated by this agreement or the Scheme, any of the events listed in Schedule 1 provided that a the Perpetual Prescribed Events listed in Schedule 1 will not occur where Perpetual has first consulted with The Trust Company in relation to the event and The Trust Company has approved the proposed event or has not objected to the proposed event within five Business Days of having been so consulted.

Perpetual Shares mean fully paid ordinary shares in the capital of Perpetual.

Perpetual Sub means Perpetual Acquisition Company Limited (ACN 163 620 362), a wholly owned direct Subsidiary of Perpetual.

Perpetual VWAP means the average of the daily volume weighted average price per Perpetual Share traded on the ASX during the Perpetual VWAP Period but does not include any "Crossing" transacted outside the "Open Session State", or any "Special Crossing" transacted at any time, each as defined in the ASX Operating Rules.

Perpetual VWAP Period means the ten ASX trading days immediately preceding the date of the Scheme Meeting (but not including that date).

Record Date means 7:00pm on seventh Business Day following the Effective Date or such other date as The Trust Company and Perpetual agree.

Register means the share register of The Trust Company and **Registry** has a corresponding meaning.

Regulator's Draft means the draft of the Scheme Booklet in a form acceptable to both parties which is provided to ASIC for approval pursuant to section 411(2) of the Corporations Act.

Regulatory Approval means Ministerial Approval and approvals from Regulatory Authorities in New Zealand and Singapore and any other approval of a Regulatory Authority to the Transaction or any aspect of it which Perpetual and The Trust Company agree, acting reasonably, is necessary or desirable to implement the Transaction.

Regulatory Authority includes:

- (a) ASX, ACCC, ASIC, the Monetary Authority of Singapore and Office of Overseas Investment of New Zealand and regulatory bodies performing similar functions in other countries;
- (b) a government or governmental, semi-governmental or judicial entity or authority;
- (c) a minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government; and
- (d) any regulatory organisation established under statute.

Regulatory Review Period means the period from the date on which the Regulator's Draft is submitted to ASIC to the date on which ASIC confirms that it does not intend to make any submissions at the Court hearing on the First Court Date or otherwise object to the Scheme.

Reimbursement Fee means \$2,100,000.

Related Body Corporate has the meaning it has in the Corporations Act.

Related Person means in respect of a party or its Related Bodies Corporate, each director, officer, employee, advisor, agent or Representative of that party or Related Body Corporate;

Relevant Interest has the same meaning as given by sections 608 and 609 of the Corporations Act.

Representative means any person acting for or on behalf of a party including any director, officer, employee, agent, contractor or professional advisor of a party.

Revised EQT Proposal means a revised or amended version of, or a restatement of, the EQT Proposal.

Sale Agent means a person appointed by Perpetual after consultation with The Trust Company to sell the New Perpetual Shares that are attributable to Foreign Shareholders under the terms of the Scheme.

Scheme means the scheme of arrangement under part 5.1 of the Corporations Act under which all Shares in The Trust Company will be transferred to Perpetual Sub substantially in the form of Annexure B together with any amendment or modification made pursuant to section 411(6) of the Corporations Act and agreed to by Perpetual and The Trust Company.

Scheme Booklet means, in respect of the Scheme, the information booklet to be approved by the Court and despatched to Shareholders in The Trust Company which must:

- (a) include the Scheme, an explanatory statement complying with the requirements of the Corporations Act and notice(s) of meeting and proxy form(s); and
- (b) comply with the Corporations Act, Corporations Regulations, ASIC Regulatory Guide 60 and the Listing Rules.

Scheme Meeting means the meeting to be convened by the Court at which Shareholders in The Trust Company will vote on the Scheme.

Scheme Participants means in the case of the Scheme, each person who is a Shareholder in The Trust Company at the Record Date.

Second Court Date means the day on which the Court makes an order pursuant to section 411(4)(b) of the Corporations Act approving the Scheme.

Scheme Consideration means the Cash Consideration and the Share Consideration payable for Shares in The Trust Company under the Scheme and in accordance with clause 4.

Share Consideration means:

- (a) if after the date of this agreement but before the Implementation Date no dividend (other than the Excluded Dividend) is paid on Perpetual Shares and no record date for any Perpetual dividend (other than the Excluded Dividend) occurs, 0.1820-1495-New Perpetual Shares for each Share in The Trust Company held by a Scheme Participant receiving Share Consideration in accordance with the terms of the Scheme; or
- (b) if after the date of this agreement but before the Implementation Date, a dividend (other than the Excluded Dividend) is paid on Perpetual Shares or the record date for any Perpetual dividend (other than the Excluded Dividend) occurs, the Adjusted Number of New Perpetual Shares for each Share in The Trust Company held by a Scheme Participant receiving Share Consideration in accordance with the terms of the Scheme.

Share in The Trust Company means an ordinary fully paid share in the capital of The Trust Company.

Shareholder in The Trust Company means each person registered in the Register as a holder of Shares in The Trust Company.

Special Dividend Payment Date means the date which is the fifth Business Day following the Special Dividend Record Date or such other date as The Trust Company determines.

Special Dividend Record Date means the date which is the fifth Business Day after the Effective Date or such other date as The Trust Company determines.

Specified Events means an event, occurrence or matter occurring before, on or after the date of this agreement.

STI Plan means The Trust Company Short Term Incentive Plan dated August 2012

Subsidiaries has the meaning it has in the Corporations Act.

Superior Proposal means a bona fide Competing Transaction of the kind referred to in paragraphs (a), (b), (c) or (d) of the definition of Competing Transaction (and not resulting from a breach of any of the Trust Company's obligations under clause 10 of this agreement) which The Trust Company Board, acting in good faith, and after taking advice from its legal and financial advisers, determines is:

- (a) reasonably capable of being completed taking into account all aspects of the Competing Transaction; and
- (b) more favourable to Shareholders in The Trust Company than the Scheme, taking into account all terms and conditions of the Competing Transaction.

The Trust Company means The Trust Company Limited ABN 59 004 027 749.

The Trust Company Board means the board of directors of The Trust Company.

The Trust Company Consolidated Tax Group means the consolidated group of which The Trust Company is the head company (where "consolidated group" and "head company" have the same meaning as in the *Income Tax Assessment Act 1997* (Cth)).

The Trust Company Constitution means the constitution of The Trust Company.

The Trust Company FY13 Final Dividend means the final dividend determined by The Trust Company Board for the financial year ending 28 February 2013.

The Trust Company FY14 Interim Dividend means the interim dividend determined by The Trust Company Board for the first half of financial year ending 28 February 2014.

The Trust Company Group means The Trust Company and its Subsidiaries.

The Trust Company Indemnified Parties means The Trust Company, its officers, employees, and advisers and its Related Bodies Corporate and the officers, employees and advisers of each of its Related Bodies Corporate.

The Trust Company Information means all information contained in the Scheme Booklet other than the Perpetual Information and the Independent Expert's report.

The Trust Company Material Adverse Change means Specified Events which individually or when aggregated with all such events, has, had or may be considered reasonably likely to have:

- (a) a material adverse effect on the assets, liabilities, business, results, operations, trading or financial position of The Trust Company Group; or
- (b) the effect of a diminution in the total consolidated net assets of The Trust Company Group, taken as a whole, of at least \$12,600,000 against what it would reasonably have been expected to have been but for such Specified Event (other than any diminution as a result of any dividend payment which is not a The Trust Company Prescribed Event or any diminution as a result of compliance with clause 8.2(a)(ii) or 8.2(a)(iii)); or
- (c) the effect of a diminution in the consolidated underlying annual EBITDA of The Trust Company Group, taken as a whole, of at least \$2,300,000 in each of the 2013/14 and 2014/15 financial years against what it would reasonably have been expected to have been but for such Specified Event (other than any diminution as a result of compliance with clause 8.2(a)(ii) or 8.2(a)(iii)); or
- (d) the result that The Trust Company Group is unable to carry on its business in substantially the same manner as carried on as at the date of this agreement, or which otherwise materially and adversely affects the prospects of The Trust Company Group,

but does not include:

- (a) any matter to the extent fairly disclosed to Perpetual or its Representatives on or before the date of this agreement (including as a result of disclosures made to ASX or during the course of due diligence);
- (b) any matter, event or circumstance arising from changes in general economic or business conditions in Australia, New Zealand or Singapore;
- (c) any change in taxation, interest rates generally or general economic conditions which impact on The Trust Company and Perpetual in a similar manner;
- (d) any change in accounting policy required by law;
- (e) any change occurring directly as a result of a general deterioration in equity markets, interest rates, exchange rates or credit spreads; or
- (f) any change occurring directly or indirectly as a result of any matter, event or circumstance required by this agreement, the Scheme or the transactions contemplated by them.

The Trust Company Prescribed Event means, except to the extent contemplated by this agreement or the Scheme, any of the events listed in Schedule 2 provided that a The Trust Company Prescribed Event listed in Schedule 2 will not occur where The Trust Company has first consulted with Perpetual in relation to the event and Perpetual has approved the proposed event or has not objected to the proposed event within five Business Days of having being so consulted.

Third Party means a person other than Perpetual or its Related Bodies Corporate.

Timetable means the timetable set out in Schedule 4.

Transaction means the acquisition of the Shares in The Trust Company by Perpetual Sub through the implementation of the Scheme.

Transaction Implementation Committee means a committee to be made up of:

- (a) the chief executive officer of each of The Trust Company and Perpetual;
- (b) a representative from each of the legal and financial advisers of each party; and
- (c) such other persons as the parties may agree from time to time.

1.2 References to certain general terms

Unless the contrary intention appears, a reference in this agreement to:

- (a) **(variations or replacement)** a document (including this agreement) includes any variation or replacement of it;
- (b) **(clauses, annexures and schedules)** a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this agreement;
- (c) **(reference to statutes)** a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) **(law)** law means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);
- (e) **(singular includes plural)** the singular includes the plural and vice versa;
- (f) **(person)** the word "person" includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association, or any Regulatory Authority;
- (g) **(executors, administrators, successors)** a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (h) **(reference to a group of persons)** a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- (i) **(dollars)** Australian dollars, dollars, A\$ or \$ is a reference to the lawful currency of Australia;
- (j) **(calculation of time)** a period of time dating from a given day or the day of an act or event, is to be calculated exclusive of that day;
- (k) **(reference to a day)** a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (l) **(accounting terms)** an accounting term is a reference to that term as it is used in accounting standards under the Corporations Act, or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia;

(m) **(meaning not limited)** the words “include”, “including”, “for example” or “such as” when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind; and

(n) **(time of day)** time is a reference to Sydney time.

1.3 Next day

If an act under this agreement to be done by a party on or by a given day is done after 5:30 pm on that day, it is taken to be done on the next day.

1.4 Next Business Day

If an event must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day.

1.5 Headings

Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this agreement.

2 Agreement to propose and implement Scheme

2.1 Target to propose Scheme

The Trust Company agrees to propose the Scheme on and subject to the terms and conditions of this agreement.

2.2 Agreement to implement Transaction

The parties agree to implement the Transaction on the terms and conditions of this agreement.

3 Conditions precedent

3.1 Conditions precedent

Subject to this clause 3, the obligations of Perpetual under clause 4 are conditional on the satisfaction of each of the Conditions Precedent contained in Schedule 3 to the extent and in the manner set out in clauses 3.2 and 3.4.

3.2 Benefit of certain Conditions Precedent

A Condition Precedent may only be waived in writing by a party entitled to the benefit of that Condition Precedent as noted in the table set out in Schedule 3 and may only be waived by both parties together where it is expressed to apply for the benefit of both parties. A waiver will be effective only to the extent specifically set out in that waiver.

A party entitled to waive the breach or non-fulfilment of a Condition Precedent under this clause 3.2 may do so in its absolute discretion.

3.3 Waiver of Conditions Precedent

If either The Trust Company or Perpetual waives the breach or non-fulfilment of a Condition Precedent in accordance with this clause, then:

(a) subject to subclause 3.3(b), that waiver precludes that party from suing the other for any breach of this agreement arising as a result of the breach or non-fulfilment of that Condition Precedent or arising from the same event which gave rise to the breach or non-fulfilment of that Condition Precedent; and

- (b) if the waiver of the Condition Precedent is itself conditional and the other party:
 - (i) accepts the condition, the terms of that condition apply notwithstanding any inconsistency with subclause 3.3(a); or
 - (ii) does not accept the condition, the Condition Precedent has not been waived.

3.4 Reasonable endeavours

- (a) The Trust Company must use its reasonable endeavours to procure that each of the Conditions Precedent in paragraph 6 (No The Trust Company Prescribed Event) and paragraph 7 (No The Trust Company Material Adverse Change) of Schedule 3 continues to be satisfied at all times until the last time it is to be satisfied.
- (b) Perpetual must use its reasonable endeavours to procure that each of the Conditions Precedent in paragraph 8 (No Perpetual Prescribed Event) and paragraph 9 (No Perpetual Material Adverse Change) of Schedule 3 continues to be satisfied at all times until the last time it is to be satisfied.
- (c) Each of The Trust Company and Perpetual agree to use reasonable endeavours to procure that:
 - (i) each of the other Conditions Precedent:
 - A is satisfied as soon as practicable after the date of this agreement; and
 - B continues to be satisfied at all times until the last time it is to be satisfied (as the case may require); and
 - (ii) there is no occurrence that would prevent the Conditions Precedent being satisfied.

3.5 Regulatory matters

Without limiting clause 3.4, each party:

- (a) **(Regulatory Approvals)** must promptly apply for all relevant Regulatory Approvals and take all steps it is responsible for as part of the approval process, including responding to requests for information at the earliest practicable time;
- (b) **(representation)** has the right to be represented and make submissions at any proposed meeting with any Regulatory Authority relating to any Regulatory Approval; and
- (c) **(consultation)** must consult with the other party in advance in relation to all communications (whether written or oral, and whether direct or via a Representative) with any Regulatory Authority relating to any Regulatory Approval **(Communications)** and, without limitation:
 - (i) provide the other party with drafts of any material written Communications to be sent to a Regulatory Authority and make such amendments as the other party reasonably requires; and
 - (ii) provide copies of any material written Communications sent to or received from a Regulatory Authority to the other party promptly upon despatch or receipt (as the case may be),

in each case to the extent it is reasonable to do so.

For the avoidance of doubt, neither party is required to disclose commercially sensitive information in relation to the application for a Regulatory Approval to the other party and the party applying for a Regulatory Approval may withhold or redact information or documents from the other party if and to the extent that they are either confidential to a Third Party or commercially sensitive and confidential to the applicant.

3.6 Notices in relation to Conditions Precedent

Each party must:

- (a) **(notice of satisfaction)** promptly notify the other of satisfaction of a Condition Precedent and must keep the other informed of any material development of which it becomes aware that may lead to the breach or non-fulfilment of a Condition Precedent;
- (b) **(notice of failure)** immediately give written notice to the other of a breach or non-fulfilment of a Condition Precedent, or of any event which will prevent a Condition Precedent being satisfied; and
- (c) **(notice of waiver)** upon receipt of a notice given under paragraph (b), give written notice to the other party as soon as possible (and in any event before 5:00pm on the day before the Second Court Date) as to whether or not it waives the breach or non-fulfilment of any Condition Precedent resulting from the occurrence of that event, specifying the Condition Precedent in question.

3.7 Deferral of Second Court Date

- (a) If a Condition Precedent is not satisfied by the time and date specified for satisfaction of that Condition Precedent (and has not been waived in accordance with this agreement), then unless there is no reasonable prospect that the Condition Precedent will be satisfied before the End Date, The Trust Company must make an application to defer the Second Court Date until such time (being not later than the Business Day before the End Date) as reasonably required to enable the relevant Condition Precedent to be satisfied.
- (b) If the Condition Precedent in paragraph 2 (Scheme approval) of Schedule 3 is not satisfied only because of a failure to obtain the majority required by section 411(4)(a)(ii)(A) of the Corporations Act, then either party may by written notice to the other within 3 Business Days after the date of the conclusion of the Scheme Meeting require the approval of the Court to be sought, pursuant to the Court's discretion in that section, provided the party has in good faith formed the view that the prospect of the Court exercising its discretion in that way is reasonable.

3.8 Effect of waiver or non-fulfilment

A waiver of a breach or non-fulfilment in respect of one Condition Precedent does not constitute:

- (a) a waiver of the breach or non-fulfilment of any other Condition Precedent resulting from the same event; or
- (b) a waiver of the breach or non-fulfilment of that Condition Precedent resulting from any other event.

3.9 Consultation on failure of Condition Precedents

If:

- (a) subject to clause 3.7, there is a breach or non-fulfilment of a Condition Precedent which is not waived in accordance with this agreement by the time or date specified in this agreement for the satisfaction of the Condition Precedent;
 - (b) subject to clause 3.7, there is an act, failure to act or occurrence which will prevent a Condition Precedent being satisfied by the time or date specified in this agreement for the satisfaction of the Condition Precedent (and the breach or non-fulfilment which would otherwise occur has not already been waived in accordance with this agreement); or
 - (c) if the Scheme has not become Effective by the End Date,
- then the parties must consult in good faith to:
- (d) determine whether the Scheme may proceed by way of alternative means or methods;
 - (e) extend the relevant time for satisfaction of the Condition Precedent or to adjourn or change the date of an application to the Court; or
 - (f) extend the End Date.

3.10 Failure to agree

If the parties are unable to reach agreement under clause 3.9 within 5 Business Days (or any shorter period ending at 5:00pm on the day before the Second Court Date):

- (a) subject to subclause 3.10(b), either party may terminate this agreement (and such termination will be in accordance with clause 14.1(e)(i)); or
- (b) if a Condition Precedent may be waived and exists for the benefit of one party only, that party only may waive that Condition Precedent or terminate this agreement (and such termination will be in accordance with clause 14.1(e)(ii)),

in each case before 8.00am on the Second Court Date. A party will not be entitled to terminate this agreement pursuant to this clause 3.10 if the relevant Condition Precedent has not been satisfied or agreement cannot be reached as a result of:

- (c) a breach of this agreement by that party; or
- (d) a deliberate act or omission of that party.

3.11 Regulatory Approval

A Regulatory Approval will be regarded as having been obtained notwithstanding that a condition or conditions may have been attached to that Regulatory Approval if that condition is reasonably satisfactory to The Trust Company and Perpetual.

4 Outline of Scheme

4.1 Scheme

Subject to clause 3.1, on the Implementation Date:

- (a) all of the Shares in The Trust Company will be transferred to Perpetual Sub; and

- (b) each Scheme Participant will be entitled to receive the Scheme Consideration.

4.2 Transaction entitlements

- (a) The entitlements of The Trust Company Shareholders pursuant to the Transaction will be as set below. The parties agree that Perpetual is not responsible for paying the special dividend permitted pursuant to clause 4.2(d).
- (b) Subject to the Scheme becoming Effective, Perpetual agrees in favour of The Trust Company that, in consideration of the transfer to Perpetual Sub of each Share in The Trust Company under the Scheme, Perpetual Sub will accept such transfer, and Perpetual will (or, in the case of the Cash Consideration, will procure that Perpetual Sub will) (subject to the scale back provisions in clause 4.6) provide to each Scheme Participant the Scheme Consideration for each Share in The Trust Company held by them, in accordance with the Election of the Scheme Participant as contemplated by clause 4.3 and the terms of the Scheme.
- (c) Subject to the Scheme becoming Effective, and subject to the scale back provisions in clause 4.6, Perpetual will:
 - (i) procure that Perpetual Sub pays to each relevant Scheme Participant the Cash Consideration to which they are entitled, as determined in accordance with this clause 4; and
 - (ii) issue to each relevant Scheme Participant the Share Consideration to which they are entitled, as determined in accordance with this clause 4.
- (d) The Trust Company may pay The Trust Company Shareholders as at the Special Dividend Record Date a cash amount of \$0.22 per Share in The Trust Company as a special dividend on the Special Dividend Payment Date, franked to the full extent of The Trust Company's available franking credits.

4.3 Election Mechanism

- (a) The Trust Company must ensure that the Scheme Booklet sent to Shareholders in The Trust Company is accompanied by a form of election which provides for the matters set out in clause 4.3(b) under which each Shareholder in The Trust Company is requested to elect a percentage of the Scheme Consideration, being one of 0%, 20%, 40%, 60%, 80% or 100%, which they wish to receive for their Shares in the Trust Company in the form of Cash Consideration, the remainder of the Scheme Consideration being received in the form of Share Consideration, one of the following:
 - (i) ~~100% Cash Consideration in respect of all of their Shares in the Trust Company; or~~
 - (ii) ~~100% Share Consideration in respect of all of their Shares in the Trust Company.~~
- (b) The form of election shall provide that:
 - (i) subject to clause 4.3(b)(vi), a Shareholder in The Trust Company may make only one Election in relation to a particular holding;

- (ii) subject to clause 4.3(b)(vi), any valid Election by a Shareholder in The Trust Company will apply to all of the Shares in The Trust Company that Shareholder in The Trust Company holds as at the Record Date; and
 - (iii) a valid Election may be made by a Shareholder in The Trust Company by:
 - (A) completing the election form in accordance with the instructions specified on the form or set out in the Scheme Booklet; and
 - (B) returning the completed election form in accordance with the instructions on it so that it is received by no later than the Election Date;
 - (iv) once made, a valid Election by a Shareholder in The Trust Company may be varied before the Election Date (provided that any variation that purports to make an Election invalid will not be effective);
 - (v) if a valid Election is not made by a Shareholder in The Trust Company prior to the Election Date in respect of all of the Shares in The Trust Company held by that Shareholder in The Trust Company as at the Record Date, then that Shareholder in The Trust Company will be deemed to have made a valid Election to receive 0% Cash ~~100% Share~~ Consideration in respect of those Shares in The Trust Company;
 - (vi) a Shareholder in The Trust Company that holds one or more parcels of Shares in The Trust Company as trustee or nominee for, or otherwise on account of, another person, may, in a manner to be agreed between the parties (acting reasonably), make separate Elections in relation to each of those parcels of Shares in The Trust Company (and, for the purpose of calculating the Scheme Consideration to which the Shareholder in The Trust Company is entitled each such parcel of Shares in The Trust Company will be treated as though it were held by a separate Scheme Participant); and
 - (vii) must otherwise be in a form agreed between the parties.
- (c) The Trust Company must ensure that, to the extent reasonably practicable, Shareholders in The Trust Company that have acquired Shares in The Trust Company after the date of the despatch of the Scheme Booklet can receive an election form on request to The Trust Company.
- (d) In order to facilitate the provision of the Scheme Consideration, The Trust Company must, upon the written request of Perpetual, provide, or procure the provision, to Perpetual or a nominee of Perpetual, of:
- (i) a weekly update of the Elections that have been received;
 - (ii) details of the final Elections made by each Shareholder in The Trust Company, within three Business Days after the Election Date; and
 - (iii) a complete copy of The Trust Company register as at the Record Date, within three Business Days after the Record Date,

and such other information as Perpetual may reasonably require to provide the Scheme Consideration in accordance with this agreement and the terms of the Scheme.

4.4 [Not used] Election for Share Consideration

~~If a Scheme Participant makes a valid Election, or is deemed to have made an Election, to receive Share Consideration, then subject to the Scheme becoming Effective and subject to clauses 4.7 and 4.8 the Scheme Participant will be entitled to receive, for each Share in The Trust Company held by that Scheme Participant as at the Record Date, the Share Consideration.~~

4.5 Election for Cash Consideration

If a Scheme Participant makes or is deemed to have made a valid Election to receive Cash Consideration, then subject to the Scheme becoming Effective and subject to clauses 4.7 and 4.8, the Scheme Participant will be entitled to receive, for all of the each Shares in The Trust Company held by that Scheme Participant as at the Record Date:

- (a) the aggregate amount of Cash Consideration calculated in accordance with the following formula, unless clause 4.6 applies in which case the amount of Cash Consideration paid to the relevant Scheme Participant will be determined in accordance with that clause:

$$pCC = EP \times NS \times CCshare$$

Where:

pCC is the aggregate amount of Cash Consideration the relevant Scheme Participant will receive as part of the Scheme Consideration;

EP is the percentage Cash Consideration, being one of 0%, 20%, 40%, 60%, 80% or 100% (expressed as a decimal number), which the relevant Scheme Participant elected to receive, or is deemed to have elected to receive, in their Election;

NS is the number of Shares in The Trust Company held by that Scheme Participant at the Record Date;

CCshare is the Cash Consideration payable per Share in The Trust Company.

- (b) the aggregate amount of Share Consideration (being the aggregate number of New Perpetual Shares) calculated in accordance with the following formula, unless clause 4.6 applies in which case the amount of Share Consideration provided to the relevant Scheme Participant will be determined in accordance with that clause:

$$pSC = (1 - EP) \times NS \times SCshare$$

Where:

pSC is the aggregate amount of Share Consideration the relevant Scheme Participant will receive as part of the Scheme Consideration ;

EP is the percentage Cash Consideration, being one of 0%, 20%, 40%, 60%, 80% or 100% (expressed as a decimal number), which the relevant Scheme Participant elected to

receive, or is deemed to have elected to receive, in their Election;

NS is the number of Shares in The Trust Company held by that Scheme Participant at the Record Date;

SCshare is the Share Consideration to be provided per Share in The Trust Company.

~~, the Cash Consideration, unless clause 4.6 applies in which case the amount of Cash Consideration paid to the relevant Scheme Participant will be determined in accordance with that clause.~~

4.6 Scale back

- (a) This clause 4.6 applies if the Elections made by Scheme Participants are such that the aggregate amount of Cash Consideration that would be required to be paid by Perpetual Sub to satisfy the entitlements determined under clause 4.5 exceeds ~~\$60,000,000~~ 110,000,000.
- (b) Where this clause applies the aggregate Cash Consideration to which each Scheme Participant is entitled will be scaled back in accordance with the following formula:

$$tCC = \frac{CCcap}{CCtotal} \times pCC$$

Where:

tCC is the aggregate amount of Cash Consideration the relevant Scheme Participant is entitled to receive as part of the Cash Scheme Consideration for all Shares in The Trust Company held by that Scheme Participant as at the Record Date;

pCC is the aggregate amount of Cash Consideration the relevant Scheme Participant would have received as part of the Scheme Consideration for all Shares in The Trust Company held by that Scheme Participant as at the Record Date determined under clause 4.5 (but for this clause 4.6);

CCcap ~~\$60,000,000~~ 110,000,000; and

CC total is the aggregate amount of Cash Consideration that would be required to be paid by Perpetual in payment of the Cash Consideration to satisfy the entitlements determined under clause 4.5 for all Scheme Participants (but for this clause 4.6).

- (c) To the extent that the application of clause 4.6(b) results in an aggregate entitlement of a Scheme Participant to Cash Consideration that is less than would have applied but for this clause 4.6, the Scheme Participant will be entitled to Share Consideration in the alternative in accordance with the following formula:

$$tSC = \frac{pCC - tCC}{VWAP}$$

$$tSC = pSC + \frac{pCC - tCC}{VWAP}$$

Where:

tSC is the aggregate number of New Perpetual Shares the relevant Scheme Participant is entitled to receive as part of the Share Scheme Consideration for all Shares in The Trust

Company held by that Scheme Participant as at the Record Date;

pSC is the aggregate amount of Share Consideration (being the aggregate number of New Perpetual Shares) the relevant Scheme Participant would have received as part of the Scheme Consideration for all Shares in The Trust Company held by that Scheme Participant as at the Record Date determined under clause 4.5 (but for this clause 4.6):

pCC has the meaning given to that term in clause 4.6(b);

tCC is the aggregate amount of Cash Consideration the relevant Scheme Participant is entitled to receive as part of the Cash Consideration for all Shares in The Trust Company held by that Scheme Participant as at the Record Date as determined in accordance with clause 4.6(b); and

VWAP is the Perpetual VWAP.

4.7 Fractional elements

(a) If the number of Shares in The Trust Company held by a Scheme Participant at the Record Date (or, if applicable, the result of the application of clause 4.5 or 4.6) is such that the aggregate entitlement of the Scheme Participant to Scheme Consideration:

- (i) comprising New Perpetual Shares includes a fractional entitlement to a New Perpetual Share; or
- (ii) comprising cash includes a fractional entitlement to a cent,

then the fractional entitlement will be rounded:

- (iii) in the case of New Perpetual Shares:
 - (A) if the fractional entitlement is less than 0.5, down to zero New Perpetual Shares; and
 - (B) otherwise, up to one New Perpetual Share; and
- (iv) in the case of cash, up or down to the nearest cent (with any such fractional entitlement of less than 0.5 being rounded down to the nearest whole cent, and any such fractional entitlement of 0.5 or more being rounded up to the nearest whole cent).

(b) If Perpetual and The Trust Company are of the opinion (acting reasonably) that two or more Scheme Participants (each of whom holds a number of Shares in The Trust Company which results in rounding in accordance with clause 4.7(a)) have, before the Record Date for the Scheme, been party to shareholding splitting or division in an attempt to obtain unfair advantage by reference to such rounding, The Trust Company may give notice to those Scheme Participants:

- (i) setting out their names and registered addresses as shown in The Trust Company Share Register;
- (ii) stating that opinion;
- (iii) attributing to one of them specifically identified in the notice the Shares in The Trust Company held by all of them; and
- (iv) attributing to one of them specifically identified in the notice which Election made by or on behalf them applies to all of them,

and, after such notice has been given, the Scheme Participant specifically identified in the notice as the deemed holder of all the specified Shares in The Trust Company will, for the purposes of the provisions of the Scheme, be taken to hold all of those Shares in The Trust Company and each of the other Scheme Participants whose names and registered addresses are set out in the notice will, for the purposes of the provisions of the Scheme, be taken to hold no Shares in The Trust Company. Perpetual in complying with the provisions of the Scheme relating to it in respect of the Scheme Participant specifically identified in the notice as the deemed holder of all the specified Shares in The Trust Company, will be taken to have satisfied and discharged its obligations to the other Scheme Participants named in the notice under the terms of the Scheme.

4.8 Foreign Shareholders in The Trust Company

(a) If a Foreign Shareholder would otherwise be entitled to receive Share Consideration under clause 4.5 or 4.6 ~~has made (or is deemed to have made) an Election to receive Share Consideration, or their entitlement to Cash Consideration has been scaled back in accordance with clause 4.6~~, Perpetual has no obligation to allot or issue, and will not allot or issue, any New Perpetual Shares to a Foreign Shareholder, and instead:

- (i) subject to clause 4.8(c), Perpetual must issue the New Perpetual Shares attributable to, and which would otherwise be required to be provided to, the Foreign Shareholders under the Scheme to the Sale Agent;
- (ii) Perpetual must procure that, as soon as reasonably practicable after the Implementation Date, the Sale Agent, in consultation with Perpetual, sells or procures the sale (including on an aggregated or partially aggregated basis), in the ordinary course of trading on ASX, of all the New Perpetual Shares issued to the Sale Agent and remits to Perpetual the proceeds of sale (after deduction of any applicable brokerage, stamp duty and other costs, taxes and charges) (the **Proceeds**); and
- (iii) Perpetual must pay, or procure the payment, to each Foreign Shareholder the amount calculated in accordance with the following formula and rounded down to the nearest cent:

$$A = (B \div C) \times D$$

where

A is the amount to be paid to the Foreign Shareholder;

B is the number of New Perpetual Shares attributable to, and that would otherwise have been issued to, that Foreign Shareholder had it not been a Foreign Shareholder and which are instead issued to the Sale Agent;

C is the total number of New Perpetual Shares attributable to, and which would otherwise have been issued to, all Foreign Shareholders collectively and which are instead issued to the Sale Agent; and

D is the Proceeds (as defined in clause 4.8(a)(ii)).

(b) None of Perpetual, The Trust Company or the Sale Agent gives any assurance as to the price that will be achieved for the sale of New Perpetual Shares described in clause 4.8(a)(ii). The sale of the New

Perpetual Shares under this clause 4.8 will be at the risk of the Foreign Shareholder.

- (c) Perpetual must appoint the Sale Agent at least two weeks prior to the Scheme Meeting.

4.9 Breach of law or constitution

Where the issue or transfer of New Perpetual Shares to which a Scheme Participant would otherwise be entitled under the Scheme would result in a breach of law or breach of a provision of Perpetual's constitution:

- (a) Perpetual will cause the issue or transfer of the maximum possible number of New Perpetual Shares to the Scheme Participant without giving rise to such a breach; and
- (b) any further New Perpetual Shares to which that Scheme Participant is entitled, but the issue of which to the Scheme Participant would give rise to such a breach, will instead be issued to the Sale Agent and dealt with under clause 4.8, as if a reference to Foreign Shareholders also included that Scheme Participant and reference to that person's New Perpetual Shares in those clauses were limited to the New Perpetual Shares issued to the Sale Agent under this clause.

4.10 Shares to rank equally

Perpetual covenants in favour of The Trust Company (in its own right and on behalf of each Scheme Participant) that:

- (a) all New Perpetual Shares issued pursuant to clause 4.2 will, upon their issue, rank equally with all other Perpetual Shares then on issue;
- (b) it will do everything reasonably necessary to ensure that trading in the New Perpetual Shares commences no later than the first Business Day after the Implementation Date; and
- (c) on issue, each New Perpetual Share will be fully paid and free from any Encumbrance.

4.11 Performance Rights

- (a) The Trust Company must ensure that, by no later than the Effective Date, there are no outstanding Performance Rights.
- (b) In order to comply with its obligation under clause 4.11(a), The Trust Company must:
 - (i) cause some or all of the outstanding Performance Rights to vest and, following such vesting, cause the relevant number of Shares in The Trust Company to be issued in sufficient time to allow the relevant former holders of the relevant Performance Rights to participate in the Scheme; and
 - (ii) take such action as may be necessary to cancel any outstanding Performance Rights which it does not cause to vest in accordance with clause 4.11(b)(i) (if any).

4.12 No amendment to the Scheme without consent

The Trust Company must not consent to any modification of, or amendment to, or the making or imposition by the Court of any condition in respect of, the Scheme without the prior written consent of Perpetual.

5 Co-operation and timing

5.1 General obligations

The Trust Company and Perpetual must each:

- (a) use all reasonable endeavours and commit necessary resources (including management and corporate relations resources and the resources of external advisers); and
- (b) procure that its officers and advisers work in good faith and in a timely and co-operative fashion with the other party (including by attending meetings and by providing information),

to produce the Scheme Booklet and implement the Scheme as soon as reasonable practicable and as far as possible in accordance with the Timetable.

5.2 Transaction Implementation Committee

The parties must establish a Transaction Implementation Committee as soon as possible after the date of this agreement. The role of the Transaction Implementation Committee will be to act as a forum for consultation and planning by parties to implement the Transaction.

Subject to this agreement, nothing in this clause requires either party to act at the direction of the other. The business of each party will continue to operate independently from the other until the Implementation Date. The parties agree that nothing in this agreement constitutes the relationship of a partnership or a joint venture between the parties.

5.3 Access to people and The Trust Company Information

Between the date of this agreement and the earlier of 5:00 pm on the Business Day immediately before the Second Court Date and the date this agreement is terminated, The Trust Company must promptly provide Perpetual and its officers and advisers with reasonable access to The Trust Company's officers and advisers and documents, records, and other information (subject to any existing confidentiality obligations owed to third parties, or applicable privacy laws) which Perpetual reasonably requires for the purposes of applying for all relevant Regulatory Approvals.

5.4 Perpetual's right to separate representation

Perpetual is entitled to separate representation at all Court proceedings relating to the Scheme. Nothing in this agreement is to be taken to give The Trust Company any right or power to make or give undertakings to the Court for or on behalf of Perpetual.

6 Implementation obligations of the parties

6.1 The Trust Company's obligations

The Trust Company must comply with the obligations of The Trust Company set out in Schedule 5 and take all reasonable steps to implement the Scheme as soon as is reasonably practicable.

6.2 Perpetual's obligations

Perpetual must comply with the obligations of Perpetual set out in Schedule 6 and take all reasonable steps to assist The Trust Company to implement the Scheme as soon as reasonably practicable and in any event prior to the End Date.

6.3 Appointment/retirement of The Trust Company directors

- (a) As soon as practicable after the Second Court Date, The Trust Company must use its reasonable endeavours to cause the appointment of each Incoming Director to The Trust Company Board.
- (b) On the Implementation Date after the Scheme Consideration has been despatched to Scheme Participants, The Trust Company must procure that each of the Outgoing Directors retire from The Trust Company Board.
- (c) On the Implementation Date after the Scheme Consideration has been despatched to Scheme Participants, The Trust Company must procure that all directors on the boards of Subsidiaries of the Trust Company resign and procure the appointment of nominees of Perpetual to those boards.

7 Scheme Booklet

7.1 Preparation

Without limiting clauses 6.1 or 6.2:

- (a) **(preparation)**: The Trust Company is generally responsible for the preparation of the Scheme Booklet but will provide drafts to and consult with Perpetual in accordance with clause 7.2;
- (b) **(compliance)** Perpetual and The Trust Company must take all necessary steps to endeavour to ensure that the Scheme Booklet:
 - (i) complies with the requirements of:
 - (A) the Corporations Act;
 - (B) ASIC Regulatory Guide 60;
 - (C) the Listing Rules; and
 - (ii) is not, having regard to applicable disclosure requirements, misleading or deceptive in any material respect (including because of any material omission).

7.2 Content of Scheme Booklet

The Trust Company must:

- (a) **(consult Perpetual)**:
 - (i) provide to Perpetual a draft of the Scheme Booklet for the purpose of enabling Perpetual to review and comment on that draft document;
 - (ii) take the comments made by Perpetual into account in good faith when producing a revised draft of the Scheme Booklet; and
 - (iii) provide to Perpetual a revised draft of the Scheme Booklet within a reasonable time before the Regulator's Draft is finalised and to enable Perpetual to review the Regulator's Draft at least 2 Business Days before its submission;
- (b) **(amend Scheme Booklet)** implement such changes to those parts of the Scheme Booklet relating to Perpetual which are provided in

accordance with clause 7.2(a) as reasonably requested by Perpetual and prior to finalising the Regulator's Draft;

- (c) **(Regulatory Review Period)** during the Regulatory Review Period:
 - (i) promptly provide to Perpetual, and include in a revised draft of the Scheme Booklet, any new information not included in the Regulator's Draft which is required by the Corporations Act, Corporations Regulations, ASIC Regulatory Guide 60 or the Listing Rules to be included in the Scheme Booklet; and
 - (ii) keep Perpetual informed of any matters raised by ASIC in relation to the Scheme Booklet and use all reasonable endeavours, in co-operation with Perpetual, to resolve any such matters;
- (d) **(Perpetual Information)** obtain approval from Perpetual for the form and context in which Perpetual Information appears in the Scheme Booklet which approval must not be unreasonably delayed or withheld.

7.3 Perpetual information

Perpetual:

- (a) must consult with The Trust Company as to the content of the Perpetual Information;
- (b) consents to the inclusion of the Perpetual Information (in the form approved by it pursuant to clause 7.2(d)) in the Scheme Booklet; and
- (c) acknowledges that it is responsible for ensuring that the Perpetual Information is not misleading or deceptive in any material respect (whether by omission or otherwise) and that The Trust Company will not verify or edit that information in the Scheme Booklet.

7.4 Responsibility statement

The Scheme Booklet will contain a responsibility statement to the effect that:

- (a) Perpetual is responsible for the Perpetual Information (other than any information provided by The Trust Company to Perpetual or obtained from The Trust Company's public filings on ASX regarding The Trust Company Group contained in, or used in the preparation of, the information regarding Perpetual and The Trust Company group following implementation of the Scheme) contained in the Scheme Booklet; and
- (b) The Trust Company is responsible for The Trust Company Information contained in the Scheme Booklet and is also responsible for the information contained in the Scheme Booklet provided by The Trust Company to Perpetual or obtained from The Trust Company's public filings on ASX regarding The Trust Company Group contained in, or used in the preparation of, the information regarding Perpetual and The Trust Company group following implementation of the Scheme.

7.5 Disagreement on content

If Perpetual and The Trust Company disagree on the form or content of the Scheme Booklet, they must consult in good faith to try to settle an agreed form of the Scheme Booklet. If complete agreement is not reached after reasonable consultation, then:

- (a) if the disagreement relates to the form or content of Perpetual Information contained in the Scheme Booklet, The Trust Company will make such amendments as Perpetual reasonably requires; and
- (b) if the disagreement relates to the form or content of any other part of the Scheme Booklet, The Trust Company Board will, acting in good faith, decide the final form or content of the disputed part of the Scheme Booklet.

7.6 Verification

Each party must undertake appropriate verification processes for the information supplied by that party for the Scheme Booklet.

8 Conduct of business

8.1 Overview

From the date of this agreement up to and including the Implementation Date, The Trust Company must conduct its business in the ordinary and proper course consistent with business plans and budgets made public or disclosed to Perpetual prior to the date of this agreement.

8.2 Specific requirements

- (a) Without limiting 8.1 above and subject to clauses 8.2(b) and 8.2(c), from the date of this agreement up to and including the Implementation Date, The Trust Company must:
 - (i) not enter into any line of business or other activities in which The Trust Company Group is not engaged as of the date of this agreement;
 - (ii) not undertake a restructure of its business operations in New Zealand or Singapore including, but not limited to, by closing offices or materially reducing the number of staff working in or servicing these jurisdictions;
 - (iii) not undertake any technology integration project between its Australian and New Zealand business operations;
 - (iv) not enter, and must ensure that no other member of The Trust Company Group enters, into a contract or commitment restraining any member of The Trust Company Group from competing with any person or conducting activities in any market;
 - (v) ensure that no member of The Trust Company Group provides financial accommodation other than to another member of The Trust Company Group or in a fiduciary capacity as trustee, responsible entity or manager of a third party trust or fund out of the assets of that trust or fund (irrespective of what form of Financial Indebtedness that accommodation takes) in excess of \$1,000,000 (individually or in aggregate);
 - (vi) ensure that no member of The Trust Company Group enters into any agreement, arrangement or transaction with respect to derivative instruments (including, swaps, futures contracts, forward commitments, commodity derivatives or options) or similar instruments (other than any such agreements, arrangements or transactions entered in a fiduciary capacity as

trustee, responsible entity or manager of a third party trust or fund);

- (vii) ensure that no member of The Trust Company Group enters into a transaction with any related party of The Trust Company (other than another member of The Trust Company Group) as defined in section 228 of the Corporations Act;
 - (viii) not amend, and must ensure that no member of The Trust Company Group amends, in any material respect any arrangement with its Financial Advisor, or enters into arrangements with a new Financial Advisor, in respect of the Transaction;
 - (ix) not change any accounting policy applied by a member of The Trust Company Group to report their financial position other than any change in policy required by a change in accounting standards;
 - (x) not do anything that would result in a change in The Trust Company Consolidated Tax Group;
 - (xi) provide regular reports on the financial affairs of The Trust Company Group, including the provision of monthly CFO reports and any Audit and Risk Committee reports, in a timely manner to Perpetual;
 - (xii) make all reasonable efforts, and procure that each other member of The Trust Company Group makes all reasonable efforts, to:
 - (A) preserve and maintain the value of the businesses and assets of The Trust Company Group;
 - (B) keep available the services of the directors, officers and employees as at the date of this agreement of each member of The Trust Company Group; and
 - (C) maintain and preserve their relationships with Regulatory Authorities, customers, suppliers and others having business dealings with any member of The Trust Company Group.
- (b) Nothing in this clause 8 restricts the ability of The Trust Company to take any action:
- (i) which is required by this agreement, the Scheme;
 - (ii) reasonably necessary to implement the appointment of a new head of The Trust Company's New Zealand business; or
 - ~~(ii)~~(iii) which has been agreed to in writing by Perpetual.
- (c) Nothing in this clause 8 restricts the ability of The Trust Company to respond to a Competing Transaction in accordance with clause 10.
- (d) From the date of this agreement until the Second Court Date The Trust Company will promptly notify Perpetual of anything of which it becomes aware that makes any warranty or representation of The Trust Company in this agreement false, inaccurate, misleading or deceptive in any material respect.

9 Releases

9.1 The Trust Company directors and officers

- (a) Perpetual releases its rights, and agrees with The Trust Company that it will not make a claim, against any The Trust Company Indemnified Party (other than The Trust Company) as at the date of this agreement in connection with:
- (i) any breach of any representations, covenants and warranties of The Trust Company or any other member of The Trust Company Group in this agreement; or
 - (ii) any disclosures containing any statement which is false or misleading whether in content or by omission,

except where The Trust Company Indemnified Party has not acted in good faith or has engaged in wilful misconduct. Nothing in this clause 9.1(a) limits Perpetual's rights to terminate this agreement under clause 14.

- (b) This clause is subject to any restrictions under the Corporations Act or any other applicable legislation and will be read down accordingly. The Trust Company receives and holds the benefit of this clause to the extent it relates to each The Trust Company Indemnified Party as trustee for each of them.

9.2 Perpetual directors and officers

- (a) The Trust Company releases its rights, and agrees with Perpetual that it will not make a claim, against any Perpetual Indemnified Party (other than Perpetual) as at the date of this agreement in connection with:
- (i) any breach of any representations, covenants and warranties of Perpetual or any other member of the Perpetual Group in this agreement; or
 - (ii) any disclosure containing any statement which is false or misleading whether in content or by omission,

except where the Perpetual Indemnified Party has not acted in good faith or has engaged in wilful misconduct. Nothing in this clause 9.2(a) limits The Trust Company's rights to terminate this agreement under clause 14.

- (b) This clause is subject to any restrictions under the Corporations Act or any other applicable legislation and will be read down accordingly. Perpetual receives and holds the benefit of this clause to the extent it relates to each Perpetual Indemnified Party as trustee for each of them.

9.3 Deeds of access, indemnity and insurance

- (a) Perpetual must procure that The Trust Company and each member of The Trust Company Group preserve the indemnities and other rights under the deeds of indemnity access and insurance made by them in favour of their respective directors and officers from time to time and, in particular, must not take any action which would prejudice or adversely affect any directors and officers run-off insurance cover taken out prior to the Implementation Date.
- (b) The undertakings contained in this clause 9.3 are subject to any restriction under the Corporations Act or any other applicable legislation

and will be read down accordingly. The Trust Company receives and holds the benefit of this clause 9.3, to the extent it relates to the directors and officers of The Trust Company and other members of The Trust Company Group, as trustee for them.

10 Exclusivity

10.1 No-shop

During the Exclusivity Period, The Trust Company must ensure that neither it nor any of its Related Bodies Corporate or Representatives directly or indirectly:

- (a) solicits, invites or initiates any enquiries, negotiations or discussions; or
- (b) communicates any intention to do any of these things,

with a view to obtaining any offer, proposal or expression of interest from any person in relation to a Competing Transaction. Nothing in this clause 10.1 prevents The Trust Company from continuing to make normal presentations to, and to respond to enquiries from, brokers, portfolio investors and analysts in the ordinary course in relation to the Transaction or its business generally.

10.2 No talk

Subject to clause 10.3, during the Exclusivity Period, The Trust Company must ensure that neither it nor any of its Related Bodies Corporate or Representatives directly or indirectly:

- (a) participate in or continue any negotiations or discussions with respect to any inquiry, expression of interest, offer, proposal or discussion by any person to make or which would reasonably be expected to encourage or lead to the making of an actual, proposed or potential Competing Transaction or participate in or continue any negotiations or discussions with respect to any actual, proposed or potential Competing Transaction;
- (b) negotiate, accept or enter into, or offer or agree to negotiate, accept or enter into, any agreement, arrangement or understanding regarding an actual, proposed or potential Competing Transaction;
- (c) disclose or otherwise provide any non-public information about the business or affairs of The Trust Company Group to a Third Party (other than a Regulatory Authority) with a view to obtaining or which would reasonably be expected to encourage or lead to receipt of an actual, proposed or potential Competing Transaction (including, without limitation, providing such information for the purposes of the conduct of due diligence investigations in respect of The Trust Company Group); or
- (d) communicate to any person an intention to do anything referred to in the preceding paragraphs of this clause 10.2.

Nothing in this clause 10.2 prevents The Trust Company from continuing to make normal presentations to, and to respond to enquiries from, brokers, portfolio investors and analysts in the ordinary course in relation to the Transaction or its business generally.

10.3 Fiduciary exception

Clause 10.2 does not prohibit any action or inaction by The Trust Company or its Related Persons in relation to an actual, proposed or potential Competing Transaction if compliance with that clause would, in the opinion of The Trust Company Board, formed in good faith after receiving written advice from its external legal advisers, constitute, or would be likely to constitute, a breach of

any of the fiduciary or statutory duties of the directors of The Trust Company, provided that the actual, proposed or potential Competing Transaction was not directly or indirectly brought about by, or facilitated by, a breach of clause 10.1.

10.4 Notification of approaches

- (a) During the Exclusivity Period, The Trust Company must as soon as possible notify Perpetual in writing if it, or any of its Related Persons, becomes aware of any:
- (i) negotiations or discussions, approach or attempt to initiate any negotiations or discussions, or intention to make such an approach or attempt to initiate any negotiations or discussions in respect of any expression of interest, offer, proposal or discussion in relation to an actual, proposed or potential Competing Transaction;
 - (ii) proposal made to The Trust Company or any of its Related Persons, in connection with, or in respect of any exploration or completion of, an actual, proposed or potential Competing Transaction; or
 - (iii) provision by The Trust Company or any of its Related Persons of any material confidential information concerning the business or operations of The Trust Company or The Trust Company Group to any to a Third Party (other than a Regulatory Authority) in connection with an actual, proposed or potential Competing Transaction,

whether direct or indirect, solicited or unsolicited, and in writing or otherwise. For the avoidance of doubt, any of the acts described in paragraphs (i) to (iii) may only be taken by The Trust Company if not proscribed by clause 10.1 or 10.2 or if permitted by clause 10.3.

- (b) For the avoidance of doubt, a notification given under clause 10.4(a) does not need to include the identity of the relevant person making or proposing the relevant actual, proposed or potential Competing Transaction, nor does it need to include any details in respect of the terms and conditions of the actual, proposed or potential Competing Transaction.

10.5 Matching right

Without limiting clauses 10.1 or 10.2, during the Exclusivity Period, The Trust Company:

- (a) must not enter into any legally binding agreement, arrangement or understanding (whether or not in writing) pursuant to which a Third Party, The Trust Company or both proposes or propose to undertake or give effect to an actual, proposed or potential Competing Transaction; and
- (b) must use its reasonable endeavours to procure that none of its directors change their recommendation in favour of the Scheme to publicly recommend an actual, proposed or potential Competing Transaction (or recommend against the Scheme),

unless:

- (c) The Trust Company Board acting in good faith determines that the Competing Transaction would be or would be likely to be an actual, proposed or potential Superior Proposal; and

- (d) The Trust Company has provided Perpetual with the material terms and conditions of the actual, proposed or potential Competing Transaction, including price and the identity of the Third Party making the actual, proposed or potential Competing Transaction; and
- (e) The Trust Company has given Perpetual at least 3 Business Days after the provision of the information referred to in clause 10.5(d) to provide a matching or superior proposal to the terms of the actual, proposed or potential Competing Transaction; and
- (f) Perpetual has not announced a proposal which The Trust Company, acting in good faith, determines is a matching or superior proposal to the terms of the actual, proposed or potential Competing Transaction by the expiry of the 3 Business Day period in clause 10.5(e) above.

The Trust Company acknowledges and agrees that each successive modification of any actual, proposed or potential Competing Transaction will constitute a new actual, proposed or potential Competing Transaction for the purposes of the requirements under this clause 10.5 and accordingly The Trust Company must comply with paragraphs (a) and (b) of this clause in respect of any new actual, proposed or potential Competing Transaction unless paragraphs (c) to (f) (inclusive) apply.

10.6 Cease discussions

- (a) Without limiting the rights of The Trust Company in respect of a Competing Transaction which is proposed after the date of this agreement under clauses 10.2 and 10.3 (including for the avoidance of doubt, in respect of a proposed Competing Transaction from a person or persons that may have previously proposed a different Competing Transaction), The Trust Company must cease any discussions or negotiations existing as at the date of this agreement relating to:
 - (i) any actual, proposed or potential Competing Transaction; or
 - (ii) any transaction that would, or would reasonably be expected to, reduce the likelihood of success of the Scheme.
- (b) Subject to clause 10.6(a), as soon as practicable following the execution of this agreement, and in any event within 2 Business Days, to the extent it has not already done so, The Trust Company must request in writing the immediate return or destruction of all The Trust Company's confidential information that has been provided to any Third Party between 1 January 2013 and the date of this agreement under a confidentiality agreement in relation to an actual, proposed or potential Competing Transaction and terminate those persons' access to The Trust Company's confidential information on an ongoing basis.
- (c) The Trust Company agrees not to waive, and to enforce, any standstill obligations of any Third Party, except in relation to a Competing Transaction where Perpetual has failed to provide a matching or superior proposal which satisfies clause 10.5(f). The Trust Company represents that it has not waived any standstill obligations contained in any confidentiality agreement that it has entered into since 1 January 2013.

10.7 Provision of information

During the Exclusivity Period, The Trust Company must as soon as possible provide Perpetual with:

- (a) in the case of written materials, a copy of; and

- (b) in any other case, a written statement of,

any material non-public information about the business or affairs of The Trust Company or The Trust Company Group disclosed or otherwise provided to any Third Party (whether such information is disclosed to the Third Party during the Exclusivity Period or was disclosed before the date of this agreement) in connection with an actual, proposed or potential Competing Transaction that has not previously been provided to Perpetual. For the avoidance of doubt, any such provision of information to a Third Party may only be undertaken if permitted by clause 10.3.

11 Reimbursement Fee

11.1 Background to Reimbursement Fee

- (a) Perpetual and The Trust Company acknowledge that, if they enter into this agreement and the Scheme is subsequently not implemented, Perpetual will have incurred significant costs, including those set out in clause 11.4.
- (b) In these circumstances, Perpetual has requested that provision be made for the payments outlined in clause 11.2, without which Perpetual would not have entered into this agreement or otherwise agreed to implement the Scheme.
- (c) The Trust Company Board believes, having taken advice from its legal advisors and Financial Advisors, that the implementation of the Scheme will provide benefits to The Trust Company and that it is appropriate for The Trust Company to agree to the payments referred to in clause 11.2 in order to secure Perpetual's participation in the Transaction.

11.2 Reimbursement Fee triggers

The Trust Company must pay the Reimbursement Fee to Perpetual, without set-off or withholding, if:

- (a) this agreement is terminated after any member of The Trust Company Board has changed his or her recommendation to the Scheme Participants that they vote in favour of the resolution to approve the Scheme (including any adverse modification of his or her recommendation) or otherwise made a public statement indicating that he or she no longer supports the Transaction, other than where the change of recommendation or public statement is made following the receipt of the report of the Independent Expert where that report states that in the opinion of the Independent Expert the Scheme is not in the best interests of Shareholders in The Trust Company (other than where a Competing Transaction other than the EQT Proposal (but including any Revised EQT Proposal) has been proposed or announced before the report is issued where the Independent Expert's conclusion is due wholly or partly to the existence, announcement or publication of a Competing Transaction other than the EQT Proposal (but including any Revised EQT Proposal));
- (b) a Competing Transaction of any kind is announced during the Exclusivity Period (whether or not such proposal is stated to be subject to any pre-conditions) and, within nine months of the date of such announcement, the Third Party proposing the Competing Transaction or any Associate of that Third Party:
- (i) completes a Competing Transaction of a kind referred to in any of paragraphs (a), (b), (c) or (d) of the definition of Competing Transaction; or

- (ii) enters into an agreement, arrangement or understanding with The Trust Company or The Trust Company Board of the kind referred to in paragraph (e) of the definition of Competing Transaction; or
- (c) Perpetual has validly terminated this agreement pursuant to clause 14.1(b)(ii) (material breach of agreement) or 14.1(b)(iv) (material breach of warranty by The Trust Company) and the Transaction does not complete;
- (d) ~~Perpetual has validly terminated this agreement pursuant to clause 3.10 due to the non-fulfilment of the Condition Precedent listed in paragraph 14 (New Zealand amendment deed) of Schedule 3;~~
- (e) a The Trust Company Material Adverse Change or a The Trust Company Prescribed Event occurs after the date of this agreement, Perpetual has validly terminated the agreement pursuant to clause 14.1(b)(v), and that change, event, occurrence, fact, matter or thing is within the control of The Trust Company;
- (f) this agreement is terminated following the Independent Expert concluding in the Independent Expert's report (or any update of, or revision, amendment or addendum to, that report) that the Scheme is not in the best interests of Shareholders in The Trust Company, where that conclusion is due wholly or partly to the existence, announcement or publication of a Competing Transaction other than the EQT Proposal (but including any Revised EQT Proposal), irrespective of whether or not any members of The Trust Company Board change, withdraw or modify their recommendation in favour of the Scheme or support or endorse the Competing Transaction; or
- (g) the Court fails to approve the terms of the Scheme for which the approval of the requisite Shareholders in The Trust Company has been obtained as a result of a material non-compliance by The Trust Company with any of its obligations under this agreement.

11.3 Timing of payment of Reimbursement Fee

- (a) A demand by Perpetual for payment of the Reimbursement Fee under clause 11.2 must:
 - (i) be in writing;
 - (ii) be made after the occurrence of the event in that clause giving rise to the right to payment;
 - (iii) state the circumstances which give rise to the demand; and
 - (iv) nominate an account in the name of Perpetual into which The Trust Company is to pay the Reimbursement Fee.
- (b) The Trust Company must pay the Reimbursement Fee into the account nominated by Perpetual, without set-off or withholding, within five Business Days after receiving a demand for payment where Perpetual is entitled under clause 11.2 to the Reimbursement Fee.

11.4 Basis of Reimbursement Fee

The Reimbursement Fee has been calculated to reimburse Perpetual for costs including the following:

- (a) fees for legal, financial and other professional advice in planning and implementing the Transaction (excluding success fees);
- (b) reasonable opportunity costs incurred in engaging in the Transaction or in not engaging in other alternative acquisitions or strategic initiatives;
- (c) costs of management and directors' time in planning and implementing the Transaction; and
- (d) out of pocket expenses incurred by Perpetual and Perpetual's employees, advisers and agents in planning and implementing the Transaction,

and the parties agree that:

- (e) the costs actually incurred by Perpetual will be of such a nature that they cannot all be accurately ascertained; and
- (f) the Reimbursement Fee is a genuine and reasonable pre-estimate of those costs.

11.5 Compliance with law

- (a) This clause 11 does not impose an obligation on The Trust Company to pay the Reimbursement Fee to the extent (and only to the extent) that the obligation to pay the Reimbursement Fee:
 - (i) is declared by the Takeovers Panel to constitute 'unacceptable circumstances'; or
 - (ii) is determined to be unenforceable or unlawful by a court,
 - (iii) after all proper avenues of appeal and review, judicial and otherwise, have been exhausted.
- (b) The parties must not make or cause or permit to be made, any application to the Takeovers Panel or a court for or in relation to a declaration or determination referred to in this clause 11.5(a).

11.6 Reimbursement Fee payable only once

Where the Reimbursement Fee becomes payable to Perpetual under clause 11.2 and is actually paid to Perpetual, Perpetual cannot make any claim against The Trust Company for payment of any subsequent Reimbursement Fee.

11.7 Reduction in amount payable

- (a) The amount payable by The Trust Company to the Perpetual under clause 11.2 is reduced by an amount equal to the amount which is recovered by the Perpetual as a result of a claim against The Trust Company pursuant to any other remedies available to the Perpetual under this agreement including pursuant to clause 12.
- (b) Where the amount payable by The Trust Company to the Perpetual under clause 11.2 has already been paid, the Perpetual must, within two Business Days of the event contemplated by clause 11.7(a) which would have reduced the amount payable, refund an amount to The Trust Company which is equivalent to that calculated under clause 11.7(a).

11.8 Limitations of Liability

- (a) Notwithstanding any other provision of this agreement:

- (i) the maximum liability of Perpetual to The Trust Company under or in connection with this agreement including in respect of any breach of the agreement will be \$2,100,000; and
- (ii) the maximum liability amount referred to in clause 11.8(a)(i) represents the maximum and absolute amount of the liability of Perpetual under or in connection with this agreement and no further damages, fees, expenses or reimbursements of any kind will be payable by Perpetual in connection with this agreement,

except that nothing in this clause 11.8(a) limits the liability of Perpetual for any breach of clause 4.2(c).

- (b) Notwithstanding any other provision of this agreement but subject to clause 11.5:

- (i) the maximum liability of The Trust Company to Perpetual under or in connection with this agreement including in respect of any breach of the agreement will be \$2,100,000; and
- (ii) the maximum liability amount referred to in clause 11.8(b)(i) represents the maximum and absolute amount of the liability of The Trust Company under or in connection with this agreement and no further damages, fees, expenses or reimbursements of any kind will be payable by The Trust Company in connection with this agreement,

except that nothing in this clause 11.8(b) limits the liability of The Trust Company for any breach of clause 10.

- (c) Nothing in this clause 11.8 limits the liability of any party for fraud.

11.9 No Reimbursement Fee if Scheme Effective

Despite anything to the contrary in this agreement, the Reimbursement Fee will not be payable to Perpetual if the Scheme becomes Effective, notwithstanding the occurrence of any event in clause 11.2 and, if the Reimbursement Fee has already been paid it must be refunded by Perpetual.

12 Representations and warranties

12.1 The Trust Company's representations and warranties

The Trust Company represents and warrants to Perpetual (on its own behalf and separately as trustee or nominee for each of the Perpetual Indemnified Parties) that each of the statements set out in Schedule 7 is true and correct in all material respects as at the date of this agreement and as at 5:00 pm on the Business Day immediately prior to the Second Court Date.

12.2 The Trust Company's indemnity

The Trust Company indemnifies the Perpetual Indemnified Parties against all Losses incurred directly or indirectly as a result of any of the representations and warranties in clause 12.1 not being true and correct.

12.3 The Trust Company warranty certificate

The Trust Company must provide to Perpetual by 5:00 pm on the Business Day immediately prior to the Second Court Date a certificate signed by a director of The Trust Company and made in accordance with a resolution of The Trust Company Board stating, as at that date, that the representations or warranties given by The Trust Company in clause 12.1 remain true and accurate or, if any

such representation or warranty is not true and accurate as at that date, providing complete particulars of the facts and matters which make the representation or warranty untrue or inaccurate.

12.4 Perpetual's representations and warranties

Perpetual represents and warrants to The Trust Company (on its own behalf and separately as trustee or nominee for each of The Trust Company directors) that each of the statements set out in Schedule 8 is true and correct in all material respects as at the date of this agreement and as at 5:00 pm on the Business Day immediately prior to the Second Court Date.

12.5 Perpetual's indemnity

Perpetual indemnifies The Trust Company Indemnified Parties against all Losses incurred directly or indirectly as a result of any of the representations and warranties in clause 12.4 not being true and correct.

12.6 Perpetual warranty certificate

Perpetual must provide to The Trust Company by 5:00 pm on the Business Day immediately prior to the Second Court Date a certificate signed by a director of Perpetual and made in accordance with a resolution of the Perpetual Board stating, as at that date, that the representations and warranties given by Perpetual in clause 12.4 remain true and accurate or, if any such representation or warranty is not true and accurate as at that date, providing complete particulars of the facts and matters which make the representation or warranty untrue or inaccurate.

13 Court proceedings

13.1 Appeal process

If the Court refuses to make orders convening the Scheme Meeting or approving the Scheme, Perpetual and The Trust Company must appeal the Court's decision to the fullest extent possible except to the extent that:

- (a) the parties agree otherwise; or
- (b) Queen's Counsel or Senior Counsel representing that party in relation to the Scheme indicates that, in their opinion, an appeal would likely have less than a 50% prospect of success; or
- (c) there is, in the bona-fide view of The Trust Company Board a Superior Proposal which should be recommended in preference to the Scheme,

in which case either party may terminate this agreement in accordance with clause 14.1(e)(iii).

13.2 Defence of proceedings

Each of the Perpetual and The Trust Company must vigorously defend, or must cause to be vigorously defended, any lawsuits or other legal proceeding brought against it (or any of its Subsidiaries) challenging this agreement or the completion of the Transaction. Neither Perpetual nor The Trust Company will settle or compromise (or permit any of its Subsidiaries to settle or compromise) any claim brought in connection with this agreement without the prior written consent of the other, such consent not to be unreasonably withheld.

13.3 Costs

Any costs incurred as a result of the operation of this clause 13 will be borne equally by each party.

14 Termination

14.1 Termination events

Without limiting any other provision of this agreement (including clauses 3.10 and 13.1), this agreement may be terminated:

- (a) **(End Date)** by either party, if the Scheme has not become Effective on or before the End Date;
- (b) **(lack of support or breach)** at any time prior to 8.00am on the Second Court Date:
 - (i) by Perpetual if any member of The Trust Company Board changes his recommendation to the Scheme Participants that they vote in favour of the resolution to approve the Scheme, including any adverse modification to his recommendation, or otherwise makes a public statement indicating that he no longer supports the Transaction; or
 - (ii) by either Perpetual or The Trust Company if the other is in material breach of any clause of this agreement (other than a warranty), taken in the context of the Transaction as a whole, provided that either Perpetual or The Trust Company, as the case may be, has, if practicable, given notice to the other setting out the relevant circumstances and stating an intention to terminate and, the relevant circumstances continue to exist 5 Business Days (or any shorter period ending at 5:00 pm on the day before the Second Court Date) after the time such notice is given; or
 - (iii) by The Trust Company if Perpetual has breached the representations and warranties set out in Schedule 8, provided that:
 - (A) The Trust Company has given notice to Perpetual setting out the relevant circumstances and stating an intention to terminate; and
 - (B) the relevant breach continue to exist 5 Business Days (or any shorter period ending at 5:00 pm on the day before the Second Court Date) after the time such notice is given; and
 - (C) the loss that could reasonably be expected to follow from such a breach would exceed \$1,000,000 in aggregate; or
 - (iv) by Perpetual if The Trust Company has breached the representations and warranties set out in Schedule 7, provided that:
 - (A) Perpetual has given notice to The Trust Company setting out the relevant circumstances and stating an intention to terminate; and
 - (B) the relevant breach continue to exist 5 Business Days (or any shorter period ending at 5:00 pm on the day before the Second Court Date) after the time such notice is given; and

- (C) the loss that could reasonably be expected to follow from such a breach would exceed \$1,000,000 in aggregate; or
- (v) by Perpetual if a The Trust Company Material Adverse Change or a The Trust Company Prescribed Event occurs; or
- (vi) by The Trust Company if a Perpetual Material Adverse Change or a Perpetual Prescribed Event occurs;
- (c) **(not approved)** by either party if the resolution submitted to the Scheme Meeting is not approved by the requisite majority;
- (d) **(restraint)** by either party if a Court or other Regulatory Authority has issued a final and non-appealable order, decree or ruling or taken other action which permanently restrains or prohibits the Transaction;
- (e) **(consultation or appeal failure)** in accordance with and pursuant to:
 - (i) clause 3.10(a);
 - (ii) clause 3.10(b); or
 - (iii) clause 13.1;
- (f) **(Independent Expert)** by either party if the Independent Expert opines that the Scheme is not in the best interests of Shareholders in The Trust Company;
- (g) **(Insolvency)** by either party if the other party or any of their Related Bodies Corporate becomes Insolvent; or
- (h) **(agreement)** if agreed to in writing by Perpetual and The Trust Company.

14.2 Termination

Where a party has a right to terminate this agreement, that right for all purposes will be validly exercised if the party delivers a notice in writing to the other party stating that it terminates this agreement.

14.3 Effect of Termination

In the event that a party terminates this agreement, or if this agreement otherwise terminates in accordance with its terms, then in either case all further obligations of the parties under this agreement, other than the obligations set out in clauses 10, 11, 12, 14.3, 17, 18 and 19.18 will immediately cease to be of further force and effect without further liability of any party to the other, provided that nothing in this clause releases any party from liability for any pre-termination breach of this agreement.

14.4 Damages

In addition to the right of termination under clause 14.1 where there is no appropriate remedy for the breach in the agreement (other than termination), the non-defaulting party is entitled to damages for Losses suffered by it and expenses incurred by it as a result of the breach of the terms of this agreement.

15 Public announcements

15.1 Public announcement of Scheme

Immediately after signing this agreement, The Trust Company and Perpetual will issue separate public announcements of the proposed Transaction in agreed form.

15.2 Required disclosure

Where a party is required by law, the Listing Rules or a memorandum of understanding with a Regulatory Authority to make any announcement or make any disclosure relating to a matter the subject of the Transaction, it may do so only after it has given the other party as much notice as possible and has consulted to the fullest extent possible in the circumstances with the other party and its legal advisers.

15.3 Other announcements

Subject to clauses 15.1 and 15.2, no party may make any public announcement or disclosure in connection with the Transaction (including disclosure to a Regulatory Authority) other than in a form approved by each party (acting reasonably). Each party will use all reasonable endeavours to provide such approval as soon as practicable.

16 GST

- (a) Any consideration or amount payable under or in connection with this agreement, including any non-monetary consideration (as reduced in accordance with clause 16(e) if required) (**Consideration**) is exclusive of GST.
- (b) If GST is or becomes payable on a Supply made under or in connection with this agreement, an additional amount (**Additional Amount**) is payable by the party providing consideration for the Supply (**Recipient**) equal to the amount of GST payable on that Supply as calculated by the party making the Supply (**Supplier**) in accordance with the GST Law.
- (c) The Additional Amount payable under clause 16(b) is payable at the same time and in the same manner as the Consideration for the Supply, and the Supplier must provide the Recipient with a Tax Invoice. However, the Additional Amount is only payable on receipt of a valid Tax Invoice.
- (d) If for any reason (including the occurrence of an Adjustment Event) the amount of GST payable on a Supply (taking into account any Decreasing or Increasing Adjustments in relation to the Supply) varies from the Additional Amount payable by the Recipient under clause 16(b):
 - (i) the Supplier must provide a refund or credit to the Recipient, or the Recipient must pay a further amount to the Supplier, as appropriate;
 - (ii) the refund, credit or further amount (as the case may be) will be calculated by the Supplier in accordance with the GST Law; and
 - (iii) the Supplier must notify the Recipient of the refund, credit or further amount within 14 days after becoming aware of the variation to the amount of GST payable. Any refund or credit must accompany such notification or the Recipient must pay any further amount within 7 days after receiving such notification, as appropriate. If there is an Adjustment Event in relation to the

Supply, the requirement for the Supplier to notify the Recipient will be satisfied by the Supplier issuing to the Recipient an Adjustment Note within 14 days after becoming aware of the occurrence of the Adjustment Event.

- (e) Despite any other provision in this agreement if an amount payable under or in connection with this agreement (whether by way of reimbursement, indemnity or otherwise) is calculated by reference to an amount incurred by a party, whether by way of cost, expense, outlay, disbursement or otherwise (**Amount Incurred**), the amount payable must be reduced by the amount of any Input Tax Credit to which that party is entitled in respect of that Amount Incurred.
- (f) Any reference in this clause to an Input Tax Credit to which a party is entitled includes an Input Tax Credit arising from a Creditable Acquisition by that party but to which the Representative Member of a GST Group of which the party is a member is entitled.
- (g) Any term starting with a capital letter that is not defined in this agreement has the same meaning as the term has in the *A New Tax System (Goods & Services Tax) Act 1999* (Cth).

17 Confidential Information

Each party acknowledges and agrees that it continues to be bound by the Confidentiality Agreements in respect of all information received by it from the other party on, before or after the date of this agreement.

18 Notices and other communications

18.1 Form - all communications

Unless expressly stated otherwise in this agreement, all notices, certificates, consents, approvals, waivers and other communications in connection with this agreement must be:

- (a) in writing;
- (b) signed by the sender (if an individual) or an Authorised Officer of the sender; and
- (c) marked for the attention of the person identified in the Details or, if the recipient has notified otherwise, then marked for attention in the way last notified.

18.2 Form - communications sent by email

Communications sent by email need not be marked for attention in the way stated in clause 18.1. However, the email must state the first and last name of the sender.

Communications sent by email are taken to be signed by the named sender.

18.3 Delivery

Communications must be:

- (a) left at the address set out or referred to in the Details;
- (b) sent by prepaid ordinary post (airmail if appropriate) to the address set out or referred to in the Details;

- (c) sent by fax to the fax number set out or referred to in the Details;
- (d) sent by email to the address set out or referred to in the Details; or
- (e) given in any other way permitted by law.

However, if the intended recipient has notified a changed address, fax number or email address, then communications must be to that address, fax number or email address.

18.4 When effective

Communications take effect from the time they are received or taken to be received under clause 18.5 (whichever happens first) unless a later time is specified.

18.5 When taken to be received

Communications are taken to be received:

- (a) if sent by post, three days after posting (or seven days after posting if sent from one country to another); or
- (b) if sent by fax, at the time shown in the transmission report as the time that the whole fax was sent; or
- (c) if sent by email;
 - (i) when the sender receives an automated message confirming delivery; or
 - (ii) four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,

whichever happens first.

18.6 Receipt outside business hours

Despite clauses 18.4 and 18.5, if communications are received or taken to be received under clause 18.5 after 5:00pm in the place of receipt or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day and take effect from that time unless a later time is specified.

19 Miscellaneous

19.1 Discretion in exercising rights

A party may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this agreement expressly states otherwise.

19.2 Partial exercising of rights

If a party does not exercise a right or remedy fully or at a given time, the party may still exercise it later.

19.3 No liability for loss

A party is not liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising a right or remedy under this agreement.

19.4 Approvals and consents

By giving its approval or consent a party does not make or give any warranty or representation as to any circumstance relating to the subject matter of the consent or approval.

19.5 Conflict of interest

The parties' rights and remedies under this agreement may be exercised even if it involves a conflict of duty or a party has a personal interest in their exercise.

19.6 Remedies cumulative

The rights and remedies in this agreement are in addition to other rights and remedies given by law independently of this agreement.

19.7 Variation and waiver

A provision of this agreement or a right created under it, may not be waived or varied except in writing, signed by the party or parties to be bound.

19.8 No merger

The warranties, undertakings and indemnities in this agreement do not merge on the Implementation Date.

19.9 Indemnities

The indemnities in this agreement are continuing obligations, independent from the other obligations of the parties under this agreement and continue after this agreement ends. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this agreement.

19.10 Enforceability

For the purpose of this agreement:

- (a) The Trust Company is taken to be acting as agent and trustee on behalf of and for the benefit of all The Trust Company Indemnified Parties; and
- (b) Perpetual is taken to be acting as agent and trustee on behalf of and for the benefit of all the Perpetual Indemnified Parties,

and all of those persons are to this extent taken to be parties to this agreement.

19.11 Further steps

Each party agrees, at its own expense, to do anything the other party asks (such as obtaining consents, signing and producing documents and getting documents completed and signed):

- (a) to bind the party and any other person intended to be bound under this agreement; or
- (b) to show whether the party is complying with this agreement.

19.12 Construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this agreement or any part of it.

19.13 Costs

The parties agree to pay their own legal and other costs and expenses in connection with the preparation, execution and completion of this agreement and other related documentation except for stamp duty.

19.14 Stamp duty

Perpetual agrees to pay all stamp duty (including fines and penalties) payable and assessed by legislation or by any revenue office on this agreement or the Scheme and in respect of a transaction evidenced by this agreement or the Scheme.

19.15 Entire agreement

Except for the Confidentiality Agreements, this agreement constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

19.16 Assignment

A party may not assign or otherwise deal with its rights under this agreement or allow any interest in them to arise or be varied in each case, without the consent of the other party.

19.17 No representation or reliance

Each party acknowledges that:

- (a) no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this agreement, except for representations or inducements expressly set out in this agreement;
- (b) it does not enter into this agreement in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this agreement; and
- (c) paragraphs 19.17(a) and 19.17(b) above do not prejudice any rights a party may have in relation to information which had been filed by the other party with ASIC or ASX.

19.18 Governing law

This agreement is governed by the law in force in the place specified in the Details. Each party submits to the non-exclusive jurisdiction of the courts of that place.

19.19 Counterparts

This agreement may be executed in counterparts. All counterparts when taken together are to be taken to constitute one instrument.

EXECUTED as an agreement

Scheme Implementation Agreement

Schedule 1 - Perpetual Prescribed Events

- 1 **(Conversion)** Perpetual converts all or any of its shares into a larger or smaller number of shares.
- 2 **(Reduction of share capital)** Perpetual resolves to reduce its share capital in any way.
- 3 **(Buy-back)** Perpetual:
 - (a) enters into a buy-back agreement; or
 - (b) resolves to approve the terms of a buy-back agreement under the Corporations Act.
- 4 **(Distribution)** Perpetual makes or declares, or announces an intention to make or declare, any distribution (whether by way of dividend, capital reduction or otherwise and whether in cash or in specie), other than any interim or final dividend made, declared or announced in accordance with Perpetual's current dividend policy as at the date of this agreement.
- 5 **(Issuing or granting shares or options)** Perpetual or any of its Subsidiaries:
 - (a) issues shares;
 - (b) grants an option over its shares; or
 - (c) agrees to make such an issue or grant such an option,
in each case to a person outside Perpetual Group other than:
 - (d) in accordance with the terms attaching to any performance rights, long term incentive plan or dividend reinvestment plan, in each case as in place as at the date of this agreement; or
 - (e) as disclosed by Perpetual to The Trust Company or the ASX before the date of this agreement.
- 6 **(Securities or other instruments)** Perpetual or any of its Subsidiaries:
 - (a) issues securities or other instruments convertible into shares or debt securities; or
 - (b) agrees to issue securities or other instruments convertible into shares or debt securities,
in each case to a person outside Perpetual Group other than:
 - (c) in accordance with the terms attaching to any performance rights, long term incentive plan or dividend reinvestment plan, in each case as in place as at the date of this agreement; or
 - (d) as disclosed by Perpetual to The Trust Company or the ASX before the date of this agreement.

- 7 **(Constitution)** Perpetual adopts a new constitution or modifies or repeals its existing constitution or a provision of it.
- 8 **(Disposals)** Perpetual or any of its Subsidiaries disposes, or agrees to dispose of the whole or a substantial part of the Perpetual Group's business or property (other than any business or property which is held in a fiduciary capacity as trustee, responsible entity or manager of a third party trust or fund).
- 9 **(Acquisitions, disposals or tenders)** Perpetual or any of its Subsidiaries:
- (a) acquires or disposes of;
 - (b) agrees to acquire or dispose of;
 - (c) offers, proposes, announces a bid or tenders for,
- any business, assets, entity or undertaking (other than a business, asset, entity or undertaking which is held in a fiduciary capacity as trustee, responsible entity or manager of a third party trust or fund) the value of which exceeds \$15,350,000 other than where such action is taken in accordance with the Transformation 2015 strategy announced by Perpetual to the ASX on 25 June 2012.
- 10 **(Encumbrances)** other than in the ordinary course of business and consistent with past practice, Perpetual or any of its Subsidiaries creates, or agrees to create, any Encumbrance over the whole or a substantial part of its business or property (other than any business or property which is held in a fiduciary capacity as trustee, responsible entity or manager of a third party trust or fund).
- 11 **(Commitments and settlements)** other than where carried out: (i) in its capacity as trustee, responsible entity or manager of a third party trust or fund in respect of the assets of that trust or fund; (ii) in accordance with the Transformation 2015 strategy announced by Perpetual to the ASX on 25 June 2012; or (iii) in the ordinary course of business and consistent with past practice, Perpetual or any of its Subsidiaries:
- (a) enters into any contract or commitment involving revenue or expenditure of more than \$12,000,000 over the term of the contract or commitment;
 - (b) terminates or amends in a material manner any contract material to the conduct of the Perpetual Group's business or which involves revenue or expenditure of more than \$12,000,000 over the term of the contract;
 - (c) waives any material Third Party default; or
 - (d) accepts as a settlement or compromise of a material matter (relating to an amount in excess of \$12,000,000) less than the full compensation due to Perpetual or a Subsidiary of Perpetual.
- 12 **(Insolvency)** Perpetual or any of its Related Bodies Corporate becomes Insolvent.

Scheme Implementation Agreement

Schedule 2 - The Trust Company Prescribed Events

- 1 **(Conversion)** The Trust Company converts all or any of its shares into a larger or smaller number of shares.
- 2 **(Reduction of share capital)** The Trust Company resolves to reduce its share capital in any way.
- 3 **(Buy-back)** The Trust Company:
 - (a) enters into a buy-back agreement; or
 - (b) resolves to approve the terms of a buy-back agreement under the Corporations Act.
- 4 **(Distribution)** The Trust Company makes or declares, or announces an intention to make or declare, any distribution (whether by way of dividend, capital reduction or otherwise and whether in cash or in specie), except for (i) The Trust Company FY13 Final Dividend provided that it is not more than 18 cents per Share in The Trust Company; (ii) The Trust Company FY14 Interim Dividend provided that it is not more than 17 cents per Share in The Trust Company, fully franked; and (iii) the special dividend permitted pursuant to clause 4.2(d).
- 5 **(Issuing or granting shares or options)** The Trust Company or any of its Subsidiaries:
 - (a) issues shares;
 - (b) grants an option over its shares; or
 - (c) agrees to make such an issue or grant such an option,in each case to a person outside The Trust Company Group other than:
 - (d) in accordance with the terms attaching to any Performance Rights or dividend reinvestment plan, in each case as in place as at the date of this agreement; or
 - (e) as disclosed by The Trust Company to Perpetual or the ASX before the date of this agreement.
- 6 **(Securities or other instruments)** The Trust Company or any of its Subsidiaries:
 - (a) issues securities or other instruments convertible into shares or debt securities; or
 - (b) agrees to issue securities or other instruments convertible into shares or debt securities,in each case to a person outside The Trust Company Group other than:

- (c) in accordance with the terms attaching to any Performance Rights or dividend reinvestment plan, in each case as in place as at the date of this agreement; or
 - (d) as disclosed by The Trust Company to Perpetual or the ASX before the date of this agreement.
- 7 **(Constitution)** The Trust Company adopts a new constitution or modifies or repeals its constitution or a provision of it.
- 8 **(Disposals)** The Trust Company or any of its Subsidiaries disposes, or agrees to dispose of the whole or a substantial part of The Trust Company Group's business or property (other than any business or property which is held in a fiduciary capacity as trustee, responsible entity or manager of a third party trust or fund).
- 9 **(Acquisitions, disposals or tenders)** The Trust Company or any of its Subsidiaries:
- (a) acquires or disposes of;
 - (b) agrees to acquire or dispose of;
 - (c) offers, proposes, announces a bid or tenders for,
- any business, assets, entity or undertaking (other than a business, asset, entity or undertaking which is held in a fiduciary capacity as trustee, responsible entity or manager of a third party trust or fund) the value of which exceeds \$6,300,000.
- 10 **(Encumbrances)** The Trust Company or any of its Subsidiaries creates, or agrees to create, any Encumbrance over the whole or a substantial part of its business or property (other than any business or property which is held in a fiduciary capacity as trustee, responsible entity or manager of a third party trust or fund).
- 11 **(Employment arrangements)** The Trust Company or any of its Subsidiaries:
- (a) other than as part of the annual remuneration review which will be effective as at 15 May 2013 and will be substantially on the terms disclosed to Perpetual, increases the remuneration of, or otherwise varies the employment arrangements with, any of its directors or employees;
 - (b) other than in respect of any Performance Rights, accelerates the rights of any of its directors or employees to compensation or benefits or any kind; or
 - (c) pays any of its directors or employees a termination or retention payment (otherwise than in accordance with an existing contract in place at the date of this agreement),
- and the aggregate of all increases in remuneration, accelerations of benefits and payments is greater than \$1,000,000.
- 12 **(Commitments and settlements)** other than where carried out in its capacity as trustee, responsible entity or manager of a third party trust or fund in respect of the assets of that trust or fund, The Trust Company or any of its Subsidiaries:
- (a) enters into any contract or commitment involving potential revenue or expenditure (including termination payments or break fees) of more than \$1,000,000 over the term of the contract or commitment;

- (b) (without limiting the foregoing) enters into any contracts or commitments relating to the same matter or project involving revenue or expenditure of more than \$1,000,000 in aggregate over the term of the contracts or commitments;
- (c) terminates or amends in a material manner any contract material to the conduct of The Trust Company Group's business or which involves revenue or expenditure of more than \$1,000,000 over the term of the contract;
- (d) waives any material Third Party default; or
- (e) accepts as a settlement or compromise of a material matter (relating to an amount in excess of \$1,000,000) less than the full compensation due to The Trust Company or a Subsidiary of The Trust Company.

13 **(Insolvency)** The Trust Company or any of its Related Bodies Corporate becomes Insolvent.

Scheme Implementation Agreement

Schedule 3 - Conditions Precedent (clause 3.1)

Condition	Party entitled to benefit
1. Regulatory Approvals	
Before 8.00am on the Second Court Date:	
(a) ACCC: Perpetual has received informal clearance in respect of the Transaction by notice in writing from the ACCC stating, or stating to the effect, that the ACCC does not propose to intervene or seek to prevent the Transaction and that notice has not been withdrawn, revoked or amended;	Both Both
(b) (ASIC and ASX) ASIC and ASX have issued or provided such consents, confirmations or approvals or have done such other acts which the parties agree are reasonably necessary or desirable to implement the Transaction;	Both
(c) (Ministerial Approval) The Minister has granted (or is deemed to have granted) all approvals pursuant to section 601VBA which Perpetual (or any member of the Perpetual Group) requires to implement the Transaction;	
(d) (Regulatory Authority) all other approvals of a Regulatory Authority which Perpetual and The Trust Company agree are necessary or desirable to implement the Transaction are obtained;	Both
(e) (Court orders) no Court or Regulatory Authority has issued or taken steps to issue an order, temporary restraining order, preliminary or permanent injunction, decree or ruling or taken any action enjoining, restraining or otherwise imposing a legal restraint or prohibition preventing the Transaction and no such order, decree, ruling, other action or refusal is in effect.	Both
2. Scheme approval	Cannot be waived
Shareholders in The Trust Company approve the Scheme by the requisite majorities in accordance	

Condition	Party entitled to benefit
with the Corporations Act.	
3. Court approval	
The Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act.	Both
4. Third party consents	
All other approvals of a Third Party which Perpetual and The Trust Company agree are necessary or desirable to implement the Transaction are obtained.	Both
5. Independent Expert	
The Independent Expert issues a report which concludes that the Scheme is in the best interests of Scheme Participants before the date on which the Scheme Booklet is lodged with ASIC.	Both
6. No The Trust Company Prescribed Event	
No The Trust Company Prescribed Event occurs between the date of this agreement and 8.00am on the Second Court Date.	Perpetual
7. No The Trust Company Material Adverse Change	
No The Trust Company Material Adverse Change occurs or becomes apparent between the date of this agreement and 8.00am on the Second Court Date.	Perpetual
8. No Perpetual Prescribed Event	
No Perpetual Prescribed Event occurs between the date of this agreement and 8.00am on the Second Court Date.	The Trust Company
9. No Perpetual Material Adverse Change	
No Perpetual Material Adverse Change occurs or becomes apparent between the date of this agreement and 8.00am on the Second Court Date.	The Trust Company
10. Index out	
Between the date of this agreement and 5:00 pm on the Business Day before the Second Court Date, the All Ordinaries Index does not close below 4,500 for more than three consecutive trading days.	Both
11. Quotation	

Condition	Party entitled to benefit
The New Perpetual Shares to be issued pursuant to the Scheme have, before 8.00 am on the Second Court Date, been approved for official quotation on the ASX.	The Trust Company
12. No termination	
This agreement has not been terminated in accordance with clause 14.	Both
13. Deed Poll	
Between the date of this agreement and the date of sending the Scheme Booklet, Perpetual signs and delivers the Deed Poll.	The Trust Company
14. New Zealand amendment deed	Perpetual
The document entitled "New Zealand amendment deed" previously approved by Perpetual is executed by the parties thereto.	

Scheme Implementation Agreement

Schedule 4 – Indicative Timetable (clause 5.1)

Event	Date
Lodge Scheme Booklet with ASIC and ASX	June <u>September</u> 2013
First Court Date	June <u>October</u> 2013
Scheme Meeting	July <u>November</u> 2013
Election Date	July <u>November</u> 2013
Second Court Date	July/August <u>November</u> 2013
Effective Date	July/August <u>November</u> 2013
Special Dividend Record Date	August <u>November</u> 2013
Record Date	August <u>November</u> 2013
Special Dividend Payment Date	August <u>November</u> 2013
Implementation Date	August <u>November</u> 2013

Scheme Implementation Agreement

Schedule 5 - The Trust Company's Obligations (clause 6.1)

- 1 **(The Trust Company Information)** ensure that The Trust Company Information included in the Scheme Booklet complies with applicable law, the Listing Rules and applicable ASIC Regulatory Guides.
- 2 **(Further The Trust Company Information)** provide to Perpetual and Scheme Participants such further or new The Trust Company Information as may arise after the Scheme Booklet has been sent until the date of the Scheme Meeting as may be necessary to ensure that The Trust Company Information contained in the Scheme Booklet is not, having regard to applicable disclosure requirements, false, misleading or deceptive in any material respect (including because of any material omission).
- 3 **(Independent Expert)** promptly appoint the Independent Expert and provide any assistance and information reasonably requested by the Independent Expert to enable it to prepare its report for the Scheme Booklet.
- 4 **(Provide a copy of the report)** on receipt, provide Perpetual with a copy of any draft or final report received from the Independent Expert.
- 5 **(Directors' recommendation)** state in the Scheme Booklet, the public announcement contemplated by clause 15.1 (on the basis of statements made to The Trust Company by each member of The Trust Company Board) and any other public statements made by The Trust Company in relation to the Scheme that:
 - (a) each of the directors of The Trust Company Board recommends to Scheme Participants that the Scheme be approved in the absence of a Superior Proposal; and
 - (b) each of the directors of The Trust Company Board will (in the absence of a Superior Proposal) vote, or procure the voting of director's Shares in The Trust Company in which they have a Relevant Interest at the time of the Scheme Meeting in favour of the Scheme at the Scheme Meeting,unless:
 - (c) the Independent Expert opines that the Scheme is not in the best interest of Shareholders in The Trust Company; or
 - (d) in relation to matters occurring after the date of this agreement, The Trust Company Board considers, after obtaining written legal advice, that compliance or continued compliance with this clause would involve a breach of their fiduciary duties or would be unlawful on any other basis,and, if The Trust Company Board proposes to change its recommendation in accordance with paragraph (c) or (d) above:
 - (e) The Trust Company Board must notify Perpetual in writing immediately if it is proposing to announce a change, withdrawal or modification of recommendation that it intends to change, withdraw or modify its recommendation; and

- (f) the parties must consult in good faith for 2 Business Days after the date on which the notification in paragraph (e) is given to consider and determine whether the recommendation in place at that time can be maintained. For the avoidance of doubt, that recommendation cannot be changed, withdrawn or modified in accordance with paragraphs (c) or (d) until the end of that consultation period.

6 **(Directors' voting)** use its reasonable endeavours to procure that:

- (a) each member of The Trust Company Board votes any Shares in The Trust Company in which they have a Relevant Interest at the time of the Scheme Meeting in favour of the Scheme and any other resolution submitted to Shareholders in The Trust Company for their approval in connection with the Scheme; and
- (b) each member of The Trust Company Board does not change that voting intention,

unless a Superior Proposal arises or the Independent Expert opines that the Scheme is not in the best interests of Shareholders in The Trust Company.

7 **(Registry details)** subject to the terms of the Scheme:

- (a) provide all necessary information about the Scheme Participants to Perpetual which Perpetual requires in order to assist Perpetual to solicit votes at the Scheme Meeting; and
- (b) provide all necessary directions to the Registry to promptly provide any information that Perpetual reasonably requests in relation to the Register, including any sub-register, and, where requested by Perpetual The Trust Company must procure such information to be provided to Perpetual in such electronic form as is reasonably requested by Perpetual.

8 **(Section 411(17)(b) statement)** apply to ASIC for the production of a statement pursuant to section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme.

9 **(ASIC and ASX review)** keep Perpetual informed of any matters raised by ASIC or ASX in relation to the Scheme Booklet or the Transaction, and use reasonable endeavours to take into consideration in resolving such matters any issues raised by Perpetual.

10 **(Court application)** apply to the Court for an order under section 411(1) of the Corporations Act directing The Trust Company to convene the Scheme Meeting.

11 **(Registration of explanatory statement)** request ASIC to register the explanatory statement included in the Scheme Booklet in relation to the Scheme in accordance with section 412(6) of the Corporations Act.

12 **(Court documents)** consult with Perpetual in relation to the content of the documents required for the purpose of each of the Court hearings held for the purpose of sections 411(1) and 411(4)(b) of the Corporations Act in relation to the Scheme (including originating process, affidavits, submissions and draft minutes of Court orders) and consider in good faith, for the purpose of amending drafts of those documents, comments from Perpetual on those documents.

13 **(Send Scheme Booklet)** send the Scheme Booklet to Shareholders in The Trust Company as soon as practicable after the Court orders The Trust Company to convene the Scheme Meeting.

- 14 **(Scheme Meeting)** convene the Scheme Meeting in accordance with any such orders made by the Court and seek the approval of Shareholders in The Trust Company for the Scheme and, for this purpose, the directors of The Trust Company must participate in reasonable efforts to promote the merits of the Scheme, including meeting with key Scheme Participants at the reasonable request of Perpetual.
- 15 **(Certificate)** at the hearing on the Second Court Date provide to the Court a certificate confirming whether or not the Conditions Precedent (other than the Condition Precedent in paragraph 3 (Court approval) of Schedule 3) have been satisfied or waived in accordance with this agreement. A draft of such certificate shall be provided by The Trust Company to Perpetual by 4:00 pm on the Business Day prior to the Second Court Date.
- 16 **(Court order)** apply to the Court for an order approving the Scheme in accordance with sections 411(4)(b) and 411(6) of the Corporations Act.
- 17 **(Lodge)** lodge with ASIC an office copy of any such Court order approving the Scheme as approved by Shareholders in The Trust Company at the Scheme Meeting in accordance with section 411(10) of the Corporations Act.
- 18 **(Registration)** register all transfers of Shares in The Trust Company to Perpetual Sub on the Implementation Date.
- 19 **(Compliance with laws)** do everything reasonably within its power to ensure that the Transaction is effected in accordance with all applicable laws and regulations.
- 20 **(Listing)** take all reasonable steps to maintain The Trust Company's listing on ASX, notwithstanding any suspension of the quotation of Shares in The Trust Company, up to and including the Implementation Date, including making appropriate applications to ASX and ASIC.
- 21 **(Other steps)** do all other things necessary to give effect to the Scheme and the orders of the Court approving the Scheme.
- 22 **(Meetings with Shareholders in The Trust Company)** at the request of Perpetual, Representatives of The Trust Company will accompany Representatives of Perpetual at meetings with Shareholders in The Trust Company that have been approved in writing by The Trust Company to convey The Trust Company's recommendation of the Scheme and rationale for that recommendation.
- 23 **(Perpetual and The Trust Company - information)** prepare and promptly provide to Perpetual any information regarding The Trust Company Group that Perpetual reasonably requires in order to prepare the information regarding the Perpetual and The Trust Company group following implementation of the Scheme for inclusion in the Scheme Booklet.
- 24 **(Suspension of trading)** apply to ASX to suspend trading in The Trust Company Shares with effect from the close of trading on the Effective Date.
- 25 **(Issues of Shares)** The Trust Company must ensure:
- (a) that no The Trust Company Prescribed Event set out in paragraph 5 of Schedule 2 occurs between the date of this agreement and 8.00 am on the Second Court Date; and
 - (b) that, from 8.00am on the Second Court Date, no entitlement offer, rights issue or similar offer is announced or made by The Trust Company.

Scheme Implementation Agreement

Schedule 6 - Perpetual's Obligations (clause 6.2)

- 1 **(Perpetual Information)** provide to The Trust Company for inclusion in the Scheme Booklet such Perpetual Information as The Trust Company reasonably requires to prepare and issue the Scheme Booklet (including any information required under the Corporations Act, Corporations Regulations, or ASIC Regulatory Guide 60).
- 2 **(Further Perpetual Information)** provide to The Trust Company such further or new Perpetual Information as may arise after the Scheme Booklet has been sent until the date of the Scheme Meeting as may be necessary to ensure that the Perpetual Information contained in the Scheme Booklet is not, having regard to applicable disclosure requirements, false, misleading or deceptive in any material respect (including because of any material omission).
- 3 **(Independent Expert information)** provide any assistance or information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's report to be included in the Scheme Booklet.
- 4 **(Representation)** procure that it is represented by counsel at the court hearings convened for the purposes of section 411(4)(b) of the Corporations Act, at which, through its counsel Perpetual must undertake (if requested by the court) to do all such things and take all such steps within its power as may be necessary in order to ensure the fulfilment of its obligations under this agreement and the Scheme.
- 5 **(Deed Poll)** prior to the Scheme Booklet being sent, sign and deliver the Deed Poll.
- 6 **(Issues of Shares)** Perpetual must ensure:
 - (a) that no Perpetual Prescribed Event set out in paragraph 5 of Schedule 1 occurs between the date of this agreement and 8.00 am on the Second Court Date; and
 - (b) that, from 8.00am on the Second Court Date, no entitlement offer, rights issue or similar offer is announced or made by Perpetual in relation to which the holders of New Perpetual Shares (once issued in accordance with clause 4.2) will not be entitled to participate on equal terms with other shareholders of Perpetual.
- 7 **(Scheme Consideration)** if the Scheme becomes Effective, provide (or, in the case of the Cash Consideration, procure that Perpetual Sub provides) the Scheme Consideration in accordance with clause 4.2 and the Deed Poll on the Implementation Date.
- 8 **(Share Transfer)** if the Scheme becomes Effective, procure that Perpetual Sub executes the master transfer form and accepts a transfer of the Shares in The Trust Company as contemplated by clause 4.2.

Scheme Implementation Agreement

Schedule 7 - The Trust Company's representations and warranties (clause 12.1)

- 1 **(Incorporation)** it is a valid existing corporation registered under the laws of its place of incorporation.
- 2 **(Execution)** the execution and delivery of this agreement has been properly authorised by all necessary corporate action of The Trust Company.
- 3 **(Corporate power)** it has full corporate power and lawful authority to execute and deliver this agreement and to consummate and perform or cause to be performed its obligations under this agreement in accordance with its terms.
- 4 **(Binding obligations)** (subject to laws generally affecting creditors' rights and the principles of equity) this agreement constitutes legal, valid and binding obligations on it.
- 5 **(The Trust Company Information)** The Trust Company Information provided in accordance with this agreement and included in the Scheme Booklet, as at the date of the Scheme Booklet, will comply in all material respects with the requirements of the Corporations Act, the Listing Rules and all relevant regulatory guides, practice notes and other guidelines and requirements of ASIC.
- 6 **(Reliance)** The Trust Company Information contained in the Scheme Booklet will be included in good faith and on the understanding that Perpetual and its directors will rely on that information for the purposes of considering and approving the Perpetual Information in the Scheme Booklet before it is despatched, approving the entry into the Deed Poll and implementing the Scheme.
- 7 **(Further information)** The Trust Company will, as a continuing obligation, provide to Perpetual all such further or new information which may arise after the date of the Scheme Booklet until the date of the Scheme Meeting which may be necessary to ensure that there would be no breach of clause 7.1(b) if it applied as at the date upon which that information arose.
- 8 **(Continuous disclosure)** The Trust Company is not in breach of its continuous disclosure obligations under the Listing Rules and is not relying on the carve-out in Listing Rule 3.1A to withhold any information from disclosure.
- 9 **(Opinions)** any statement of opinion or belief contained in The Trust Company Information is honestly held and there are reasonable grounds for holding the opinion or belief.
- 10 **(Provision of information to Independent Expert)** all information provided by or on behalf of The Trust Company to the Independent Expert to enable the Independent Expert's report to be included in the Scheme Booklet to be prepared and completed will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purpose of preparing the Independent Expert's report.
- 11 **(No default)** neither it nor any of its Subsidiaries is in default under any document, agreement or instrument binding on it or its assets nor has anything occurred which is or would with the giving of notice or lapse of time constitute an event of default, prepayment event or similar event, or give another party thereto

a termination right or right to accelerate any right or obligation, under any such document or agreement with such an effect.

- 12 **(Securities)** The Trust Company's issued securities as at the date of this agreement are 33,555,862 Shares in The Trust Company and 811,309 Performance Rights and it has not issued or agreed to issue any other securities or instruments which are still outstanding and which may convert into Shares in The Trust Company, other than rights arising under the Performance Rights.
- 13 **(No Encumbrances)** there is no material Encumbrance over all or any of the assets or revenues of any The Trust Company Group member other than assets which are held in a fiduciary capacity as trustee, responsible entity or manager of a third party trust or fund.
- 14 **(Information provided to Third Parties)** The Trust Company has provided Perpetual with copies or written statements of any material non-public information about the business or affairs of The Trust Company or The Trust Company Group disclosed or otherwise provided to any Third Party in connection with an actual, proposed or potential Competing Transaction.
- 15 **(Interest)** any company, partnership, trust, joint venture or other enterprise in which The Trust Company or another member of The Trust Company Group owns or has a material interest in is as notified in writing by The Trust Company to Perpetual prior to entry into this agreement.
- 16 **(Insolvency event or regulatory action)** no member of The Trust Company Group is Insolvent, nor has any regulatory action of any nature been taken that would prevent or restrict the ability of a member of The Trust Company Group to fulfil its obligations under this agreement.
- 17 **(Compliance):**
- (a) Each member of The Trust Company Group has complied in all material respects with all Australian and foreign laws and regulations applicable to them and orders of Australian and foreign Regulatory Agencies having jurisdiction over them.
 - (b) The Trust Company Group members have all material licenses and permits to conduct the business of The Trust Company Group as it is presently conducted (where a **material license or permit** for the purposes of this paragraph means a license or permit absent which, if The Trust Company Group was conducting its business as it is presently conducted, it would be reasonably likely to result in a The Trust Company Material Adverse Change).
- 18 **(Disclosure Materials)** it has collated and prepared all of the Disclosure Materials in good faith.
- 19 **(Debenture Book)** the information in the Disclosure Materials relating to the Debenture Book when considered as a whole is true, accurate and not misleading in any material respect, and no member of The Trust Company Group has knowingly withheld any information from inclusion in the Disclosure Materials which would render the information in the Disclosure Materials relating to the Debenture Book misleading. For the purpose of this paragraph **Debenture Book** means the debenture book held by The Trust Company Group's debt capital markets business (being a business line within its Australian Corporate Client Services division).

Scheme Implementation Agreement

Schedule 8 - Perpetual's representations and warranties (clause 12.4)

- 1 **(Incorporation)** it is a valid existing corporation registered under the laws of its place of incorporation.
- 2 **(Execution)** the execution and delivery of this agreement has been properly authorised by all necessary corporate action of Perpetual.
- 3 **(Corporate power)** it has full corporate power and lawful authority to execute and deliver this agreement and to consummate and perform or cause to be performed its obligations under this agreement in accordance with its terms.
- 4 **(Binding obligations)** (subject to laws generally affecting creditors' rights and the principles of equity) this agreement constitutes legal, valid and binding obligations on it.
- 5 **(Reliance)** the Perpetual Information provided to The Trust Company for inclusion in the Scheme Booklet will be provided in good faith and on the understanding that The Trust Company and its directors will rely on that information for the purposes of preparing the Scheme Booklet and proposing and implementing the Scheme in accordance with the Corporations Act.
- 6 **(Perpetual Information)** the Perpetual Information provided in accordance with this agreement and included in the Scheme Booklet, as at the date of the Scheme Booklet, will comply in all material respects with the requirements of the Corporations Act, the Listing Rules and all relevant regulatory guides, practice notes and other guidelines and requirements of ASIC.
- 7 **(Further information)** Perpetual will, as a continuing obligation, provide to The Trust Company all such further or new information which may arise after the date of the Scheme Booklet until the date of the Scheme Meeting which may be necessary to ensure that there would be no breach of clause 7.1(b) if it applied as at the date on which that information arose.
- 8 **(Opinions)** any statement of opinion or belief contained in the Perpetual Information is honestly held and there are reasonable grounds for holding the opinion or belief.
- 9 **(Provision of information to Independent Expert)** all information provided by or on behalf of Perpetual to the Independent Expert to enable the Independent Expert's report to be included in the Scheme Booklet to be prepared and completed will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purpose of preparing the Independent Expert's report.
- 10 **(Perpetual shares)** the New Perpetual Shares will be duly authorised and validly issued, fully paid and non-assessable, free of all security interests and Third Party rights and will rank equally with all other the Perpetual Shares then on issue.
- 11 **(Insolvency event or regulatory action)** no member of The Perpetual Group is Insolvent, nor has any regulatory action of any nature been taken that would prevent or restrict the ability of member of the Perpetual Group to fulfil its obligations under this agreement.

12 **(Compliance):**

- (a) Each member of Perpetual Group has complied in all material respects with all Australian and foreign laws and regulations applicable to them and orders of Australian and foreign Regulatory Agencies having jurisdiction over them.

- (b) The Perpetual Group members have all material licenses and permits to conduct the business of Perpetual Group as it is presently conducted (where a **material license or permit** for the purposes of this paragraph means a license or permit absent which, if Perpetual Group was conducting its business as it is presently conducted, it would be reasonably likely to result in a Perpetual Material Adverse Change).

Scheme Implementation Agreement

Annexure A - Scheme

Scheme of Arrangement

Dated

The Trust Company Limited ABN 59 004 027 749 (“**The Trust Company**”)

Scheme Participants

King & Wood Mallesons

Level 50
Bourke Place
600 Bourke Street
Melbourne VIC 3000
Australia
T +61 3 9643 4000
F +61 3 9643 5999
DX 101 Melbourne
www.kwm.com

Scheme of Arrangement

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Scheme of Arrangement

Details

Parties	The Trust Company and Scheme Participants	
The Trust Company	Name	The Trust Company Limited
	ABN	59 004 027 749
	Address	Level 15 20 Bond Street Sydney NSW 2000
	Fax	(02) 8295 8692
	Attention	Peter Bryant
Scheme Participants	Name	Each person registered as a holder of fully paid ordinary shares in The Trust Company as at the Record Date
	Governing law	New South Wales

General terms

1 Definitions and interpretation

1.1 Definitions

In this Scheme:

ACCC means the Australian Competition and Consumer Commission.

Adjusted Number means the number determined in accordance with the following formula:

$$\text{Adjusted Number} = 0.1495 \times \left(1 + \frac{D}{(\text{Perpetual VWAP})}\right)$$

$$\text{Adjusted Number} = 0.182 \times \left(1 + \frac{D}{(\text{Perpetual VWAP})}\right)$$

Where:

D is the cash amount per Perpetual Share (expressed in dollars and excluding, for the avoidance of doubt, any franking credit) of any dividend (other than the Excluded Dividend) declared or paid by Perpetual the record date for which occurs after the date of this agreement and before the Implementation Date.

ASIC means the Australian Securities and Investments Commission.

ASX means ASX Limited (ABN 98 008 624 691), Australian Securities Exchange or the Australian Stock Exchange, as appropriate.

ASX Operating Rules means the market operating rules of ASX as amended, varied or waived from time to time.

Business Day means a business day as defined in the Listing Rules.

Cash Consideration means:

(a) if after the date of the Scheme Implementation Agreement but before the Implementation Date no dividend (other than the Excluded Dividend) is paid on Perpetual Shares and no record date for any Perpetual dividend (other than the Excluded Dividend) occurs, the amount calculated as the Perpetual VWAP multiplied by 0.1495/0.182 for each Share in The Trust Company held by a Scheme Participant electing to receive Cash Consideration in accordance with the terms of the Scheme; or

(b) if after the date of the Scheme Implementation Agreement but before the Implementation Date a dividend (other than the Excluded Dividend) is paid on Perpetual Shares or the record date for any Perpetual dividend (other than the Excluded Dividend) occurs, the amount calculated as the Perpetual VWAP multiplied by the Adjusted Number for each Share in The Trust Company held by a Scheme Participant electing to receive Cash Consideration in accordance with the terms of the Scheme,

subject in any event to the Cash Consideration for each Share in The Trust Company being not less than \$6.29.

Corporations Act means the Corporations Act 2001 (Cwlth).

Court means a court of competent jurisdiction under the Corporations Act agreed in writing by Perpetual and The Trust Company.

Deed Poll means the deed poll dated [insert] executed by Perpetual and Perpetual Sub substantially in the form of Annexure B of the Scheme Implementation Agreement or as otherwise agreed by Perpetual and The Trust Company under which Perpetual covenants in favour of each Scheme Participant to perform its obligations under this Scheme.

Details means the section of this agreement headed "Details".

Effective means the coming into effect, pursuant to section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) of the Corporations Act in relation to this Scheme, but in any event at no time before an office copy of the order of the Court is lodged with ASIC.

Effective Date means the date on which the Scheme becomes Effective.

Election means the election or deemed election by a Scheme Participant to receive 0%, 20%, 40%, 60%, 80% or 100% of the Scheme Consideration in the form of either Cash Consideration (the remainder being received in the form of or Share Consideration) in accordance with clause 6.1.

Election Date means 7.00pm on the date that is 3 Business Days after the Scheme Meeting in respect of the Scheme or such other date as the parties agree in writing.

Encumbrance means any mortgage, lien, charge, pledge, assignment by way of security, security interest (including any 'security interests' within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)), title retention, preferential right or trust arrangement, claim, covenant, profit à prendre, easement, interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind or any other security arrangement having the same effect.

End Date means 31 December 2013 or such other date as is agreed by Perpetual and The Trust Company.

Excluded Dividend means the 80 cents per Perpetual Share dividend determined by Perpetual and scheduled for payment on or about 4 October 2013.

Foreign Sale Agent means a person appointed by Perpetual after consultation with The Trust Company to sell the New Perpetual Shares that are attributable to Foreign Shareholders under the terms of this Scheme.

Foreign Shareholder means a Shareholder in The Trust Company:

- (a) who is (or is acting on behalf of) a citizen or resident of a jurisdiction other than residents of Australia and its external territories or New Zealand; or
- (b) whose address shown in the Register is a place outside Australia and its external territories or New Zealand or who is acting on behalf of such a person,

unless Perpetual determines that:

- (c) it is lawful and not unduly onerous or unduly impracticable to issue that Shareholder in The Trust Company with New Perpetual Shares on implementation of the Scheme; and
- (d) it is lawful for that Shareholder in The Trust Company to participate in the Scheme by the law of the relevant place outside Australia and its external territories or New Zealand.

Immediately Available Funds means a bank cheque, electronic funds transfer for same day value or other form of cleared funds acceptable to The Trust Company.

Implementation Date means the third Business Day following the Record Date or such other date as is agreed by Perpetual and The Trust Company.

Listing Rules means the Listing Rules of the ASX.

New Perpetual Shares means Perpetual Shares to be issued under the Scheme.

Perpetual means Perpetual Limited (ABN 86 000 431 827).

Perpetual Constitution means the Perpetual Constitution approved at Perpetual's annual general meeting on 1 November 2012 as amended from time to time.

Perpetual Shares means fully paid ordinary shares in the capital of Perpetual.

Perpetual Sub means Perpetual Acquisition Company Limited (ACN 163 620 362), a wholly owned direct Subsidiary of Perpetual.

Perpetual VWAP means the average of the daily volume weighted average price per Perpetual Share traded on the ASX during the Perpetual VWAP Period but does not include any "Crossing" transacted outside the "Open Session State", or any "Special Crossing" transacted at any time, each as defined in the ASX Operating Rules.

Perpetual VWAP Period means the ten ASX trading days immediately preceding the date of the Scheme Meeting (but not including that date).

Record Date means 7.00pm on the seventh Business Day following the Effective Date or such other date as The Trust Company and Perpetual agree.

Register means the register of members of The Trust Company maintained by or on behalf of The Trust Company in accordance with section 168(1) of the Corporations Act.

Registered Address means, in relation to a Shareholder in The Trust Company, the address shown in the Register.

Regulatory Authority includes:

- (a) ASX, ACCC, ASIC;
- (b) a government or governmental, semi-governmental or judicial entity or authority;
- (c) a minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government; and
- (d) any regulatory organisation established under statute.

Scheme means this scheme of arrangement between The Trust Company and Scheme Participants under which all of the Scheme Shares will be transferred to Perpetual under Part 5.1 of the Corporations Act as described in clause 6, in consideration for the Scheme Consideration, subject to any amendments or conditions made or required by the Court pursuant to section 411(6) of the Corporations Act to the extent they are approved in writing by The Trust Company and Perpetual in accordance with clause 8.2.

Scheme Booklet means, in respect of the Scheme, the information booklet to be approved by the Court and despatched to Shareholders in The Trust Company.

Scheme Consideration means the Cash Consideration and the Share Consideration to be provided to Scheme Participants under the terms of this Scheme for the transfer to Perpetual Sub of their Scheme Shares.

Scheme Implementation Agreement means the scheme implementation agreement dated on or about 7 May 2013 between The Trust Company and Perpetual (as amended) under which, amongst other things, The Trust Company has agreed to propose this Scheme to Shareholders in The Trust Company, and each of Perpetual and The Trust Company has agreed to take certain steps to give effect to this Scheme.

Scheme Meeting means the meeting of Shareholders in The Trust Company, ordered by the Court to be convened pursuant to section 411(1) of the Corporations Act at which Shareholders in The Trust Company will vote on this Scheme.

Scheme Participant means each person who is a Shareholder in The Trust Company as at the Record Date.

Scheme Share means a Share in The Trust Company held by a Scheme Participant as at the Record Date and, for the avoidance of doubt, includes any Shares in The Trust Company issued on or before the Record Date.

Second Court Date means the day on which the Court makes an order pursuant to section 411(4)(b) of the Corporations Act approving the Scheme.

Share Consideration means:

- (a) if after the date of the Scheme Implementation Agreement but before the Implementation Date no dividend (other than the Excluded Dividend) is paid on Perpetual Shares and no record date for any Perpetual dividend (other than the Excluded Dividend) occurs, 0.182 New Perpetual Shares for each Share in The Trust Company held by a Scheme Participant receiving Share Consideration in accordance with the terms of the Scheme; or
- (b) if after the date of the Scheme Implementation Agreement but before the Implementation Date, a dividend (other than the Excluded Dividend) is paid on Perpetual Shares or the record date for any Perpetual dividend (other than the Excluded Dividend) occurs, the Adjusted Number of New Perpetual Shares for each Share in The Trust Company held by a Scheme Participant receiving Share Consideration in accordance with the terms of the Scheme.

Share in The Trust Company means a fully paid ordinary share in the capital of The Trust Company.

Shareholder in The Trust Company means each person registered in the Register as a holder of Shares in The Trust Company.

Share Scheme Transfer means, for each Scheme Participant, a duly completed and executed proper instrument of transfer of the Scheme Shares held by that Scheme Participant for the purposes of section 1071B of the Corporations Act, which may be a master transfer of all Scheme Shares.

Subsidiary has the meaning given to it in the Corporations Act.

The Trust Company means The Trust Company Limited (ABN 59 004 027 749).

Trust Account means the trust account operated by or on behalf of The Trust Company to hold the cash component of the Scheme Consideration on trust for the purpose of paying the cash component of the Scheme Consideration to the Scheme Participants in accordance with clause 6.4.

1.2 Reference to certain general terms

Unless the contrary intention appears, a reference in this Scheme to:

- (a) **(variations or replacement)** a document, agreement (including this agreement) or instrument is a reference to that document, agreement or instrument as amended, consolidated, supplemented, novated or replaced;
- (b) **(clauses, annexures and schedules)** a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this agreement;
- (c) **(reference to statutes)** a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) **(law)** law means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);
- (e) **(singular includes plural)** the singular includes the plural and vice versa;
- (f) **(party)** a party means a party to this Scheme;
- (g) **(person)** the word "person" includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association, or any Regulatory Authority;
- (h) **(executors, administrators, successors)** a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (i) **(dollars)** Australian dollars, dollars, A\$ or \$ is a reference to the lawful currency of Australia;
- (j) **(calculation of time)** a period of time dating from a given day or the day of an act or event, is to be calculated exclusive of that day;
- (k) **(reference to a day)** a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;

(l) **(meaning not limited)** the words “include”, “including”, “for example” or “such as” when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind; and

(m) **(time of day)** time is a reference to Sydney time.

1.3 Headings

Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this Scheme.

2 Preliminary

2.1 The Trust Company

The Trust Company is:

- (a) a public company limited by shares;
- (b) incorporated in Australia and registered in Victoria; and
- (c) admitted to the official list of the ASX and Shares in The Trust Company are officially quoted on the stock market conducted by ASX.

As at **[insert date]**, The Trust Company's issued securities are:

- (a) Shares in The Trust Company: [33,555,862]; and
- (b) performance rights: [811,309].

Perpetual is:

- (d) a public company limited by shares;
- (e) incorporated in Australia and registered in New South Wales; and
- (f) admitted to the official list of the ASX and Perpetual Shares are officially quoted on the stock market conducted by ASX.

Perpetual Sub is:

- (g) a public company limited by shares;
- (h) incorporated in Australia and registered in Victoria; and
- (i) a wholly-owned subsidiary of Perpetual.

2.2 If Scheme becomes Effective

If this Scheme becomes Effective:

- (a) in consideration of the transfer of each Scheme Share to Perpetual Sub, The Trust Company will procure Perpetual to provide (or, in the case of the Cash Consideration, procure that Perpetual Sub provides) the Scheme Consideration to each Scheme Participant in accordance with the terms of this Scheme;
- (b) all Scheme Shares will be transferred to Perpetual Sub on the Implementation Date; and

- (c) The Trust Company will enter the name of Perpetual Sub in the Register in respect of all Scheme Shares transferred to Perpetual Sub in accordance with the terms of this Scheme.

2.3 Scheme Implementation Agreement

The Trust Company and Perpetual have agreed by executing the Scheme Implementation Agreement to implement the terms of this Scheme.

2.4 Deed Poll

Perpetual and Perpetual Sub have executed the Deed Poll for the purpose of covenanting in favour of the Scheme Participants to perform (or procure the performance of) its obligations as contemplated by this Scheme, including to provide the Scheme Consideration.

3 Conditions precedent

3.1 Conditions precedent to Scheme

This Scheme is conditional on, and will have no force or effect until, the satisfaction of each of the following conditions precedent:

- (a) as at 8.00am on the Second Court Date, neither the Scheme Implementation Agreement nor the Deed Poll having been terminated;
- (b) all of the conditions precedent in schedule 3 of the Scheme Implementation Agreement having been satisfied or waived (other than the condition precedent in item 3 of that schedule);
- (c) the Court having approved this Scheme, with or without any modification or condition, pursuant to section 411(4)(b) of the Corporations Act, and if applicable, The Trust Company and Perpetual having accepted in writing any modification or condition made or required by the Court under section 411(6) of the Corporations Act; and
- (d) the coming into effect, pursuant to section 411(10) of the Corporations Act, of the orders of the Court made under section 411(4)(b) of the Corporations Act (and, if applicable, section 411(6) of the Corporations Act) in relation to this Scheme.

3.2 Conditions precedent and operation of clause 5

The satisfaction of each condition of clause 3.1 is a condition precedent to the operation of clause 5.

3.3 Certificate in relation to conditions precedent

The Trust Company and Perpetual must provide to the Court on the Second Court Date a certificate confirming (in respect of matters within their knowledge) whether or not all of the conditions precedent set out in clause 3.1 (other than the conditions precedent in clause 3.1(c) and clause 3.1(d)) have been satisfied or waived as at 8.00am on the Second Court Date.

The certificates referred to in this clause 3.3 will constitute conclusive evidence of whether the conditions precedent referred to in clause 3.1 (other than the conditions precedent in clause 3.1(c) and 3.1(d)) have been satisfied or waived as at 8.00am on the Second Court Date.

4 Scheme

4.1 Effective Date

Subject to clause 4.2, this Scheme will come into effect pursuant to section 411(10) of the Corporations Act on and from the Effective Date.

4.2 End Date

This Scheme will lapse and be of no further force or effect if the Effective Date does not occur on or before the End Date.

5 Implementation of Scheme

5.1 Lodgement of Court orders with ASIC

If the conditions precedent set out in clause 3.1 (other than the condition precedent in clause 3.1(d)) are satisfied, The Trust Company must lodge with ASIC in accordance with section 411(10) of the Corporations Act an office copy of the Court order approving this Scheme as soon as possible, and in any event by no later than 5.00pm on the first Business Day after the day on which the Court approves this Scheme or such later time as Perpetual and The Trust Company agree in writing.

5.2 Transfer and registration of Shares in The Trust Company

On the Implementation Date, but subject to the provision of the Scheme Consideration for the Scheme Shares in accordance with clause 6 and Perpetual having provided The Trust Company with written confirmation thereof:

- (a) the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date, will be transferred to Perpetual Sub without the need for any further act by any Scheme Participant (other than acts performed by The Trust Company as attorney and agent for Scheme Participants under clause 8.1) by:
 - (i) The Trust Company delivering to Perpetual Sub a duly completed and executed Share Scheme Transfer executed on behalf of the Scheme Participants; and
 - (ii) Perpetual Sub duly executing the Share Scheme Transfer and delivering it to The Trust Company for registration; and
- (b) as soon as practicable after receipt of the duly executed Share Scheme Transfer, The Trust Company must enter the name of Perpetual Sub in the Register in respect of all Scheme Shares transferred to Perpetual Sub in accordance with the terms of this Scheme.

5.3 Entitlement to Scheme Consideration

On the Implementation Date, in consideration for the transfer to Perpetual Sub of the Scheme Shares, each Scheme Participant will be entitled to receive the Scheme Consideration in respect of each of their Scheme Shares in accordance with clause 6.

5.4 Title and rights in Shares in The Trust Company

Subject to the provision of the Scheme Consideration for the Scheme Shares as contemplated by clause 6, on and from the Implementation Date, Perpetual Sub will be beneficially entitled to the Scheme Shares transferred to it under the Scheme, pending registration by The Trust Company of Perpetual Sub in the Register as the holder of the Scheme Shares.

5.5 Scheme Participants' agreements

Under this Scheme, each Scheme Participant agrees to the transfer of their Scheme Shares, together with all rights and entitlements attaching to those Scheme Shares, in accordance with the terms of this Scheme.

To the extent that a Scheme Participant receives New Perpetual Shares as part of any Scheme Consideration, that Scheme Participant accepts the New Perpetual Shares issued by way of Scheme Consideration subject to the Perpetual Constitution and agrees to be bound by the Perpetual Constitution.

5.6 Warranty by Scheme Participants

Each Scheme Participant warrants to Perpetual and Perpetual Sub and is deemed to have authorised The Trust Company to warrant to Perpetual and Perpetual Sub as agent and attorney for the Scheme Participant by virtue of this clause 5.6, that:

- (a) all their Scheme Shares (including any rights and entitlements attaching to those shares) transferred to Perpetual Sub under the Scheme will, as at the date of the transfer, be fully paid and free from all Encumbrances; and
- (b) they have full power and capacity to sell and to transfer their Scheme Shares (including any rights and entitlements attaching to those shares) to Perpetual Sub under the Scheme.

5.7 Transfer free of encumbrances

To the extent permitted by law, all Shares in The Trust Company (including any rights and entitlements attaching to those shares) which are transferred to Perpetual Sub under this Scheme will, at the date of the transfer of them to Perpetual Sub, vest in Perpetual Sub free from all Encumbrances not referred to in this Scheme.

5.8 Appointment of Perpetual Sub as sole proxy

Subject to the provision of the Scheme Consideration for the Scheme Shares as contemplated by clauses 5.2, 6.3 and 6.5, on and from the Implementation Date until The Trust Company registers Perpetual Sub as the holder of all of Shares in The Trust Company in the Register, each Scheme Participant:

- (a) irrevocably appoints The Trust Company as attorney and agent (and directs The Trust Company in such capacity) to appoint Perpetual Sub and each of its directors from time to time (jointly and each of them individually) as its sole proxy and where applicable, corporate representative, to attend shareholders' meetings, exercise the votes attaching to Shares in The Trust Company registered in its name and sign any shareholders resolution, and no Scheme Participant may itself attend or vote at any of those meetings or sign any resolutions, whether in person, by proxy or by corporate representative (other than pursuant to this clause 5.8(a));
- (b) must take all other actions in the capacity of the registered holder of Shares in The Trust Company as Perpetual Sub directs; and
- (c) acknowledges and agrees that in exercising the powers referred to in clause 5.8(a), Perpetual Sub and any director, officer, secretary or agent nominated by Perpetual Sub under clause 5.8(a) may act in the best interests of Perpetual Sub as the intended registered holder of the Scheme Shares.

The Trust Company undertakes in favour of each Scheme Participant that it will appoint Perpetual Sub and each of its directors from time to time (jointly and each of them individually) as that Scheme Participant's proxy or, where applicable, corporate representative in accordance with clause 5.8(a).

5.9 Instructions and elections

If not prohibited by law (and including where permitted or facilitated by relief granted by a Regulatory Authority), all instructions, notifications or elections by a Scheme Participant to The Trust Company are binding or deemed binding between the Scheme Participant and The Trust Company relating to The Trust Company or its shares (including any email addresses, instructions relating to communications from The Trust Company, whether dividends are to be paid by cheque or into a specific bank account, notices of meetings or other communications from The Trust Company) will be deemed from the Implementation Date (except to the extent determined otherwise by Perpetual in its sole discretion), by reason of this Scheme, to be made by the Scheme Participant to Perpetual and to be a binding instruction, notification or election to, and accepted by, Perpetual in respect of the New Perpetual Shares issued to that Scheme Participant until that instruction, notification or election is revoked or amended in writing addressed to Perpetual at its registry.

6 Scheme Consideration

6.1 Election

- (a) A Scheme Participant may make an Election to receive 0%, 20%, 40%, 60%, 80% or 100% of the Scheme Consideration in the form of either Cash Consideration (the remainder of their Scheme Consideration being received in the form of or Share Consideration) by completing the election form which accompanies the Scheme Booklet and returning it to the address specified in the election form so that it is received by no later than 7.00 pm on the Election Date.
- (b) Any Scheme Participant who has not made a valid Election in respect of all of the Shares in The Trust Company held by that Shareholder to receive either Cash Consideration or Share Consideration in accordance with clause 6.1(a) is, for the purpose of this Scheme, taken to have validly elected to receive 0% Cash Share Consideration.
- (c) Any Scheme Participant that holds one or more parcels of Scheme Shares as trustee or nominee for, or otherwise on account of, another person, may make separate Elections in relation to each of those parcels of Scheme Shares (and, for the purpose of calculating the Share Scheme Consideration to which the Scheme Participant is entitled, including the application of clause 6.6, each such parcel of Scheme Shares (to the extent that they are Scheme Shares) will be treated as though it were held by a separate Scheme Participant).
- (d) If a Scheme Participant makes or is deemed to have made a valid Election, then, subject to clauses 6.7 and 6.8, the Scheme Participant will be entitled to receive, for all of the Shares in The Trust Company held by that Scheme Participant as at the Record Date:
- (ii) the aggregate amount of Cash Consideration calculated in accordance with the following formula, unless clause 6.6 applies in which case the amount of Cash Consideration paid to the relevant Scheme Participant will be determined in accordance with that clause:

$$pCC = EP \times NS \times CCshare$$

Where:

pCC is the aggregate amount of Cash Consideration the relevant Scheme Participant will receive as part of the Scheme Consideration;

EP is the percentage Cash Consideration, being one of 0%, 20%, 40%, 60%, 80% or 100% (expressed as a decimal number), which the relevant Scheme Participant elected to receive, or is deemed to have elected to receive, in their Election;

NS is the number of Shares in The Trust Company held by that Scheme Participant at the Record Date;

CCshare is the Cash Consideration payable per Share in The Trust Company.

- (iii) the aggregate amount of Share Consideration (being the aggregate number of New Perpetual Shares) calculated in accordance with the following formula, unless clause 6.6 applies in which case the amount of Share Consideration provided to the relevant Scheme Participant will be determined in accordance with that clause:

$$pSC = (1 - EP) \times NS \times SCshare$$

Where:

pSC is the aggregate amount of Share Consideration the relevant Scheme Participant will receive as part of the Scheme Consideration ;

EP is the percentage Cash Consideration, being one of 0%, 20%, 40%, 60%, 80% or 100% (expressed as a decimal number), which the relevant Scheme Participant elected to receive, or is deemed to have elected to receive, in their Election;

NS is the number of Shares in The Trust Company held by that Scheme Participant at the Record Date;

SCshare is the Share Consideration to be provided per Share in The Trust Company.

- (d) ~~If a Scheme Participant makes an Election, or is deemed to have made an Election, to receive Cash Consideration, then subject to clause 6.6 and 6.7, the Scheme Participant will be entitled to receive, for each Scheme Share held by that Scheme Participant on the Record Date, the Cash Consideration.~~
- (d) ~~If a Scheme Participant makes a valid Election other than an Election to receive Cash Consideration, then subject to clause 6.7, the Scheme Participant will be entitled to receive for each Scheme Share held by that Scheme Participant on the Record Date, the Share Consideration.~~

6.2 Consideration under the Scheme

On the Implementation Date, The Trust Company must procure that Perpetual will:

- (a) subject to clause 6.6, procure that Perpetual Sub will pay to each Scheme Participant ~~who elected to receive Cash Consideration~~, the aggregate amount of Cash Consideration (if any) to which they are

entitled in accordance with clause 6.1 in respect of ~~all of the each~~ Scheme Shares held by that Scheme Participant on the Record Date; and

- (b) subject to clauses 6.6, 6.7, 6.8 and 6.9, issue to each Scheme Participant ~~who elected (or was deemed to have elected) to receive the Share Consideration,~~ the aggregate number of New Perpetual Shares (if any) to which they are entitled in accordance with clause 6.1 in respect of ~~each all of the~~ Scheme Shares held by that Scheme Shareholder on the Record Date,

in accordance with clause 6.3, 6.4 and 6.5 (as applicable).

6.3 Satisfaction of obligations – Cash Consideration

The obligation of The Trust Company to procure payment of the Cash Consideration pursuant to clause 6.2 will be satisfied by the Trust Company procuring that Perpetual will by no later than two Business Days before the Implementation Date procure that Perpetual Sub will, subject to the scale back provisions in clause 6.6, deposit in Immediately Available Funds the aggregate amount of the Cash Consideration payable to all Scheme Participants into the Trust Account (except that the amount of any interest on the amount deposited will be to Perpetual's account).

6.4 Payment of Cash Consideration

- (a) Subject to clause 6.6, on the Implementation Date, subject to receipt of the Cash Consideration from Perpetual Sub in accordance with clause 6.3, The Trust Company must pay to each Scheme Participant ~~who has made an Election to receive Cash Consideration,~~ the aggregate amount of Cash Consideration (if any) to which that Scheme Participant is entitled for all of the each Scheme Shares transferred to Perpetual on the Implementation Date by that Scheme Participant.
- (b) Unless otherwise directed by the Scheme Participants before the Record Date, the amounts referred to in this clause 6.4 must be paid by direct credit or sending a cheque drawn on an Australian bank in Australian currency on, or within two Business Days, of the Implementation Date to each Scheme Participant by pre-paid ordinary post (or, if the address of the Scheme Participant in the Register is outside Australia, by pre-paid airmail post) to their address recorded in the Register on the Record Date.

6.5 Provision of New Perpetual Shares as Scheme Consideration

Subject to clauses 6.7, 6.8 and 6.9, the obligation of Perpetual to issue the New Perpetual Shares pursuant to clauses 6.2 and 6.6 will be satisfied by Perpetual:

- (a) on the Implementation Date, entering the name of each Scheme Participant in the Perpetual share register in respect of the New Perpetual Shares (if any) which that Scheme Participant is entitled to receive under this Scheme; and
- (b) within 2 Business Days after the Implementation Date, sending or procuring the dispatch by pre-paid ordinary post (or, if the address of the Scheme Participant in the Register is outside Australia, by pre-paid airmail post) to each Scheme Participant to their address recorded in the Register on the Record Date, a holding statement for the New Perpetual Shares (if any) issued to that Scheme Participant.

6.6 Scale Back

(a) This clause 6.6 applies if the Elections made by Scheme Participants are such that the aggregate amount of Cash Consideration that would be required to be paid by Perpetual Sub in payment of the Cash Consideration exceeds ~~\$60,000,000~~ 110,000,000.

(b) Where this clause applies, the aggregate Cash Consideration to which each Scheme Participant is entitled will be scaled back in accordance with the following formula:

$$tCC = \frac{CCcap}{CCtotal} \times pCC$$

Where:

tCC is the aggregate amount of Cash Consideration the relevant Scheme Participant is entitled to receive as part of the Cash Scheme Consideration for all Shares in The Trust Company held by that Scheme Participant as at the Record Date;

pCC is the aggregate amount of Cash Consideration the relevant Scheme Participant would have received as part of the Scheme Consideration for all Shares in The Trust Company held by that Scheme Participant as at the Record Date determined under clause 6.1 (but for this clause 6.6);

CCcap is \$110,000,000~~60,000,000~~.

CC total is the aggregate amount of Cash Consideration that would be required to be paid by Perpetual in payment of the Cash Consideration to satisfy the entitlements determined under clause 6.1 for all Scheme Participants (but for this clause 6.6).

(c) To the extent that the application of clause 6.6(b) results in an aggregate entitlement of a Scheme Participant to Cash Consideration that is less than would have applied but for this clause 6.6, the Scheme Participant will be entitled to Share Consideration in the alternative in accordance with the following formula:

$$tSC = \frac{pCC - tCC}{VWAP}$$

$$tSC = pSC + \frac{pCC - tCC}{VWAP}$$

Where:

tSC is the aggregate number of New Perpetual Shares the relevant Scheme Participant is entitled to receive as part of the Scheme Share Consideration for all Shares in The Trust Company held by that Scheme Participant as at the Record Date;

pSC is the aggregate amount of Share Consideration (being the aggregate number of New Perpetual Shares) the relevant Scheme Participant would have received as part of the Scheme Consideration for all Shares in The Trust Company held by that Scheme Participant as at the Record Date determined under clause 6.1 (but for this clause 6.6);

pCC has the meaning given to that term in clause 6.6(b);

tCC is the aggregate amount of Cash Consideration the relevant Scheme Participant is entitled to receive as part of the Cash Consideration for all Shares in The Trust Company held by that Scheme Participant as at the Record Date as determined in accordance with clause 6.6 (b);

VWAP is the Perpetual VWAP.

6.7 Fractional entitlements

(a) If the number of Shares in The Trust Company held by a Scheme Participant at the Record Date (or, if applicable, the result of the application of clause 6.1 or 6.6) is such that the aggregate entitlement of the Scheme Participant to Scheme Consideration:

(i) comprising New Perpetual Shares includes a fractional entitlement to a New Perpetual Share; or

(ii) comprising cash includes a fractional entitlement to a cent,

then the fractional entitlement will be rounded:

(iii) in the case of New Perpetual Shares:

(A) if the fractional entitlement is less than 0.5, down to zero New Perpetual Shares; and

(B) otherwise, up to one New Perpetual Share; and

(iv) in the case of cash, up or down to the nearest cent (with any such fractional entitlement of less than 0.5 being rounded down to the nearest whole cent, and any such fractional entitlement of 0.5 or more being rounded up to the nearest whole cent).

(b) If Perpetual and The Trust Company are of the opinion (acting reasonably) that two or more Scheme Participants (each of whom holds a number of Shares in The Trust Company which results in rounding in accordance with clause 4.6(a)) have, before the Record Date for the Scheme, been party to shareholding splitting or division in an attempt to obtain unfair advantage by reference to such rounding, The Trust Company may give notice to those Scheme Participants:

(i) setting out their names and registered addresses as shown in The Trust Company Share Register;

(ii) stating that opinion;

(iii) attributing to one of them specifically identified in the notice the Shares in The Trust Company held by all of them; and

(iv) attributing to one of them specifically identified in the notice which Election made by or on behalf them applies to all of them,

and, after such notice has been given, the Scheme Participant specifically identified in the notice as the deemed holder of all the specified Shares in The Trust Company will, for the purposes of the provisions of the Scheme, be taken to hold all of those Shares in The Trust Company and each of the other Scheme Participants whose names and registered addresses are set out in the notice will, for the purposes of the provisions of the Scheme, be taken to hold no Shares in The Trust Company. Perpetual in complying with the provisions of the Scheme relating to it in respect of the Scheme Participant specifically

identified in the notice as the deemed holder of all the specified Shares in The Trust Company, will be taken to have satisfied and discharged its obligations to the other Scheme Participants named in the notice under the terms of the Scheme.

6.8 Foreign Shareholders in The Trust Company

If a Foreign Shareholder ~~would otherwise be entitled to receive Share Consideration under clause 6.1 or 6.6 has made (or is deemed to have made) an Election to receive Share Consideration, or their entitlement to Cash Consideration has been scaled back in accordance with clause 6.6~~, Perpetual has no obligation to allot or issue, and will not allot or issue, any New Perpetual Shares to a Scheme Participant who is a Foreign Shareholder in The Trust Company, and instead:

- (a) subject to clause 6.8(d), Perpetual must issue the New Perpetual Shares attributable to, and which would otherwise be required to be provided to, the Foreign Shareholders under the Scheme to the Foreign Sale Agent;
- (b) Perpetual must procure that, as soon as reasonably practicable after the Effective Date, the Foreign Sale Agent, in consultation with Perpetual, sells or procures the sale (including on an aggregated or partially aggregated basis), in the ordinary course of trading on ASX, of all the New Perpetual Shares issued to the Foreign Sale Agent and remits to Perpetual the proceeds of sale (after deduction of any applicable brokerage, stamp duty and other costs, taxes and charges) (the **Proceeds**); and
- (c) Perpetual must pay, or procure the payment, to each Foreign Shareholder the amount calculated in accordance with the following formula and rounded down to the nearest cent:

$$A = (B \div C) \times D$$

where

A is the amount to be paid to the Foreign Shareholder;

B is the number of New Perpetual Shares attributable to, and that would otherwise have been issued to, that Foreign Shareholder had it not been a Foreign Shareholder and which are instead issued to the Foreign Sale Agent;

C is the total number of New Perpetual Shares attributable to, and which would otherwise have been issued to, all Foreign Shareholders collectively and which are instead issued to the Foreign Sale Agent; and

D is the Proceeds (as defined in clause 6.8(b));

- (d) none of Perpetual, Perpetual Sub, The Trust Company or the Foreign Sale Agent gives any assurance as to the price that will be achieved for the sale of New Perpetual Shares described in clause 6.8(b). The sale of the New Perpetual Shares under this clause 6.8 will be at the risk of the Foreign Shareholder; and
- (e) Perpetual must appoint the Foreign Sale Agent at least two weeks prior to the Scheme Meeting.

6.9 Breach of law or Perpetual Constitution

Where an issue of New Perpetual Shares to which a Scheme Participant would otherwise be entitled would result in a breach of law or breach of a provision of

the Perpetual Constitution, Perpetual will, in full satisfaction of that Scheme Participant's rights to the New Perpetual Shares under clause 6.1:

- (a) issue the maximum possible number of New Perpetual Shares to the Scheme Participant without giving rise to such breach; and
- (b) any further New Perpetual Shares to which that Scheme Participant is entitled, but the issue of which to the Scheme Participant would give rise to such a breach, will instead be issued to the Foreign Sale Agent and dealt with under clause 6.8, as if a reference to Foreign Shareholders also included that Scheme Participant and reference to that person's New Perpetual Shares in those clauses were limited to the New Perpetual Shares issued to the Foreign Sale Agent under this clause.

Payment to a Scheme Participant under clause 6.9(b) will be in full satisfaction of that Scheme Participant's right to receive New Perpetual Shares under clause 6.1.

6.10 New Perpetual Shares to rank equally

- (a) New Perpetual Shares issued to Scheme Participants will rank equally in all respect with all existing Perpetual Shares.
- (b) On issue, each New Perpetual Share issued to Scheme Participants will be fully paid and free from any Encumbrance.

6.11 Joint holders

In the case of Scheme Shares held in joint names holding statements for New Perpetual Shares issued to Scheme Participants must be issued in the names of the joint holders and sent to the holder whose name appears first in the Register on the Record Date.

6.12 Unclaimed money

- (a) Perpetual may cancel, or procure the cancelling, of a cheque issued under this clause 6 if the cheque:
 - (i) is returned to the sender; or
 - (ii) has not been presented for payment within six months after the date on which the cheque was sent.
- (b) During the period of 12 months commencing on the Implementation Date, on request in writing from a Foreign Shareholder to Perpetual or The Trust Company (or The Trust Company's registry) (which request may not be made until the date which is 10 Business Days after the Implementation Date), Perpetual must reissue, or procure the reissuing of, a cheque that was previously cancelled under this clause 6.12.

6.13 Orders of a court or Regulatory Authority

If written notice is given to The Trust Company (or The Trust Company's registry) of an order or direction made by a court of competent jurisdiction or by another Regulatory Agency:

- (a) that requires payment to a third party of all or part of the Scheme Consideration, which would otherwise be payable to that Scheme Participant in accordance with clause 6, then The Trust Company shall be entitled to procure that payment is made in accordance with that order or direction; or

- (b) that prevents all or part of the Scheme Consideration being paid to any particular Scheme Participant in accordance with clause 6, or such payment is otherwise prohibited by applicable law:
- (i) in the case of a Scheme Participant who is not a Foreign Shareholder, The Trust Company shall be entitled (in its sole discretion) to:
- direct Perpetual to issue to the Foreign Sale Agent such number of New Perpetual Shares as that Scheme Participant would otherwise be entitled to, to be dealt with in accordance with clause 6.8, as if a reference to Foreign Shareholders also included that Scheme Participant and references to that person's New Perpetual Shares in that clause were limited to New Perpetual Shares issued to the Foreign Sale Agent under this clause, and retain an amount equal to the amount 'A' calculated in accordance with clause 6.8(a); or
 - direct Perpetual to issue such number of New Perpetual Shares, or pay such amount of the Cash Consideration, as that Scheme Participant would otherwise be entitled to under clause 6 to a trustee or nominee for that trustee or nominee to retain; or
- (ii) in the case of a Foreign Shareholder, The Trust Company shall be entitled to retain an amount equal to the amount the Foreign Shareholder would otherwise be entitled to be paid under clause 6.8,

until such time as full payment in accordance with clause 6 is permitted by that order or direction or otherwise by law.

For the avoidance of doubt, if the relevant order or direction prevents payment of only part of the Scheme Consideration otherwise payable to a Scheme Participant, Perpetual will pay the maximum possible portion of the Scheme Consideration to the Scheme Participant without giving rise to a breach of that order or direction and this clause 6.13(b) shall only apply only in respect of the remaining portion.

7 Dealings in Scheme Shares

7.1 Determination of Scheme Participants

To establish the identity of the Scheme Participants, dealings in Scheme Shares will only be recognised by The Trust Company if:

- (a) in the case of dealings of the type to be effected using CHESSE, the transferee is registered in the Register as the holder of the relevant Scheme Shares on or before the Record Date; and
- (b) in all other cases, registrable transmission applications or transfers in registrable form in respect of those dealings are received on or before the Record Date at the place where the Register is kept.

7.2 Register

The Trust Company must register any registrable transmission applications or transfers of the Scheme Shares received in accordance with clause 7.1(b) on or before the Record Date.

7.3 No disposals after Effective Date

If this Scheme becomes Effective, a holder of Scheme Shares (and any person claiming through that holder) must not dispose of or purport or agree to dispose of any Scheme Shares or any interest in them after the Effective Date in any way except as set out in this Scheme and any such disposal will be void and of no legal effect whatsoever.

The Trust Company will not accept for registration or recognise for any purpose any transmission, application or transfer in respect of Scheme Shares received after the Record Date (except a transfer to Perpetual Sub pursuant to this Scheme and any subsequent transfer by Perpetual Sub or its successors in title).

7.4 Maintenance of The Trust Company Register

For the purpose of determining entitlements to the Scheme Consideration, The Trust Company will maintain the Register in accordance with the provisions of this clause 7.4 until the Scheme Consideration has been paid to the Scheme Participants and Perpetual Sub has been entered in the Register as the holder of all the Scheme Shares. The Register in this form will solely determine entitlements to the Scheme Consideration.

7.5 Effect of certificates and holding statements

Subject to provision of the Scheme Consideration and registration of the transfer to Perpetual Sub contemplated in clauses 5.2, 6.4 and 6.5, any statements of holding in respect of Scheme Shares will cease to have effect after the Record Date as documents of title in respect of those shares (other than statements of holding in favour of Perpetual Sub and its successors in title). After the Record Date, each entry current on the Register as at the Record Date (other than entries in respect of Perpetual Sub or its successors in title) will cease to have effect except as evidence of entitlement to the Scheme Consideration.

7.6 Details of Scheme Participants

Within three Business Days after the Record Date The Trust Company will ensure that details of:

- (a) the names, Registered Addresses and holdings of Scheme Shares for each Scheme Participant, as shown in the Register on the Record Date; and
- (b) the names and Registered Addresses of every Foreign Shareholder in The Trust Company on the Record Date,

are available to Perpetual in such form as Perpetual reasonably requires.

7.7 Quotation of Shares in The Trust Company

- (a) Suspension of trading on ASX in Shares in The Trust Company will occur from the close of trading on ASX on the Effective Date.
- (b) After the Scheme has been fully implemented, The Trust Company will apply:
 - (i) for termination of the official quotation of Shares in The Trust Company on ASX; and
 - (ii) to have itself removed from the official list of the ASX.

7.8 Quotation of New Perpetual Shares

Perpetual will apply for the official quotation of the New Perpetual Shares on the ASX and will request that those shares be quoted on a deferred settlement basis as from the Business day following the Effective Date (or such later date as the ASX requires), and on an ordinary settlement basis as from the Business Day after the Implementation Date.

8 General Scheme provisions

8.1 Power of attorney

Each Scheme Participant, without the need for any further act by any Scheme Participant, irrevocably appoints The Trust Company and each of its directors and secretaries (jointly and each of them individually) as its attorney and agent for the purpose of:

- (a) executing any document necessary or expedient to give effect to this Scheme including the Share Scheme Transfer;
- (b) enforcing the Deed Poll against Perpetual,

and The Trust Company accepts such appointment.

8.2 Variations, alterations and conditions

The Trust Company may, with the consent of Perpetual (which cannot be unreasonably withheld), by its counsel or solicitor consent on behalf of all persons concerned to any variations, alterations or conditions to this Scheme which the Court thinks fit to impose.

8.3 Further action by The Trust Company

The Trust Company will execute all documents and do all things (on its own behalf and on behalf of each Scheme Participant) necessary or expedient to implement, and perform its obligations under, this Scheme.

8.4 Authority and acknowledgement

Each of the Scheme Participants:

- (a) irrevocably consents to The Trust Company, Perpetual and Perpetual Sub doing all things necessary or expedient for or incidental to the implementation of this Scheme; and
- (b) acknowledges that this Scheme binds The Trust Company and all Scheme Participants (including those who do not attend the Scheme Meeting or do not vote at that meeting or vote against the Scheme at that Meeting) and, to the extent of any inconsistency and to the extent permitted by law, overrides the constitution of The Trust Company.

8.5 No liability when acting in good faith

None of The Trust Company, Perpetual, Perpetual Sub or any of their respective officers will be liable for anything done or omitted to be done in the performance of this Scheme in good faith.

8.6 Enforcement of Deed Poll

The Trust Company undertakes in favour of each Scheme Participant to enforce the Deed Poll against Perpetual on behalf of and as agent and attorney for the Scheme Participants.

8.7 Stamp duty

Perpetual Sub will pay all stamp duty (including any fines, penalties and interest) payable in connection with this Scheme.

8.8 Notices

- (a) If a notice, transfer, transmission application, direction or other communication referred to in this Scheme is sent by post to The Trust Company, it will not be taken to be received in the ordinary course of post or on a date and time other than the date and time (if any) on which it is actually received at The Trust Company's registered office or at the office of the registrar of Shares in The Trust Company.
- (b) The accidental omission to give notice of the Scheme Meeting or the non-receipt of such a notice by any Shareholder shall not, unless so ordered by the Court, invalidate the Scheme Meeting or the proceedings of the Scheme Meeting.

9 Governing law

9.1 Governing law

This Scheme is governed by the law in force in New South Wales.

9.2 Jurisdiction

Each party irrevocably and unconditionally:

- (a) submits to the non-exclusive jurisdiction of the courts of that place.
- (b) waives, without limitation, any claim or objection based on absence of jurisdiction or inconvenient forum.

Scheme Implementation Agreement

Annexure B - Deed Poll

Deed Poll

Dated

Given by Perpetual Limited ABN 86 000 431 827 ("**Perpetual**")

And

Perpetual Acquisition Company Limited (ACN 163 620 362) ("**Perpetual Sub**")

In favour of each registered holder of fully paid ordinary shares in The Trust Company Limited (ABN 59 004 027 749) ("**The Trust Company**") as at 7.00 pm on the Record Date ("**Scheme Participants**")

King & Wood Mallesons

Level 50
Bourke Place
600 Bourke Street
Melbourne VIC 3000
Australia
T +61 3 9643 4000
F +61 3 9643 5999
DX 101 Melbourne
www.kwm.com

Deed Poll

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Deed Poll

Details

Parties

Perpetual	Name	Perpetual Limited
	ABN	86 000 431 827
	Address	Level 12, 123 Pitt Street, Sydney, NSW, 2000
	Fax	(02) 8256 1461
	Attention	Joanne Hawkins, Company Secretary
Perpetual Sub	Name	Perpetual Acquisition Company Limited
	ACN	ACN 163 620 362
	Address	Level 12, 123 Pitt Street, Sydney, NSW, 2000
	Fax	(02) 8256 1461
	Attention	Joanne Hawkins, Company Secretary

In favour of Each registered holder of fully paid ordinary shares in The Trust Company as at 7.00 pm on the Record Date.

Recitals	A	The directors of The Trust Company have resolved that The Trust Company should propose the Scheme.
	B	The effect of the Scheme will be that all Scheme Shares will be transferred to Perpetual Sub.
	C	The Trust Company and Perpetual have entered into the Scheme Implementation Agreement.
	D	In the Scheme Implementation Agreement, Perpetual agreed (amongst other things) to provide (or, in the case of the Cash Consideration, procure the provision of) the Scheme Consideration to Scheme Participants, subject to the satisfaction of certain conditions.
	E	Perpetual and Perpetual Sub are entering into this deed poll for the purpose of covenanting in favour of Scheme Participants to perform its obligations in relation to the Scheme.

Governing law New South Wales

**Date of
agreement**

See Signing page

Deed Poll

General terms

1 Definitions and interpretation

1.1 Definitions

In this deed poll (unless the context otherwise requires):

- (a) **Authorised Officer** means, in respect of a party, a director or secretary of the party or any other person appointed by a party to act as an Authorised Officer under this deed poll;
- (b) **Scheme** means the proposed scheme of arrangement between The Trust Company and Scheme Participants under which all the Scheme Shares will be transferred to Perpetual Sub under Part 5.1 of the Corporations Act, substantially in the form of Annexure A to this deed poll, or as otherwise agreed by Perpetual and The Trust Company, subject to any amendments or conditions made or required by the Court pursuant to section 411(6) of the Corporations Act, to the extent they are approved in writing by The Trust Company and Perpetual in accordance with clause 8.2 of the Scheme; and
- (c) **Scheme Implementation Agreement** means the scheme implementation agreement dated on or about 7 May 2012 between The Trust Company and Perpetual under which, amongst other things, The Trust Company has agreed to propose the Scheme to Shareholders in The Trust Company, and each of Perpetual and The Trust Company has agreed to take certain steps to give effect to the Scheme;
- (d) all other words and phrases used in this deed poll have the same meaning as given to them in the Scheme.

1.2 Interpretation

Clause 1.2 of the Scheme applies to the interpretation of this deed poll except that references to “this Scheme” in that clause are to be read as references to “this deed poll”.

1.3 Headings

Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this deed poll.

1.4 Nature of deed poll

Perpetual and Perpetual Sub acknowledge that this deed poll may be relied on and enforced by any Scheme Participant in accordance with its terms even though the Scheme Participants are not a party to it.

2 Conditions precedent and termination

2.1 Conditions precedent

Perpetual’s and Perpetual Sub’s obligations under clause 3 are subject to the Scheme becoming Effective.

2.2 Termination

Perpetual's and Perpetual Sub's obligations under this deed poll will automatically terminate and the terms of this deed poll will be of no further force or effect if:

- (a) the Scheme has not become Effective on or before the End Date; or
- (b) the Scheme Implementation Agreement is terminated in accordance with its terms.

2.3 Consequences of termination

If this deed poll is terminated under clause 2.2, then, in addition and without prejudice to any other rights, powers or remedies available to Scheme Participants:

- (a) Perpetual and Perpetual Sub are released from their obligations to further perform this deed poll except those obligations contained in clause 7.1 and any other obligations which by their nature survive termination; and
- (b) each Scheme Participant retains the rights, powers or remedies they have against Perpetual and Perpetual Sub in respect of any breach of this deed poll which occurs before it is terminated.

3 Scheme Consideration

3.1 Scheme Consideration

Subject to clause 2, Perpetual undertakes in favour of each Scheme Participant, to

- (a) procure that Perpetual Sub will pay the Cash Consideration to the Trust Account on behalf of each Scheme Participant;
- (b) subject to clauses 6.7, 6.8, 6.9 of the Scheme issue the New Perpetual Shares to the Scheme Participants; and
- (c) undertake all other actions attributed to it under the Scheme,

in accordance with the Scheme.

3.2 Manner of payment

Perpetual's obligation to procure the provision of the Cash Consideration to The Trust Company on behalf of each Scheme Participant is satisfied by Perpetual Sub, no later than two Business Days before the Implementation Date, depositing in Immediately Available Funds the aggregate amount of the cash component of the Scheme Consideration payable to all Scheme Participants into the Trust Account (except that the amount of any interest on the amount deposited will be to Perpetual Sub's account)

3.3 Provision of New Perpetual Shares as Scheme Consideration

Subject to clauses 6.7, 6.8 and 6.9 of the Scheme, Perpetual must:

- (a) on the Implementation Date, issue the New Perpetual Shares to the Scheme Participants in accordance with the Scheme;
- (b) on the Implementation Date, enter the name of each Scheme Participant in the Perpetual share register in respect of the New Perpetual Shares which that Scheme Participant is entitled to receive under the Scheme;

- (c) within 2 Business Days after the Implementation Date, send or procure the dispatch by pre-paid ordinary post (or, if the address of the Scheme Participant in the Register is outside Australia, by pre-paid airmail post) to each Scheme Participant to their address recorded in the Register at 7.00pm on the Record Date, a holding statement for the New Perpetual Shares issued to that Scheme Participant in accordance with the Scheme.

3.4 Foreign Shareholders in The Trust Company

Subject to clause 6.5 of the Scheme Perpetual has no obligation to allot or issue, and will not allot or issue, any New Perpetual Shares to a Scheme Participant who is a Foreign Shareholder in The Trust Company, and instead:

- (a) subject to clause 3.4(d), Perpetual must issue the New Perpetual Shares attributable to, and which would otherwise be required to be provided to, the Foreign Shareholders under the Scheme to the Foreign Sale Agent;
- (b) Perpetual must procure that, as soon as reasonably practicable after the Effective Date, the Foreign Sale Agent, in consultation with Perpetual, sells or procures the sale (including on an aggregated or partially aggregated basis), in the ordinary course of trading on ASX, of all the New Perpetual Shares issued to the Foreign Sale Agent and remits to Perpetual the proceeds of sale (after deduction of any applicable brokerage, stamp duty and other costs, taxes and charges) (the **Proceeds**); and
- (c) Perpetual must pay, or procure the payment, to each Foreign Shareholder the amount calculated in accordance with the following formula and rounded down to the nearest cent:

$$A = (B \div C) \times D$$

where

A is the amount to be paid to the Foreign Shareholder;

B is the number of New Perpetual Shares attributable to, and that would otherwise have been issued to, that Foreign Shareholder had it not been a Foreign Shareholder and which are instead issued to the Foreign Sale Agent;

C is the total number of New Perpetual Shares attributable to, and which would otherwise have been issued to, all Foreign Shareholders collectively and which are instead issued to the Foreign Sale Agent; and

D is the Proceeds (as defined in clause 3.4(b));

- (d) none of Perpetual, Perpetual Sub, The Trust Company or the Foreign Sale Agent gives any assurance as to the price that will be achieved for the sale of New Perpetual Shares described in clause 3.4(b). The sale of the New Perpetual Shares under this clause 3.4 will be at the risk of the Foreign Shareholder.

The Foreign Sale Agent has been selected by the Perpetual and is the holder of an Australian financial services licence number [*insert*].

3.5 Breach of law or Perpetual Constitution

Where an issue of New Perpetual Shares to which a Scheme Participant would otherwise be entitled would result in a breach of law or breach of a provision of the Perpetual Constitution:

- (a) Perpetual must, in full satisfaction of that Scheme Participant's rights to the New Perpetual Shares under clause 3.1 and the Scheme issue the maximum possible number of New Perpetual Shares to the Scheme Participant without giving rise to such breach; and
- (b) any further New Perpetual Shares to which that Scheme Participant is entitled, but the issue of which to the Scheme Participant would give rise to such a breach, will instead be issued to the Foreign Sale Agent and dealt with under clause 3.4, as if a reference to Foreign Shareholders also included that Scheme Participant and reference to that person's New Perpetual Shares in those clauses were limited to the New Perpetual Shares issued to the Foreign Sale Agent under this clause.

Payment to a Scheme Participant under this clause 3.5 will be in full satisfaction of that Scheme Participant's right to receive New Perpetual Shares under clause 3.1 and the Scheme.

3.6 Joint holders

In the case of Scheme Shares held in joint names:

- (a) any cheque required to be paid to Scheme Participants by Perpetual Sub must be payable to the joint holders and be forwarded to the holder whose name appears first in the Register as at 7.00pm on the Record Date; and
- (b) holding statements for New Perpetual Shares issued to Scheme Participants must be issued in the names of the joint holders and sent to the holder whose name appears first in the Register as at 7.00pm on the Record Date.

4 Representations and warranties

Perpetual and Perpetual Sub each represents and warrants that:

- (a) it is a corporation validly existing under the laws of its place of registration;
- (b) it has the corporate power to enter into and perform its obligations under this deed poll and to carry out the transactions contemplated by this deed poll;
- (c) it has taken all necessary corporate action to authorise its entry into this deed poll and has taken or will take all necessary corporate action to authorise the performance of this deed poll and to carry out the transactions contemplated by this deed poll; and
- (d) this deed poll is valid and binding upon Perpetual and Perpetual Sub and enforceable against Perpetual and Perpetual Sub in accordance with its terms.

5 Continuing obligations

This deed poll is irrevocable and, subject to clause 2, remains in full force and effect until:

- (a) Perpetual and Perpetual Sub have fully performed their respective obligations under this deed poll; or
- (b) the earlier termination of this deed poll under clause 2.2.

6 Notices

6.1 Form - all communications

Unless expressly stated otherwise in this deed poll, all notices, certificates, consents, approvals, waivers and other communications in connection with this deed poll must be:

- (a) in writing;
- (b) signed by the sender (if an individual) or an Authorised Officer of the sender; and
- (c) marked for the attention of the person identified in the Details or, if the recipient has notified otherwise, then marked for attention in the way last notified.

6.2 Delivery

Communications must be:

- (a) left at the address set out or referred to in the Details;
- (b) sent by prepaid ordinary post (airmail if appropriate) to the address set out or referred to in the Details;
- (c) sent by fax to the fax number set out or referred to in the Details; or
- (d) given in any other way permitted by law.

However, if the intended recipient has notified a changed address or fax number, then communications must be to that address or fax number.

6.3 When effective

Communications take effect from the time they are received or taken to be received under clause 6.4 (whichever happens first) unless a later time is specified.

6.4 When taken to be received

Communications are taken to be received:

- (a) if sent by post, three days after posting (or seven days after posting if sent from one country to another); or
- (b) if sent by fax, at the time shown in the transmission report as the time that the whole fax was sent.

6.5 Receipt outside business hours

Despite clauses 6.3 and 6.4, if communications are received or taken to be received under clause 6.4 after 5.00pm in the place of receipt or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day and take effect from that time unless a later time is specified.

7 General

7.1 Stamp duty

Perpetual Sub must:

- (a) pay all stamp duty (including fines, penalties and interest) payable and assessed on or in connection with this deed poll, the performance of this deed poll, or any instruments entered into under this deed poll and in respect of a transaction effected by or made under the Scheme and this deed poll;
- (b) pay other costs in respect of the Scheme (including, in connection with the transfer of The Trust Company Shares to Perpetual Sub in accordance with the terms of the Scheme); and
- (c) indemnify on demand each Scheme Participant against any liability arising from failure to comply with clauses 7.1(a) or 7.1(b).

7.2 Waiver

- (a) A waiver of any right arising from a breach of this deed poll or of any right, power, authority, discretion or remedy arising upon default under this deed poll must be in writing and signed by the party giving the waiver.
- (b) A failure or delay in exercise, or partial exercise, of:
 - (i) a right arising from a breach of this deed poll; or
 - (ii) a right, power, authority, discretion or remedy created or arising upon default under this deed poll,
 does not result in a waiver of that right, power, authority, discretion or remedy.
- (c) A party is not entitled to rely on a delay in the exercise or non-exercise of a right, power, authority, discretion or remedy arising from a breach of this deed poll or on a default under this deed poll as constituting a waiver of that right, power, authority, discretion or remedy.
- (d) A party may not rely on any conduct of another party as a defence to exercise of a right, power, authority, discretion or remedy by that other party.

7.3 Variation

A provision of this deed poll or any right created under it may not be varied, altered or otherwise amended unless:

- (a) the variation is agreed to by The Trust Company, Perpetual and Perpetual Sub in writing; and
- (b) the Court indicates that the variation, alteration or amendment would not itself preclude approval of the Scheme,

in which event Perpetual and Perpetual Sub must enter into a further deed poll in favour of the Scheme Participants giving effect to the variation, alteration or amendment.

7.4 Remedies cumulative

The rights, powers and remedies of Perpetual, Perpetual Sub and the Scheme Participants under this deed poll are cumulative and are in addition to, and do not exclude any, other rights, powers and remedies given by law independently of this deed poll.

7.5 Assignment

The rights and obligations of Perpetual, Perpetual Sub and each Scheme Participant under this deed poll are personal and must not be assigned, encumbered or otherwise dealt with at law or in equity and no person may attempt or purport to do so without the prior written consent of Perpetual and The Trust Company.

7.6 Governing law and jurisdiction

This deed poll is governed by the law in force in New South Wales. Perpetual and Perpetual Sub irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of that place.

7.7 Further action

Perpetual and Perpetual Sub must execute all deeds and other documents and do all things (on their own behalf or on behalf of each Scheme Participant) necessary or expedient to give full effect to this deed poll and the transactions contemplated by it.

EXECUTED as a deed poll

Deed Poll

Signing page

DATED: _____

EXECUTED by Perpetual Limited in
accordance with section 127(1) of the
Corporations Act 2001 (Cwth) by
authority of its directors:

.....
Signature of director)

.....
Name of director (block letters))

.....
Signature of director/company
secretary)

.....
Name of director/company secretary
(block letters))

EXECUTED by **Perpetual Acquisition
Company Limited** in accordance with
section 127(1) of the Corporations Act
2001 (Cwth) by authority of its
directors:

.....
Signature of director)

.....
Name of director (block letters))

.....
Signature of director/company
secretary)

.....
Name of director/company secretary
(block letters))