



HERBERT
SMITH
FREEHILLS

Deed

PERLS X Trust Deed

Commonwealth Bank of Australia

The Trust Company (Australia) Limited



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1 Definitions and interpretation

1.1 Definitions

The meanings of capitalised terms used in this deed are set out below. Capitalised terms which are not set out below have the meaning given to them in the Terms.

Term	Meaning
ASX Settlement	ASX Settlement Pty Limited ABN 49 008 504 532.
ASX Settlement Operating Rules	the settlement operating rules of ASX from time to time with any applicable modification or waiver granted by ASX.
Authorisation	includes: <ol style="list-style-type: none">1 any consent, authorisation, registration, filing, lodgement, agreement, notarisation, certificate, permission, licence, approval (including any planning approval), authority or exemption from, by or with a Government Agency (including, without limitation, the Foreign Investment Review Board of Australia); or2 in relation to anything which could be fully or partly prohibited or restricted by law if a Government Agency intervenes or acts in any way within a specified period, the expiry of that period without intervention or action.
Confidential Information	all information and other material (other than information or material in the public domain) provided by CBA to the Trustee, or any officer, employee, delegate, adviser or other consultant of the Trustee under, in connection with or related to this deed or any obligation, duty or power of the Trustee under this deed.
Costs	includes costs, charges, fees, expenses (including expenses of advisors), commissions, liabilities, losses, damages and Taxes and all amounts payable in respect of any of them or like payments.
Date of Substitution	has the meaning in clause 18 of this deed.
Full Successor	has the meaning given in clause 18 of this deed.



Term	Meaning
Government Agency	any government or any governmental, semi governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.
GST	any goods and services tax, consumption tax, value added tax or any similar tax, impost or duty.
Indirect Tax	any goods and services tax, consumption tax, value added tax or any tax of similar nature.
Issuer Level 1 Group	means: <ol style="list-style-type: none">1 the Issuer; or1 the "extended licensed entity" which is comprised of the Issuer and each Subsidiary of the Issuer as specified in any approval granted by APRA in accordance with APRA's prudential standards (as amended from time to time).
Issuer Level 2 Group	means the Issuer and each Subsidiary that is recognised by APRA as part of the Issuer's Level 2 group in accordance with APRA's prudential standards (as amended from time to time).
Meeting	a meeting of Holders convened in accordance with this deed.
Official List	the Official List of the ASX.
Officially Quoted	quoted on the ASX or any other securities exchange on which PERLS X are quoted.
Ordinary Resolution	<ol style="list-style-type: none">1 a resolution passed at a meeting of Holders duly called and held under the Meeting provisions in schedule 4 to this deed:<ul style="list-style-type: none">• by more than 50% of the persons voting on a show of hands (unless the following paragraph applies); or• if a poll is duly demanded, then by a majority consisting of more than 50% of the votes cast; or2 if the meeting is by postal ballot or written resolution, then by Holders representing (in aggregate) more than 50% of the principal amount of all of the outstanding PERLS X.
Partial Successor	has the meaning given in clause 18 of this deed.



Term	Meaning
PERLS X	has the meaning given to it in the Terms set out in schedule 1 to this deed.
Power	a right, power, authority, discretion or remedy conferred on the Trustee by this deed or the Terms or by law.
Register	the register of Holders established and maintained by or on behalf of the Issuer and includes any sub-register maintained under the Clearing House Electronic Sub-Register System operated by ASX Settlement and any branch register.
Related Body Corporate	means related body corporate as defined in the Corporations Act or (where used in relation to the Issuer) an entity over which the Issuer, or a future parent entity of Issuer, exercises control or significant influence.
Sale Agent	an entity who is authorised by its Australian financial services licence (AFSL) to sell shares (or is an authorised representative of an AFSL holder) and which will sell or procure the sale of Ordinary Shares in accordance with clause 4.7 of this deed in accordance with the Trustee's instructions.
Settled Sum	means \$10.00.
Share Register	the electronic register of Ordinary Shares maintained by or on behalf of the Issuer.
Substitution Conditions	has the meaning given in clause 18 of this deed.
Successor	means a Full Successor or a Partial Successor, in each case as defined in clause 18 of this deed.
Successor Deed Poll	has the meaning given in clause 18 of this deed.
Terms	the terms and conditions of PERLS X, as set out in Schedule 1 to this deed.
Trust	the trust established by this deed.

Term	Meaning
Trustee	the trustee for the time being of the Trust (being initially the person named as party to this deed as Trustee) in its capacity as such trustee.

1.2 Interpretation

Capitalised terms and expressions defined in the Terms and not defined in this clause 1 have the same meanings when used elsewhere in this deed. In addition, in this deed, headings and boldings are for convenience only and do not affect the interpretation of this deed and, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) words importing a gender include any gender;
- (c) other parts of speech and grammatical forms of a word or phrase defined in this deed have a corresponding meaning;
- (d) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency;
- (e) terms defined in the Corporations Act have the same meaning in this deed;
- (f) a reference to any thing (including, but not limited to, any right) includes a part of that thing;
- (g) an annexure, exhibit or schedule to this deed forms part of this deed;
- (h) a reference to a part, clause, party, annexure, exhibit or schedule is a reference to a part and clause of, and a party, annexure, exhibit and schedule to, this deed, a reference to this deed includes any schedule, annexure or exhibit;
- (i) a reference to a statute, regulation, proclamation, ordinance or by law includes all statutes, regulations, proclamations, ordinances or by laws amending, consolidating or replacing it, and a reference to a statute includes all regulations, proclamations, ordinances and by laws issued under that statute;
- (j) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (k) a reference to a party to a document includes that party's successors and permitted assigns;
- (l) no provision of this deed will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this deed or that provision;
- (m) a reference to an agreement other than this deed includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing;
- (n) a reference to an asset includes all property of any nature, including, but not limited to, a business, and all rights, revenues and benefits;



- (o) a reference to a document includes any agreement in writing, or any certificate, notice, instrument or other document of any kind;
- (p) a reference to a body, other than a party to this deed (including, without limitation, an institute, association or authority), whether statutory or not:
 - (1) which ceases to exist; or
 - (2) whose powers or functions are transferred to another body,is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (q) a reference to liquidation includes official management, appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding up, dissolution, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure or, where applicable, changes in the constitution of any partnership or person, or death; and
- (r) a reference to 'wilful default' in relation to the Trustee means any wilful failure to comply with, or wilful breach by, the Trustee of any of its obligations under this deed or at law other than a failure or breach which:
 - (1) is in accordance with a lawful court order or direction or required by law; or
 - (2) is in accordance with any proper instruction or direction of the Holders given at a Meeting convened pursuant to clause 11 of this deed.

1.3 Business Day

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the succeeding Business Day. Nothing in this clause 1.3 applies to any thing that must be done as a result of a Capital Trigger Event or Non-Viability Trigger Event.

1.4 Issuer

A reference to the Issuer is a reference to Commonwealth Bank of Australia. A reference to the branch through which the Issuer acts in entering in this deed or issuing PERLS X is not to be construed to limit the rights or obligations of the Issuer under this deed or the Terms or (subject to clause 11 of the Terms) require those rights or obligations to be exercised or performed through the specified branch.

2 Appointment of Trustee and declaration of trust

2.1 Appointment

The Trustee is hereby appointed by the Issuer as trustee for the Holders subject to and in accordance with this deed.

2.2 Declaration of trust

The Trustee acknowledges receipt of the Settled Sum from the Issuer and declares that it enters into this deed as trustee for the Holders, and it holds the benefit of the following:



- (a) the Settled Sum;
- (b) this deed and any deed executed under clause 18 of this deed;
- (c) the right to enforce the Issuer's duty to repay PERLS X and to pay any Distribution on PERLS X or to exchange PERLS X for Ordinary Shares;
- (d) the right to enforce all other duties of the Issuer under the Terms and the provisions of this deed; and
- (e) any other Powers and any other property which the Trustee may receive or which may be vested in the Trustee,

in trust for the Holders from time to time subject to and in accordance with this deed and the Terms.

2.3 Application of moneys

All money received by the Trustee in respect of amounts payable under this deed must be held by the Trustee on trust to be applied in the following order:

- (a) firstly, in payment of all Costs incurred by or other amounts owing to the Trustee under or in connection with this deed (including all remuneration and other amounts payable to the Trustee under this deed);
- (b) secondly, in or towards payment equally or rateably of all arrears of any Distributions payable and remaining unpaid in respect of PERLS X and all Face Value due under the Terms; and
- (c) thirdly, in payment of the balance (if any) to the Issuer.

3 Issue, ownership and transfer of PERLS X

3.1 Issue

- (a) Subject to the terms of this deed, the Issuer may issue PERLS X to any person in accordance with the Terms.
- (b) The Issuer may issue PERLS X to any person by causing that person to be entered in the Register as the Holder of those PERLS X.
- (c) Upon the issue of a PERLS X in accordance with clause 3.1(a) of this deed that PERLS X will be duly constituted as a debt obligation by, and owing under, this deed.
- (d) Despite clause 3.1(c) of this deed, the issue of a PERLS X will be void, and that PERLS X will confer no rights against the Issuer on the Holder or any other person, unless the Issuer has received payment in cleared funds in full of the moneys due on application for that PERLS X.

3.2 Ownership

- (a) PERLS X are regarded as issued or transferred to a person if and when the person's name is recorded in the Register as the holder of PERLS X in accordance with this deed.
- (b) Title to PERLS X vests in the Holder of that PERLS X. The Issuer and the Trustee may treat Holders as the absolute beneficial owners of PERLS X held



by them and are not bound by or obliged to recognise any other person as having any right or interest in any PERLS X whether or not they have notice of such right or interest.

- (c) Despite clause 3.2(a) and 3.2(b) of this deed, the Holder's title to PERLS X is subject to rectification of the Register for fraud or error.

3.3 Death, bankruptcy

- (a) Subject to clause 12.2 of this deed, a person who becomes entitled to a PERLS X as a consequence of the death, bankruptcy, liquidation or winding-up of a Holder or of a vesting order by a court or other body with power to make the order, or a person administering the estate of a Holder, may, upon providing evidence as to that entitlement or status satisfactory to the Issuer, become recognised as being entitled to require the transfer to it of PERLS X registered in the Holder's name.
- (b) The Issuer need not register any transfer or transmission under this clause 3.3 unless if the Issuer so requires an indemnity is provided in relation to the correctness of such evidence as to entitlement or status, as the Issuer considers sufficient in respect of any consequence arising from the transfer or transmission.

3.4 Holders bound

The Holders and any persons claiming through any of them are deemed to have notice of, and are bound by, all the provisions of this deed and the Terms. This clause is a condition of each Holder's rights in relation to a PERLS X under this deed and the Terms.

3.5 Brokerage

The Issuer may pay a commission, procurement fee, brokerage or any other fees to any person for subscribing or underwriting the subscription of or subscription for PERLS X.

4 Terms of PERLS X

4.1 Terms

PERLS X are issued on and subject to the terms and conditions set out in the Terms and the Issuer undertakes to perform its obligations in respect of PERLS X under the Terms. To the extent there are any inconsistencies between the Terms and this deed, the Terms prevail.

4.2 Payments

- (a) Without limiting clause 4.1 of this deed, the Issuer covenants to pay to the Trustee on behalf of the Holders all amounts stated or determined to be payable on PERLS X under the Terms, provided that the Issuer covenants to pay such amounts directly to the Holders if directed to do so by the Trustee or otherwise as required under this deed. The Trustee directs the Issuer to pay the amounts referred to in this clause 4.2 to the Holders, in accordance with their rights and entitlements unless the winding up of the Issuer has commenced in which case the payment must be made to the Trustee.



- (b) Subject to all applicable laws, where the Issuer is unable to make a payment or is relieved from the obligation to make a payment to which a Holder is entitled under the Terms, the Issuer will send a notice to the registered address of the relevant Holder advising of the unsuccessful payment and the amount is to be held by the Issuer for the Holder in a non-interest bearing deposit with a bank selected by the Issuer until the first of the following to occur:
- (1) the Holder or a legal representative of the Holder (or the person who was the Holder at the time the entitlement to the payment is determined under the Terms) claims the amount and provides evidence of its entitlement and details for payment to be effected to the satisfaction of the Issuer;
 - (2) the Issuer pays the amount in accordance with the law relating to unclaimed money; and
 - (3) the claim for payment of the amount becomes void under the Terms.
- No further interest or other additional amount is payable in respect of any delay in payment.
- (c) The Issuer's obligations to make payments in respect of PERLS X are subject to all applicable laws. If a payment could not lawfully be made to a particular Holder due to any circumstance or matter affecting the Holder without the approval of a Government Agency or the satisfaction of some other condition then the Holder is not entitled to receive that payment, and the Issuer is not obliged to make that payment, unless that approval has been obtained or that other condition is satisfied. The Issuer is not obliged to pay any further interest or other additional amount to the affected Holder in such circumstances on account of the delay.
- (d) If the Issuer has determined that a person or persons other than the Holder is or may be entitled to be registered as Holder and receive a payment in respect of a PERLS X, the Issuer may withhold the payment until it has established the respective entitlements of that person or those persons to its satisfaction and (if applicable) the person or persons entitled have been registered as a Holder and provided details for the payment to be effected to the satisfaction of the Issuer. The Issuer is not obliged to pay any further interest or other additional amount on account of the delay.
- (e) The Issuer, in its absolute discretion, may withhold or deduct payments to a Holder (including, if applicable, any other person who beneficially derives Distributions under PERLS X) where it is required to do so under or in connection with FATCA, or where it has reasonable grounds to suspect that the Holder or a beneficial owner of PERLS X may be subject to FATCA, and may deal with such payment and the Holder's PERLS X in accordance with FATCA. If any withholding or deduction arises under or in connection with FATCA, the Issuer will not be required to pay any further amounts on account of such withholding or deduction or otherwise reimburse or compensate, or make any payment to, a Holder or a beneficial owner of PERLS X for or in respect of any such withholding or deduction.
- (f) For the avoidance of doubt, nothing in this clause 4.2 obliges the Issuer to make a payment it has not otherwise determined to make under clause 2 of the Terms.

4.3 Entry into Share Register

Without limiting clause 4.2 of this deed, the Issuer must procure entry into the Share Register, of details in respect of the Ordinary Shares as the Issuer and the operator of the Share Register consider necessary or desirable to record the issue or transfer of the Ordinary Shares in accordance with the Terms and the provisions of this deed. If clause 4.7 of this deed applies, this will include entry into the Share Register of the name of the Trustee (or its nominee) in respect of a number of Ordinary Shares.

4.4 Status and subordination

Without limiting clause 4.1, 4.2 or 4.3 of this deed:

- (a) PERLS X constitute subordinated unsecured notes of the Issuer;
- (b) the Issuer's obligation to pay amounts due on a PERLS X is subject to, and subordinated on the terms set out in, the applicable Terms;
- (c) PERLS X rank equally without any preference among themselves; and
- (d) the Terms are binding on the Trustee in relation to any amount due on PERLS X that it recovers or seeks to recover and applies to the Trustee as if references to the Holders in the Terms included references to the Trustee.

To avoid doubt, this clause does not affect the Trustee's entitlement to be paid any amount under clause 9 of this deed or any other provision or arrangement providing for the payment of amounts to the Trustee or any replacement arrangements to be put in place by a Successor or alternative arrangements between a Successor and the Trustee, if applicable.

4.5 Automatic Exchange upon the occurrence of a Capital Trigger Event or Non-Viability Trigger Event

If a Capital Trigger Event or Non-Viability Trigger Event has occurred and all or some PERLS X (or percentage of the Face Value of each PERLS X) are required to be Exchanged in accordance with clauses 4.1 or 4.2 of the Terms, then:

- (a) Exchange of the relevant PERLS X or percentage of the Face Value of each PERLS X will be taken to have occurred in accordance with clause 7 of the Terms immediately upon the date of occurrence of the Capital Trigger Event or Non-Viability Trigger Event; and
- (b) the entry of the corresponding PERLS X in each relevant Holder's holding in the Register will constitute an entitlement of that Holder (or, if applicable, of the Trustee) to the relevant number of Ordinary Shares (and, if applicable, also to any remaining balance of PERLS X or remaining percentage of the Face Value of each PERLS X), and the Issuer will recognise the Holder (or, if applicable, the Trustee) as having been issued the relevant Ordinary Shares for all purposes,

in each case without the need for any further act or step by the Issuer, the Holder or any other person (and the Issuer will, as soon as possible thereafter and without delay on the part of the Issuer, take any appropriate procedural steps to record such Exchange, including updating the Register and the Share Register and seek quotation of the Ordinary Shares issued on Exchange).



4.6 No further rights if Exchange cannot occur

If for any reason Exchange of any PERLS X (or a percentage of the Face Value of any PERLS X) required to be Exchanged under clauses 4.1 or 4.2 of the Terms fails to take effect under clauses 4.5(a) and (b) of the Terms and the Issuer has not otherwise issued the Ordinary Shares required to be issued in respect of such Exchange within 5 Business Days after the date of occurrence of the Capital Trigger Event or Non-Viability Trigger Event, then the relevant Holders' rights (including to payment of the Face Value and Distributions and the right to receive Ordinary Shares) in relation to such PERLS X or percentage of the Face Value of PERLS X are immediately and irrevocably terminated and such termination will be taken to have occurred immediately on the date of the occurrence of the Capital Trigger Event or Non-Viability Trigger Event. The Issuer must give notice as soon as practicable that such termination has occurred to the Holders and such notice must be announced on ASX, and the notice must specify the date on which the Capital Trigger Event or Non-Viability Trigger Event occurred.

4.7 Delivery of Ordinary Shares to the Trustee where the Holder does not wish to receive Ordinary Shares or is an Ineligible Holder

- (a) The Terms contain provisions which require PERLS X to be Exchanged.
- (b) If PERLS X of a Holder are required to be Exchanged and:
 - (1) the Holder has notified the Issuer that it does not wish to receive Ordinary Shares as a result of Exchange, which notice may be given at any time on or after the Issue Date and prior to the Exchange Date;
 - (2) the Holder is an Ineligible Holder; or
 - (3) the Issuer has not received (for any reason whether or not due to the fault of that Holder) any information required by it in accordance with the Terms so as to impede the Issuer issuing the Ordinary Shares to a Holder on the Exchange Date,

then the Terms require that on the Exchange Date the relevant Holder's rights (including to payment of Distributions) in relation to each such PERLS X being Exchanged are immediately and irrevocably terminated.

- (c) Notwithstanding clause 4.7(b) of this deed and only if required by clause 7.10 of the Terms, the Issuer will at that time instead of issuing Ordinary Shares to the relevant Holder, issue the Exchange Number of Ordinary Shares to the Trustee for no additional consideration to be held by the Trustee on trust for sale for the benefit of the relevant Holder (unless, because the Holder is an Ineligible Holder, the Trustee is deemed to be an Ineligible Holder, in which case such issue shall occur as soon as practicable after the Trustee ceases to be an Ineligible Holder). If Exchange is occurring because of the occurrence of a Capital Trigger Event or Non-Viability Trigger Event and the Exchange fails to take effect and the Issuer has not otherwise issued Ordinary Shares to the Trustee within five Business Days, then Holders' rights will be immediately and irrevocably terminated under clause 4.6 of the Terms.
- (d) For the purposes of clause 4.7(c) of this deed, if the Trustee is able to appoint one or more entities to act as the Sale Agent the Trustee will appoint such entity as the Sale Agent and will procure the Sale Agent at the first reasonable opportunity to sell the Ordinary Shares of all relevant Holders in one or more marketable parcels and by such manner as the Sale Agent advises is appropriate and upon a sale of the Ordinary Shares occurring must cause the proceeds of such sale (after deduction of any applicable brokerage, stamp duty



and other costs, taxes and charges, including the Trustee's reasonable out of pocket Costs properly incurred by or on behalf of the Trustee in connection with such sale) (the **Proceeds**) to be paid:

- (1) directly to the Trustee; or
 - (2) at the direction of the Trustee,
- in either case for payment to each relevant Holder in proportion to the total number of Ordinary Shares that would otherwise have been issued to the relevant Holder.
- (e) The Trustee gives no assurance (and is not required to procure the Sale Agent to give such assurance) as to:
- (1) the appropriateness of the size of the parcels for, the manner of, the timing of, or the price that will be achieved from, the sale of the Ordinary Shares described in clause 4.7(d) above;
 - (2) whether a willing buyer for all or some of the Ordinary Shares will be found by the Sale Agent; or
 - (3) whether a sale will be achieved.
- (f) If all or some of the Ordinary Shares have been sold by the Sale Agent, the Trustee may make payments to the relevant Holders under clause 4.7(d) of this deed by either crediting an Australian dollar bank account maintained in Australia with a financial institution and nominated by the relevant Holder in writing or in any other manner that the Trustee decides.
- (g) Where the Trustee is unable to make a payment to the relevant Holders under clause 4.7(f) of this deed, the amount may be returned to the Issuer who will be subject to the obligation to hold a payment under clause 4.2(b) of this deed, unless the winding up of the Issuer has commenced in which case the Trustee must continue to hold the amount until the Trustee pays the amount in accordance with the law relating to unclaimed money. No additional payment is payable in respect of any delay in payment.
- (h) The Issuer will provide a copy of the Register and all necessary information to enable appropriate deductions for withholding taxes or other deductions required by law to be made to the Trustee within 48 hours of a request by the Trustee for a copy of such Register and such information so that the Trustee may make payments to the relevant Holders under clause 4.7(d) of this deed or comply with the law relating to unclaimed money. The Trustee is entitled to accept the correctness of all information contained in the Register without investigation for the purpose of the Trustee making payments to the relevant Holders under clause 4.7(d) of this deed.

5 Undertakings of Issuer

Subject to this deed, the Issuer undertakes to the Trustee that for so long as any Face Value or Distribution due on PERLS X remains outstanding or any Ordinary Shares that are required to be issued on Exchange have not yet been issued to the person to whom they are required to be issued under this deed or any obligations of the Issuer may arise pursuant to the requirements under clause 4.7 of this deed, it will:

- (a) comply with the provisions of this deed and the Terms;
- (b) comply with all applicable laws;



- (c) provide a copy of this deed to a Holder if they request a copy;
- (d) use all reasonable endeavours and furnish all such documents, information and undertakings as may be reasonably necessary in order to procure that PERLS X are officially quoted on the Official List of the ASX;
- (e) do all things which are reasonably requested by the Trustee to enable the Trustee to comply with the Trustee's obligations under this deed, (or any other laws binding on the Trustee with respect to the trust or PERLS X), the Listing Rules or the ASX Settlement Operating Rules;
- (f) provide to the Trustee at the same time as their issue (to the extent not already provided to the Trustee) all documents sent to Holders;
- (g) provide to the Trustee:
 - (1) all other information which is reasonably required or requested by the Trustee from time to time within any reasonable specified timeframe for the purposes of discharging the duties, trusts, and Powers vested in the Trustee under this deed or imposed upon it by law;
 - (2) as soon as possible prior to the proposed issue of Ordinary Shares to the Trustee under clause 4.7(c) of this deed, information as to the Exchange Number of Ordinary Shares proposed to be issued to the Trustee for the purpose of the Trustee considering whether such issue of Ordinary Shares to the Trustee would cause the Trustee to be in breach of any applicable law;
 - (3) an opinion of reputable legal counsel of recognised standing in Australia that it is open to the Trustee to determine that the Exchange Number of Ordinary Shares may be issued to the Trustee under 4.7(c) of this deed and that the Trustee is not in breach of any laws imposed upon it in discharging its duties, trusts and Powers vested in the Trustee under this deed (unless the Trustee has obtained its own legal opinion to this effect); and
 - (4) an original of any instrument in writing executed by the Issuer amending this deed under clause 14.2 (promptly after execution);
- (h) promptly, after becoming aware of any breach of any term or condition binding on the Issuer under this deed or the Terms that is continuing, provide details of the breach to the Trustee, including if the waiver would require APRA's approval in accordance with clause 7.3(k)(2) of this deed; and
- (i) promptly after cancelling any PERLS X, confirm details of that cancellation and the relevant provisions in respect of such cancellation under the Terms to the Trustee (including, if applicable, of any Exchange or Redemption).

6 Enforcement

6.1 Enforcement by Trustee

- (a) Subject to clause 6.1(b) of this deed, the Trustee and only the Trustee is entitled to take any action against the Issuer to enforce any term or condition binding on the Issuer under this deed or the Terms in respect of the PERLS X.
- (b) No Holder shall be entitled to proceed directly against the Issuer to enforce any right or remedy under or in respect of any PERLS X unless the Trustee, having



become bound so to proceed under clause 6.2 of this deed, fails to do so within a reasonable period and such failure shall be continuing. In that case any Holder may, upon giving an indemnity satisfactory to the Trustee, in the name of the Trustee (but not otherwise) and subject to clause 6.2 of this deed, itself institute proceedings against the Issuer for the relevant remedy to the same extent (but not further or otherwise) that the Trustee would have been entitled to do so.

- (c) The Issuer is not liable in damages for breach of any provision of this deed other than in respect of the Trustee's remuneration and expenses due and payable under clause 9 of this deed. This does not affect the Issuer's obligation under the Terms to pay the Face Value, any Distribution or other amounts payable in respect of PERLS X or to exchange PERLS X for Ordinary Shares and Costs and other amounts due to the Trustee.

6.2 Enforcement on direction by Holders

Subject to clause 7 of this deed, the Trustee must take action to enforce this deed or the Terms where all the following conditions are met:

- (a) the Trustee has been directed to take that action by a Special Resolution of the Holders or the Terms otherwise oblige it to act;
- (b) the Trustee is indemnified to its reasonable satisfaction:
 - (1) for all actions, proceedings, claims and demands to which the Trustee may render itself liable by taking such action; and
 - (2) in respect of all costs, charges, damages and expenses which the Trustee may thereby incur and remuneration which the Trustee may thereby become entitled; and
- (c) the Trustee is not restricted or prohibited from taking such action by any order of any competent court or any applicable law.

If the Trustee forms the view that action it has been directed to take is or could be inconsistent with this deed, the Terms or any applicable law or is or could be otherwise objectionable, it may take steps to seek (and, if the court so determines, to obtain) as soon as reasonably practicable a court direction or order to set aside or vary the direction, and, while those steps are underway, the Trustee is not obliged to take any action or proceedings it has been directed to take.

For the avoidance of doubt, the Trustee may take action to enforce this deed or the Terms in any other circumstances and in its absolute discretion but is not obliged to act unless the conditions of this clause are satisfied.

7 Powers, duties and discretions of Trustee

7.1 Powers generally

- (a) Subject to this deed, the Trustee has in acting as trustee of the Trust and in relation to all property and rights held on Trust all the powers of a natural person or which it is otherwise possible to confer on a trustee.
- (b) Subject to applicable law, the Trustee may exercise its rights, powers and discretions under this deed in any manner it thinks fit.

7.2 Duties

- (a) The Trustee must:
- (1) comply with its duties under this deed;
 - (2) act honestly and in good faith and comply with all laws in performing its duties and in the exercise of its Powers;
 - (3) exercise such reasonable diligence and prudence as a person qualified to be a trustee in the position of the Trustee would exercise in performing its duties and in the exercise of its Power;
 - (4) if and to the extent the Trustee holds Trust assets, keep accounting records which correctly record and explain all amounts paid and received by the Trustee in its capacity as trustee under this deed and in respect of the procedures under clause 4.7 of this deed being followed the Trustee may procure that the Sale Agent keeps accounting records which correctly record and explain all amounts received by it for the sale of Ordinary Shares, amounts deducted from the proceeds of such sale and amounts paid directly to the Trustee or at the direction of the Trustee; and
 - (5) if and to the extent the Trustee holds Trust assets, keep the assets of the Trust separate from all other assets of the Trustee which are held in a capacity other than trustee under this deed.
- (b) The Trustee has no obligation to exercise or to exercise in a particular way any of its obligations, rights, powers or discretions unless:
- (1) except in the case of the obligation to appoint a Sale Agent under clause 4.7 of this deed, it is directed to do so by a Meeting called under clause 11 of this deed;
 - (2) its liability is limited in a manner consistent with clause 8 of this deed; and
 - (3) it is indemnified to its satisfaction against any expense or liability which it may incur as a result of doing so.
- (c) The Trustee must not interfere with the conduct of the ordinary business of the Issuer unless required to do so in order to comply with its duties under this deed.
- (d) The Trustee has no obligations or duties except those expressly set out in this deed and those imposed on it by any law that cannot be excluded.

7.3 Discretions

Subject to this deed, the Trustee may:

- (a) **delegation:** by power of attorney or otherwise, authorise:
- (1) a Related Body Corporate of the Trustee; or
 - (2) any other person (including, without limitation, the Issuer and persons associated with the Issuer),

to do anything which the Trustee may lawfully do (on such Terms and conditions as the Trustee may think fit) including, without limitation, holding any trust property and executing documents on its behalf;

- (b) **directions:** apply to the Court for directions in relation to any question arising either before or after PERLS X become;
- (1) repayable and assent to and approve of or oppose any application to the Court made by or at the instance of any Holder or by Issuer; and
 - (2) at any time after the Holder's rights become enforceable, apply to the Court for an order:
 - (A) that the Trust be carried into execution under the direction of the Court; and
 - (B) for any other order or direction in relation to the administration of the Trust hereof as the Trustee may deem expedient;
- (c) **reliance:** rely and act upon (without enquiry) any communication or document that it reasonably believes to be genuine and correct and to have been signed or sent by the appropriate person or persons;
- (d) **expert advice:** rely and act upon (without enquiry) the advice or opinion of or information of any barrister, solicitor, accountant, auditor, actuary, valuer or other consultant or adviser of the Issuer or the Trustee including any Sale Agent (and whether or not such person is engaged or instructed by the Trustee and whether or not the advice or opinion or information is addressed to the Trustee);
- (e) **certificates:** accept as conclusive evidence and act upon any of the following:
- (1) a certificate which purports to be signed by any two directors of the Issuer as to any fact or matter, including without limitation as to whether or not any particular dealing, transaction, step or thing is commercially desirable or detrimental to the interests of the Holders or whether any circumstances exists entitling the Issuer to Redeem or Exchange PERLS X early in accordance with the Terms or entitling the Issuer to apply the procedures set out in clause 4.7 of this deed;
 - (2) a certificate which purports to be signed by any two directors of the Successor as to any fact or matter;
 - (3) any information, report, accounts, certificate or statement supplied by the Issuer, or the auditor or solicitor of the Issuer, including without limitation, any statements or opinions contained therein; and
 - (4) any reports required to be provided under a provision of this deed.
- The Trustee is not required to call for further evidence or information and is not responsible for any loss occurring as a result of such reliance, except to the extent that its reliance amounts to fraud, negligence or wilful default;
- (f) **documents:** accept as conclusive evidence and act upon, any document, communication, information, report, balance sheet, profit and loss account, certificate or statement supplied by the Issuer or any Subsidiary of the Issuer or by any director, secretary, auditor, solicitor or duly authorised officer of the Issuer or any Subsidiary of the Issuer (including any electronic transmission);
- (g) **statements:** accept as conclusive evidence and act upon, all statements (including statements made or given to the best of knowledge and belief or similarly qualified) contained in any statement, certificate, report, balance sheet or profit and loss account given pursuant to the provisions of, or in any way in relation to, this deed;
- (h) **Trustee determinations:** except as otherwise expressly provided for in this deed, determine as between itself and the Holders all questions and matters of

doubt arising in relation to this deed or the Terms and every such determination shall be conclusive and binding on all Holders;

- (i) **Issuer determinations:** accept as conclusive evidence and act upon (without enquiry), any determination by the Issuer, including without limitation, a determination as to:
- (1) the Market Rate;
 - (2) the existence of circumstances justifying early Redemption of PERLS X under the Terms due to (without limitation):
 - (A) an inability to frank Distributions;
 - (B) tax reasons; or
 - (C) regulatory reasons;
 - (3) the existence of circumstances justifying any of the procedures set out in clause 4.7 of this deed being followed;
 - (4) the Mandatory Exchange Conditions having been met;
 - (5) the occurrence of a Capital Trigger Event, a Non-Viability Trigger Event or a Change of Control Event under the Terms which requires PERLS X to be Exchanged; or
 - (6) the need for APRA's written approval prior to the Redemption or Exchange of PERLS X by the Issuer or prior to any amendment or waiver of the Terms or this deed;
- (j) **exercise of powers:** determine in any manner it thinks fit whether to exercise, and the manner, mode and time of exercise of, the Trustee's Powers. Subject to any law applicable to the Trustee, unless the Trustee is fraudulent, negligent or wilfully defaults, it is not liable in its personal capacity for any loss, cost, claim, damage or expense which may result from the exercise or failure to exercise any of its rights, powers or discretions; and
- (k) **waiver:** waive, so long as it is in writing and where required APRA's prior written approval has been obtained (APRA approval is required where the proposed waiver may affect the capital treatment of PERLS X under APRA's prudential standards), at any time and on any terms or conditions, any breach by the Issuer under this deed or the Terms but where a breach is the failure of the Issuer to Redeem or repay any PERLS X or to pay any Distribution on any PERLS X or to Exchange PERLS X for Ordinary Shares or a failure of the Issuer to issue Ordinary Shares when required in accordance with the Terms, or to the extent required by this deed, the Trustee may waive the breach only if:
- (1) the Holders have consented to or authorised the waiver, or the breach has been remedied; and
 - (2) where required the Issuer must obtain APRA's prior written approval (APRA approval is required where the waiver affects the capital treatment of PERLS X under APRA's prudential standards at the relevant time).

7.4 Holders bound

- (a) The exercise by the Trustee of the Powers (including the discretions referred to in clause 7.3 of this deed) binds all the Holders, whether or not the Holders gave an instruction or concurred in their exercise.

- (b) Each Holder (and any person claiming through or under a Holder) is bound by and PERLS X are issued on the condition that each Holder (and any person claiming through or under a Holder) is taken to have notice of and is bound by this deed and the Terms.

8 Trustee protections

8.1 Trustee not responsible for certain matters

Except to the extent provided by this deed, the Trustee:

- (a) **(form of documents)** has no responsibility for the form or contents of this deed and will have no liability arising as a result of or in connection with any inadequacy, invalidity or unenforceability of any provision of this deed except insofar as it relates to any representation or warranty given by the Trustee;
- (b) **(monitoring)** is not required to:
- (1) provide to any person any information concerning the business, financial condition, status or affairs of the Issuer;
 - (2) investigate the adequacy, accuracy or completeness of any information, confirmations or certificates provided by the Issuer;
 - (3) assess, investigate or keep under review the business, financial condition, status or affairs of the Issuer;
 - (4) monitor compliance by the Issuer with its obligations under this deed or the Terms or take any steps to ascertain whether any circumstances referred to in this deed or the Terms have occurred or are likely to occur, including without limitation:
 - (A) a Mandatory Exchange Date;
 - (B) a Capital Trigger Event;
 - (C) a Non-Viability Trigger Event;
 - (D) a Change of Control Event; or
 - (E) circumstances for any Redemption under the Terms;
 - (5) investigate or consider whether any issue of a PERLS X or any payment in respect of a PERLS X will be an unfair preference or other similar voidable transaction for the purposes of Chapter 5 of the Corporations Act;
- (c) **(notice)** is not required to notify any person of the execution of this deed or breach of this deed or the Terms or any other document relating to PERLS X; and
- (d) **(notices)** is not required to (and, to avoid doubt, in the case of Confidential Information, must not) provide to the Holders copies of notices, documents or other information received from the Issuer.

8.2 Knowledge of the Trustee

The Trustee:



- (a) will only be considered to have knowledge or notice of or be aware of any matter or thing if the Trustee has knowledge, notice or awareness of that matter or thing by virtue of the actual notice or awareness of the officers or employees of the Trustee who have day to day responsibility for the administration of the Trust where that actual notice or awareness arises from the performance of the administration of the Trust; and
- (b) will be taken not to have knowledge of the occurrence of a failure to make a payment of amounts payable in respect of PERLS X or a failure to issue Ordinary Shares to a Holder under this deed unless the Trustee has received written notice from a Holder or the Issuer stating that such failure has occurred and describing it.

8.3 Confidential information

Nothing in this deed requires the Trustee to disclose information or provide documents relating to the Issuer or any other person if the Trustee reasonably believes that to do so would constitute a breach of law or duty of confidentiality.

8.4 Capacity as Holder

If the Trustee or an associate of the Trustee is also a Holder, then in its capacity as a Holder it:

- (a) has the same rights and obligations as the other Holders; and
- (b) may exercise those rights and agrees to comply with those obligations independently from its role as Trustee as if it were not the Trustee.

8.5 Other dealings with Issuer and Holders

The Trustee and any Related Body Corporate of the Trustee may, without being liable to account to the Issuer or any Holder:

- (a) hold PERLS X, shares or any other marketable securities issued by the Issuer in any capacity;
- (b) represent or act for, or contract with, individual Holders in any capacity;
- (c) deal in any capacity with the Issuer or any of its Related Bodies Corporate or associates; or
- (d) act in any capacity in relation to any other trusts.

8.6 Indemnity for Trustee

- (a) Without prejudice to any right of indemnity by any applicable law given to trustees, the Trustee and every person appointed by it pursuant to this deed is indemnified by the Issuer in respect of all liabilities including any fines or penalties in respect of a charge and expenses including legal fees (charged at the usual commercial rates charged by the provider of the legal services) incurred by it in the execution of the trusts, authorities, discretions or Powers constituted or conferred by this deed or an amendment to this deed, and against all actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted in any way relating to this deed, or any amendment to this deed, other than:

- (1) a claim arising out of the Trustee's fraud, negligence or wilful default and;
 - (2) any Taxes (excluding any Indirect Tax) imposed on the Trustee's remuneration for its services as Trustee.
- (b) The Trustee may retain and pay out of any moneys in its hands in priority to any claim by a Holder, all sums necessary to effect and satisfy such indemnity or an amount due and payable to the Trustee under clause 9 of this deed.

8.7 Continuing indemnity

The indemnity contained in clause 8.6(a) above is a continuing and independent obligation of the Issuer and it and clause 8.9 survive:

- (a) winding up or termination of the Trust under this deed;
- (b) the retirement or removal of the Trustee as trustee; and
- (c) the substitution of the Issuer for a Successor under clause 18.1 or 18.2 of this deed, subject to clause 18.3.

8.8 Exclusions of liability

Neither the Trustee nor any of its directors, officers, employees, agents or attorneys or Related Bodies Corporate will be responsible for or liable to the Issuer or any Holder or any other person for loss caused by:

- (a) the Trustee's acts or omissions in accordance with the Terms of this deed in reliance on:
 - (1) the Register;
 - (2) information or documents supplied by the Issuer or any agent of the Issuer;
 - (3) the authenticity of any document it reasonably believes to be genuine and correct;
 - (4) opinion, advice or information of any consultant or adviser of the Trustee;
 - (5) acting on any instruction or direction properly given to it, in writing or otherwise, by the Issuer or Holders under this deed;
- (b) any loss arising due to the acts or omissions of any delegate, attorney or agent of the Trustee (other than a Related Body Corporate of the Trustee), unless the Trustee fails to use reasonable care in selecting and monitoring them or the act or omission was caused or contributed to by the Trustee's negligence, wilful misconduct or fraud;
- (c) any act, omission, neglect or default of the Issuer or any other person under or in connection with this deed or PERLS X;
- (d) any act or omission required by law or by any court of competent jurisdiction;
- (e) anything required to be done or omitted to be done in accordance with an instruction or direction given to it by the Holders at a Meeting;
- (f) any act or omission of an operator of any securities title, transfer or holding system or any absence of, or defect in, the title of the Issuer to any asset;
- (g) any payment having been made to any fiscal authority;



- (h) the Trustee waiving or excusing, subject to any conditions that the Trustee thinks fit, any breach by the Issuer of the Issuer's obligations under this deed;
- (i) the subscription of moneys by applicants for PERLS X or to see to the application of those moneys; or
- (j) the form or contents of this deed and will have no liability arising as a result of or in connection with any inadequacy, invalidity or unenforceability of any provision of this deed insofar as it applies to the Trustee or to any representation or warranty given by the Trustee.

8.9 Limitation of liability

- (a) The Trustee enters this deed as trustee of the Trust and in no other capacity.
- (b) Subject to clause 8.9(e) below, a liability of the Trustee to the Holders arising under or in connection with this deed is limited to and can be enforced by the Holders against the Trustee only to the extent to which it can be satisfied out of the property of the Trust against which the Trustee is actually indemnified in respect of the liability incurred by it as trustee of the Trust. This limitation of the Trustee's liability applies despite any other provision of this deed (subject to clause 8.9(e) below) and extends to all Obligations in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this deed.
- (c) The Issuer and the Holders may not:
 - (1) have recourse to the Trustee, or enforce their rights against the Trustee arising from breach or non-performance of the Obligations by the Trustee, beyond the Assets against which the Trustee is actually indemnified; or
 - (2) seek the appointment of a receiver, a liquidator, an administrator or any other similar person to the Trustee (except in relation to property of the Trust) or prove in any liquidation of or affecting the Trustee (exception in relation to the property of the Trust).
- (d) The Holders and the Issuer may only enforce any rights they may have against the Trustee arising from the breach or non-performance of the Obligations only to the extent to which it can be satisfied out of the Assets against which the Trustee is actually indemnified in respect of the liability incurred by it as trustee of the Trust.
- (e) The provisions of clause 8.8 and this clause 8.9 of this deed will not apply to any obligation or liability of the Trustee to the extent arising or not satisfied as a result of the Trustee's fraud, negligence or wilful default.
- (f) The Issuer acknowledges that it is responsible under this deed and the Terms for performing a variety of obligations under this deed and the Terms. No act or omission of the Trustee (including any related failure to satisfy its obligations or breach of representation or warranty under this deed) will be considered fraud, negligence or wilful default of the Trustee to the extent to which the act or omission was caused or contributed to by any failure of the Issuer or any other person (other than a Related Body Corporate of the Trustee) to fulfil its obligations relating to the Trust or by any other act or omission of the Issuer or any other person (other than a Related Body Corporate of the Trustee).



- (g) For the purposes of this clause 8.9:
- (1) obligations means all obligations and liabilities of whatever kind undertaken or incurred by, or devolving upon, the Trustee under or in respect of this deed; and
 - (2) assets includes all assets, property and rights, real and personal of any value whatsoever.

8.10 Trustee capacity

In this deed, except where expressly provided to the contrary:

- (a) a reference to the Trustee is a reference to the Trustee in its capacity as trustee of the trust created by this deed only, and in no other capacity; and
- (b) a reference to the undertaking, assets, business, money or any other thing of or in relation to the Trustee is a reference to such undertaking, assets, business, money or other thing of or in relation to the Trustee only in its capacity as trustee of the trust created by this deed, and in no other capacity.

8.11 Notice of this deed

For the avoidance of doubt, the Trustee is not bound to give notice to any person of the execution of this deed.

9 Trustee's remuneration and expenses

9.1 Remuneration

- (a) The Issuer must pay to the Trustee by way of remuneration for its services as trustee under this Deed a fee or such other remuneration as may be agreed between the parties, and in the manner notified by the Trustee to the Issuer, from time to time.
- (b) If the Trustee is required at any time to appoint a Sale Agent or deal with unclaimed money in accordance with the procedures set out in clause 4.7 of this deed, then its reasonable out of pocket Costs properly incurred by or on behalf of the Trustee in connection with clause 4.7 of this deed will be taken out of the Proceeds of sale of the Ordinary Shares or paid in accordance with any other provision or arrangement providing for payment of amounts to the Trustee or any replacement arrangements put in place by a Successor or alternative arrangements between a Successor and the Trustee, if applicable.
- (c) If the Trustee is required at any time to:
 - (1) undertake duties which relate to the enforcement of the terms of this deed by the Trustee upon a default by any other party under the terms of this deed or otherwise participate in legal proceedings to which it has been joined as a party;
 - (2) undertake activities outside of the normal day to day scope of the Trustee's duties in respect of Corporate Transactions;
 - (3) appoint a Sale Agent or deal with unclaimed money under clause 4.7 of this deed; or



- (4) undertake duties which are agreed by the Issuer to be of an exceptional nature or otherwise outside the scope of the normal duties of the Trustee,

then the Trustee is entitled to additional remuneration as may be agreed between the Trustee and the Issuer or, failing agreement, determined by reference to the reasonable time and attendance costs at the prevailing hourly rates for legal work or executive time (exclusive of GST) of the Trustee's employees required in respect of such activities to the extent outside the normal day-to-day scope of the Trustee's duties.

In this clause 9.1, **Corporate Transactions** means a transaction or proposed transaction affecting the Issuer or the CBA Group that involves:

- (5) equity raisings;
- (6) mergers and acquisitions;
- (7) divestments;
- (8) significant restructures;
- (9) responding to significant regulatory inquiries; and
- (10) debt refinancing.

9.2 Reimbursement

- (a) The Issuer must pay to the Trustee on demand all reasonable out of pocket Costs properly incurred by or on behalf of the Trustee in connection with:
 - (1) the negotiation, preparation and execution of this deed, registration, stamping, administration and any subsequent consent, agreement, approval, waiver or amendment required under this deed;
 - (2) the carrying out or exercise or the purported carrying out or exercise by the Trustee of any duty, obligation or power imposed or conferred expressly or impliedly by this deed on the Trustee or upon Holders or by law;
 - (3) the exercise, preservation of, or enforcement of, any rights in connection with any breach or default in the observance or performance by the Issuer of any of the covenants, obligations, conditions and provisions of this deed or the performance by the Trustee of its powers, duties and discretions under clause 7 of this deed;
 - (4) the service of Notices to any Holder, the convening and holding of any Meeting and the carrying out of any proper directions or resolutions of Holders; or
 - (5) all actions taken under this deed in relation to complying with any notice, request or requirement of any Government Agency and any investigation by any Government Agency into the affairs of the Issuer.
- (b) If the Issuer or any of its assets are placed in liquidation, the Trustee is entitled (as between itself, the Issuer and the Holders) to claim and receive from any receiver, receiver and trustee, official trustee, liquidator, administrator or similar official amounts by way of reimbursement of all costs, charges, fees and expenses incurred by the Trustee (including on its own account) in connection with any enforcement or other action taken by it as trustee of the Trust.



9.3 No indemnity by Holders

Except as otherwise agreed with any Holder or Holders in connection with the taking of any action by the Trustee, the Trustee is not entitled to be indemnified by any Holder personally.

9.4 GST

The Issuer must pay to the Trustee on demand any goods and services tax, value added tax or any like tax (**GST**) which is payable as a consequence of any supply made or deemed to be made or other matter or thing done under or in connection with this deed by the Trustee (together with any fine, penalty or interest payable because of a default by the Issuer). The amount paid by the Issuer to the Trustee on account of the GST must be sufficient to ensure that the economic benefit to the Trustee of this deed remains the same whether or not GST applies. The Trustee will give the Issuer a tax invoice.

9.5 Priority and survival

All remuneration and expenses referred to in this clause 9 shall be paid in priority to any claim by any Holder and continue to be payable until paid notwithstanding that this deed or the Trust may be terminated, or the Trust may be wound up or subject to administration by or under the order of any court.

9.6 Right of indemnity not affected by unrelated breach

Where the Trustee incurs a liability, claim or loss or expense of any kind pursuant to a proper exercise of the Trustee's powers under the Trust Deed or at law, the Trustee may exercise any of its rights of indemnification or reimbursement out of the property of the Trust to satisfy that liability to any creditor of the Trustee, despite any loss the Trust may have suffered or any diminution in the value of the property of the Trust as a consequence of any unrelated act or omission by the Trustee or any person or entity acting on behalf of the Trustee.

10 Retirement and removal of Trustee

10.1 Retirement

Subject to compliance with the relevant statutory requirements for the time being, the Trustee may retire by giving notice to the Issuer, but such retirement will not be effective until the last to occur of the following:

- (a) the day which is 60 days after the date of the notice (or such shorter period as the Trustee and the Issuer may agree); and
- (b) the day upon which the appointment of a new Trustee becomes effective under clause 10.3 of this deed.

10.2 Removal

- (a) Subject to compliance with the relevant statutory requirements for the time being, the Trustee must retire as trustee for the Holders under this deed under clause 10.1 and the Issuer may by written notice remove the Trustee if:

- (1) the Trustee is in material breach of its obligations under this deed and has not rectified the breach within 10 Business Days of receiving a written notice from the Issuer to rectify the breach;
 - (2) the Trustee ceases or refuses to act as trustee under this deed;
 - (3) the Trustee ceases to carry on business;
 - (4) the Trustee has not been validly appointed;
 - (5) the Trustee is placed in liquidation or is wound up or dissolved;
 - (6) a receiver, receiver and trustee, official trustee, liquidator, administrator or similar official is appointed to the Trustee;
 - (7) any licence, consent, Authorisation, permit or similar thing the Trustee is required to hold to carry out its obligations and duties under or in respect of this deed is revoked or not renewed; or
 - (8) the Issuer is authorised or requested to do so by a Meeting of the Holders called in accordance with clause 11 of this deed.
- (b) Any removal of the Trustee by the Issuer under this clause 10.2 will only take effect upon the appointment of a new Trustee under clause 10.3 below.
- (c) On the retirement or removal of the Trustee, the Trustee must at the cost of the Issuer do all such things and execute all such deeds and assurances as are necessary for the purpose of vesting in a new trustee all money, property, rights, powers, authorities and discretions vested in the Trustee under this deed.

10.3 Appointment of new Trustee

- (a) The Issuer may appoint a Trustee to be a new Trustee following the retirement or removal of the Trustee in accordance with this clause 10, but if the Issuer fails to do so within 60 days after receiving a notice from the Trustee under clause 10.1 above then the Trustee may appoint a new Trustee (or, if possible, apply to the court for the appointment of a new Trustee). The new Trustee cannot be the Issuer or a Related Body Corporate of the Issuer.
- (b) A new Trustee may be appointed by deed executed under seal by the new Trustee and the Issuer or the Trustee (as applicable) and such execution shall by force of this clause 10.3 vest in the new Trustee all Powers and all right title and interest of the Trustee in this deed and the Terms.

10.4 Release

- (a) When the Trustee retires or is removed, the Trustee is by force of this clause 10.4 discharged and released from its obligations, covenants and liabilities under this deed arising after the date it retires or is removed. The Issuer must then, if required by the Trustee, execute a confirmation of release in favour of the Trustee in a form and substance reasonably acceptable to the Trustee.
- (b) The retirement, removal or departure of the Trustee does not prejudice any accrued right or obligation of the Trustee (including, without limitation, its right of indemnity or entitlement to be paid fees that continue to accrue up to the date of appointment of the new trustee).

10.5 Obligations of Trustee

On the retirement or removal of the Trustee, the Trustee must do all such things and execute all such deeds and assurances as are reasonably necessary for the purpose of vesting in a new trustee all money, property, rights, powers, authorities and discretions vested in the Trustee under this deed.

11 Meetings of Holders

11.1 Meetings of Holders

- (a) The Trustee or the Issuer may at any time convene a Meeting.
- (b) The provisions in Schedule 4 of this deed apply to any Meeting of Holders.
- (c) The Issuer must convene a Meeting on receipt of a direction in writing by Holders who hold 10% or more of PERLS X stating the object of the Meeting and any proposed resolution. The Issuer must serve a copy of the direction on the Trustee together with all other relevant information.
- (d) The Trustee may do all things (including executing documents) it reasonably considers necessary or desirable under or in connection with any Ordinary Resolution or Special Resolution.

11.2 Power of Holders

Subject to this deed and the Terms, the Holders may by Ordinary Resolution:

- (a) give a direction to the Trustee as to; or
- (b) authorise, ratify or confirm anything done or not done by the Trustee in respect of,

the performance or exercise of any of the duties, rights, powers and remedies of the Trustee under or relating to this deed or PERLS X, and may by Special Resolution approve any amendment to the Trust Deed or the Terms in accordance with clause 14 of this deed or do anything else for which the Trust Deed or the Terms provide for a Special Resolution.

11.3 Passing of resolution

A resolution passed at a Meeting held in accordance with this deed is binding on all Holders.

12 Register

12.1 Maintenance of the Register

- (a) The Issuer must establish and maintain (or cause to be established and maintained) a Register and enter (or cause to be entered) on the Register:
 - (1) the terms and conditions of PERLS X;



- (2) the name and address of the Holder and the amount of PERLS X held to be recorded in the Register;
 - (3) any payment instructions or account details notified by the relevant Holder (or by the Issuer in respect of the relevant Holder) to the Registrar, for the purpose of receiving payments in relation to PERLS X held by such Holder; and
 - (4) any other particulars which the Issuer thinks fit or that it is required to include on the Register under this deed.
- (b) The Issuer must promptly, on receipt of details of any change of name or address of a Holder notified in writing and accompanied, in the case of change of name, by any evidence which the Issuer may reasonably require, alter (or cause to be altered) the details recorded on the Register in respect of that Holder.
- (c) On giving a notice by advertisement or otherwise as may be required by law, or the requirements of the Listing Rules, the Issuer may from time to time close the Register for any period or periods not exceeding in any one year the maximum period permitted by law or those requirements in aggregate in any calendar year.
- (d) No notice of any trust (whether express, implied or constructive) will be entered in the Register except as may be ordered by a court of competent jurisdiction.
- (e) At any time the Issuer may (on such terms as it thinks fit) appoint a person to establish and maintain a Register and may terminate such appointment, however the Issuer will remain responsible for maintaining or ensuring that there is maintained a Register and the Trustee may rely on such Register as conclusive evidence of PERLS X issued under this deed.
- (f) The Issuer must give a copy of the Register to the Trustee within 48 hours of a request by the Trustee for a copy of such Register. A Holder must advise the Issuer of any change to the information noted in the Register in respect of that Holder.
- (g) The Trustee and the Issuer are entitled to accept the correctness of all information contained in a Register without investigation and are not liable to any person for any error in it.
- (h) The Issuer may at any time rectify any error in the Register. None of the Issuer or the Trustee is liable for any loss, Costs or liability incurred by any person as a result of doing so.
- (i) Where a Holder transfers some but not all of its PERLS X, the transfer may be recorded in the Register in respect of any of the Holder's PERLS X.

12.2 Joint Holders

Where two or more persons are registered as the holders of PERLS X (**Joint Holders**) they are deemed to hold PERLS X as joint tenants, on the following conditions:

- (a) the Joint Holders are jointly and severally liable in respect of all payments, including payment of any Tax, which ought to be made in respect of PERLS X;
- (b) on the death of a Joint Holder, the survivor or survivors are the only person or persons whom the Issuer or the Trustee will recognise as having any title to PERLS X, but the Issuer or the Trustee may require any evidence of death which it thinks fit;



- (c) any one of the Joint Holders may give an effective receipt which will discharge the Issuer or the Trustee in respect of any payment;
- (d) the Joint Holders of a PERLS X are counted as a single holder of PERLS X for the purposes of calculating the number of Holders or requisitioners who have applied for a Meeting;
- (e) only the person whose name appears first in the applicable Register as one of the Holders is entitled to delivery of any notices, cheques or other communications from the Issuer or the Trustee, and any notice, cheque or other communication given to that person is deemed to be given to all the Joint Holders;
- (f) If more than one address is notified to the Issuer, the address recorded in the Register will be the address of the Joint Holder whose name first appears in the Register; and
- (g) a payment to any one of the Joint Holders will discharge the Issuer's liability with respect to that payment.

12.3 Register conclusive

Each in the Register of a person as a Holder constitutes:

- (a) conclusive evidence of that person's:
 - (1) absolute ownership of that PERLS X;
 - (2) entitlement to the other benefits given to Holders under the Terms and this deed in respect of the PERLS X; and
- (b) an undertaking by the Issuer to pay amounts in accordance with the Terms, subject to correction of the Register for fraud or error.

12.4 Holding statements

- (a) The Issuer or the Register (as applicable) must issue to each Holder a holding statement as soon as reasonably practicable after the issue of PERLS X.
- (b) Any holding statement in respect of PERLS X is no guarantee that any amounts will be paid to the Holder.

13 Transfers

13.1 Transfer

- (a) PERLS X may be transferred in accordance with the Terms.
- (b) A transferor of PERLS X remains the Holder until the transfer is registered and the name of the transferee is entered in the applicable Register in respect of PERLS X.

13.2 Transaction advice after transfer

If the Issuer accepts a transfer under this clause 13, the Issuer may issue a transaction advice for:

- (a) PERLS X which have been transferred; and
- (b) the balance of any PERLS X which were not transferred.

13.3 Participation in transfer systems

If PERLS X are lodged or approved for entry on CHESS, then ASX Settlement Operating Rules prevail to the extent of any inconsistency with clause 12 of this deed or this clause 13.

14 Amendments to deed

14.1 Amendment of Terms

The Terms may only be amended in accordance with the Terms.

14.2 Amendments without consent

Subject to clause 14.1 above and complying with the Corporations Act and all applicable laws, the Issuer may by deed poll and without the consent or approval of the Holders or the Trustee, amend the Terms or this deed from the date specified by the Issuer to the Trustee if such amendment is, in the opinion of the Issuer:

- (a) of a formal, minor or technical nature;
- (b) made to cure any ambiguity, correct any manifest error, or correct or supplement any defective provisions of the Terms or amend any provision of the Trust Deed;
- (c) necessary or expedient for the purpose of:
 - (1) enabling PERLS X to be listed for quotation, or to retain quotation, on any securities exchange or to be offered for subscription or for sale under the laws for the time being in force in any place;
 - (2) complying with the provisions of any statute, the requirements of any statutory authority, the ASX Listing Rules or the listing or quotation requirements of any securities exchange on which the Issuer may propose to seek a listing or quotation of PERLS X; or
 - (3) facilitating a substitution of the Issuer for a Successor in accordance with clause 18 of this deed;
- (d) made to amend any date or time period stated, required or permitted in connection with any Exchange or Redemption (including, without limitation, when the proceeds of Redemption are to be reinvested in a new security to be issued by the Issuer or a Related Body Corporate); or
- (e) not materially prejudicial to the interests of Holders as a whole.

14.3 Amendments with consent

Without limiting clause 14.2 above, at any time and from time to time, the Issuer may by deed poll amend the Terms or this deed if such amendment is approved by a Special Resolution. In this case, the Terms of all PERLS X will be amended from the date specified in the Special Resolution or otherwise notified to the Holders (provided such



date is permitted by the terms of the Special Resolution). Despite this clause 14.3, no amendment under this clause 14.3 will affect the personal rights or obligations of the Trustee under this deed unless made with the consent of the Trustee (such consent not to be unreasonably withheld or delayed).

14.4 Amendments

In this clause 14 'amend' includes modify, cancel, alter or add to and 'amendment' has a corresponding meaning.

14.5 APRA approval of amendments

Prior to any amendment under the Terms being effective, where required the Issuer must obtain APRA's prior written approval (APRA approval is required where the proposed amendment may affect the capital treatment of PERLS X under APRA's prudential standards at the relevant time) and any consent or approval required under any applicable law, regulation or ASX Listing Rule.

15 Termination and release

15.1 Termination of trust

This deed terminates on the earlier of:

- (a) if no PERLS X have been issued, any date specified by the Issuer by notice to the Trustee;
- (b) if PERLS X have been issued, the date the last of the following occurs:
 - (1) the Redemption or Exchange of all PERLS X or the date on which the Proceeds are distributed to the relevant Holders in accordance with clause 4.7 of this deed;
 - (2) payment of all amounts due and payable on PERLS X under the Terms;
 - (3) payment of all Costs reasonably and properly incurred by the Trustee; and
 - (4) payment of all other amounts payable by the Issuer to the Trustee or Holders;
- (c) the date on which Holders unanimously determine that the Trust be wound up; or
- (d) the date required by law.

15.2 Disposal of assets

If the Trust is terminated in accordance with clause 15.1 above, the Trustee must distribute the balance of any income and capital in accordance with clause 2.3 of this deed.



15.3 Confirmation of release

- (a) At any time after the Issuer's obligations have been discharged under clause 15.1 above, either party (**Released Party**) may request the other to execute in favour of the Released Party, certification that the Released Party is released from the obligations under this deed and the other party must provide the Released Party with the confirmation and release so requested.
- (b) Without limiting the generality of clause 7.3(e) of this deed, where the Trust terminates following satisfaction of the conditions in clause 15.1(a), neither party is required to execute a release in favour of the Released Party unless and until the Issuer has procured an auditor of the Issuer to certify the satisfaction of the conditions specified in clause 15.1(a) (**Termination Certificate**), and the Trustee may rely and act on the Termination Certificate.

16 Confidentiality

16.1 Confidential Information

The Trustee acknowledges that all Confidential Information is confidential to the Issuer and must not be disclosed to any person except as permitted by clause 16.2 of this deed.

16.2 Permitted disclosure

The Trustee may disclose Confidential Information:

- (a) to the extent required by this deed or by law, but only to the extent so required;
- (b) to its officers, employees and professional advisers, but only to the extent that such disclosure is considered by the Trustee appropriate or necessary in order for the Trustee to perform its obligations (including exercising the Powers) under this deed; or
- (c) with the prior written consent of the Issuer (which may be given or withheld in its absolute discretion).

16.3 Disclosure to third parties

The Trustee must use its best endeavours to ensure that every person to whom it provides Confidential Information under clause 16.2 of this deed is informed in writing of the terms of this clause 16.

17 Representations and warranties

The Trustee and the Issuer each represents and warrants to the other that as at the date of this deed:

- (a) **incorporation:** it is duly incorporated and has the power to own its property and to carry on its business as it is now being conducted;
- (b) **authority:** it has full power and authority to enter into, deliver and perform its obligations under this deed;



- (c) **authorisations:** it has taken all necessary action to authorise the execution, delivery and performance of this deed in accordance with its terms;
- (d) **documents binding:** this deed constitutes (or will, when signed and delivered constitute) legal, valid and binding obligations enforceable against it in accordance with its terms, subject to stamping and any necessary registration and except as such enforceability may be limited by any applicable bankruptcy, insolvency, reorganisation, moratorium or trust or general principles of equity or other similar laws affecting creditors' rights generally; and
- (e) **no misrepresentation:** in the case of the Issuer only, to the best of its information, knowledge and belief after having made due inquiry, all written information provided by the Issuer to the Trustee is true in all material respects at the date it was provided or as at the date (if any) it was stated and that neither that information nor its conduct and the conduct of anyone on its behalf in relation to the transactions contemplated by this deed or PERLS X, was or is misleading in a material respect, by omission or otherwise.

Each representation and warranty in this clause is deemed to be repeated by the Issuer and the Trustee on the date PERLS X are issued with reference to the facts and circumstances existing on that date.

18 Substitution of Issuer for a NOHC

18.1 Successor may substitute Issuer

The Issuer may, in connection with a NOHC Event and provided that the Substitution Conditions are satisfied, without the approval of the Trustee or the Holders and by giving notice to ASX and the Holders:

- (a) substitute for itself a NOHC (the **Full Successor**) in place of the Issuer as the principal debtor under this deed; or
- (b) substitute for itself a NOHC (the **Partial Successor**) as the issuer of the Ordinary Shares on Exchange,

and a reference to the **Successor** shall be a reference to the Full Successor or the Partial Successor, as applicable. The notice shall specify the date on which the substitution is to take effect (**Date of Substitution**).

18.2 Substitution Conditions

The Substitution Conditions are:

- (a) in the case of the Full Successor:
 - (1) the Full Successor or another entity (which is a parent entity) subscribes for Ordinary Shares or other capital instruments acceptable to APRA in such amount as may be necessary, or takes other steps acceptable to APRA, to ensure that the capital position of the Issuer Level 1 Group and Issuer Level 2 Group will not be adversely affected;
 - (2) the Full Successor will expressly assume the Issuer's obligations under the Terms and this deed by entering into a deed poll for the benefit of the Holders (a **Successor Deed Poll** substantially in the

form of Schedule 2 of this deed) providing that, among other things, it agrees:

- (A) to comply with the restrictions in clause 2.7 of the Terms (with all necessary modifications); and
 - (B) to deliver fully paid ordinary shares in its capital under all circumstances when the Issuer would otherwise have been required to deliver Ordinary Shares, subject to the Terms (with all necessary modifications);
- (b) in the case of the Partial Successor:
- (1) the Partial Successor agrees with effect on and from the Date of Substitution, by entering into a Successor Deed Poll substantially in the form of Schedule 3 of this deed, to deliver fully paid ordinary shares in its capital under all circumstances when the Issuer would otherwise have been required to deliver Ordinary Shares, subject to the same terms and conditions as set out in the Terms (with all necessary modifications); and
 - (2) the Partial Successor agrees that in all circumstances where the Partial Successor delivers fully paid ordinary shares in its capital under the Successor Deed Poll in clause 18.2(b)(1), the Partial Successor or another entity (which is a parent entity) will subscribe for Ordinary Shares in such amount as may be necessary, or takes other steps acceptable to APRA, to ensure that the capital position of the CBA Level 1 Group and CBA Level 2 Group is equivalent to the position if the Successor Deed Poll had not been entered into and the Issuer was required to issue the Ordinary Shares; and
- (c) in the case of either the Full Successor or the Partial Successor (as applicable):
- (1) the Successor's ordinary shares are or are to be quoted on the ASX, and the Successor agrees to use all reasonable endeavours and furnish all such documents, information and undertakings as may be reasonably necessary in order to procure quotation of ordinary shares issued under the Terms on the securities exchanges on which the Successor's ordinary shares are quoted at the time of delivery;
 - (2) the Successor and the Issuer have obtained APRA approval and all other necessary authorisations, regulatory and governmental approvals and consents for such substitution and for the performance by the Successor of its obligations under PERLS X and the documents effecting substitution;
 - (3) if the Successor does not have a place of business in New South Wales, the Successor has appointed a process agent in New South Wales to receive service of process on its behalf in relation to any legal proceedings arising out of or in connections with PERLS X;
 - (4) the Successor has, in the reasonable opinion of the Issuer, the financial capacity to satisfy its obligations under the Successor Deed Poll;
 - (5) the Issuer has used all reasonable endeavours to give an irrevocable notice to the Holders as soon as reasonably practicable before a NOHC Event specifying the amendments to PERLS X which will be made in accordance with the Terms in connection with the substitution of the Successor as the issuer of the ordinary shares on Exchange in accordance with the Terms; and



- (6) the Issuer may by an instrument in writing and without the authority, assent or approval of Holders, amend the Terms and (with the consent of the Trustee, not to be unreasonably withheld, to the extent such amendment affects the personal rights or obligations of the Trustee) this deed to the extent such amendment is, necessary or expedient for the purpose of complying with the provisions of Chapter 2L of the Corporations Act.

18.3 Effect of substitution of Full Successor

If the relevant requirements set out in clauses 18.1 and 18.2 relating to a substitution under 18.1(a) have been completed, on and from the Date of Substitution:

- (a) the Full Successor will assume all of the obligations of, succeed to, and be substituted for, and may exercise every right and power of, the Issuer under this deed as the principal debtor in place of the Issuer and the Terms with the same effect as if the Successor had been named as the Issuer in the Terms and this deed; and
- (b) the Issuer (or any corporation which has previously assumed the obligations of the Issuer) will be released from its liability as the Issuer under this deed and the Terms:
- (c) references to the Issuer in any other provisions of this deed or the Terms will be taken to be references to the Full Successor only; and
- (d) if the Issuer gives a notice to Holders under clause 18.2(c)(5), the amended Terms will have the effect on and from the date specified in the notice.

18.4 Effect of substitution of Partial Successor

If the relevant requirements set out in clauses 18.1 and 18.2 above relating to a substitution under clause 18.1(b) have been completed, on and from the Date of Substitution:

- (a) the Issuer (or any corporation which has previously assumed the obligations of the Issuer) will be released from any obligation it would otherwise have under the Terms to issue Ordinary Shares to Holders upon Exchange; and
- (b) if the Issuer gives a notice to Holders under clause 18.2(c)(5), the amended Terms will have effect on and from the date specified in the notice.

18.5 Evidence of substitution

In connection with any substitution under this clause 18, the Issuer or the Successor must deliver to the Trustee:

- (a) a certificate signed by two directors of the Successor stating that the Successor Deed Poll complies with this clause 18 and the Terms, that all required conditions precedent have been satisfied and that the Successor will be solvent immediately after such substitution; and
- (b) opinions from reputable legal counsel of recognised standing in the jurisdiction of incorporation of the Successor, and in such other jurisdictions as are relevant and in relation to the governing law of this deed confirm that the Successor Deed Poll is the legal, valid and binding and enforceable obligation of the Successor.

19 General

19.1 Notices

Any notice or other communication including, but not limited to, any demand, consent or approval to or by a party under this deed or the Terms:

- (a) must be in legible writing and in English addressed as shown below:
- (1) if to the Issuer:
 - Address: Level 25, Tower 1, 201 Sussex Street, Sydney NSW 2000
 - Email: capitalandregulatorystrategy@cba.com.au
 - Attention: Head of Capital and Regulatory Strategy
 - (2) if to the Trustee:
 - Address: Level 18, Angel Place, 123 Pitt Street, Sydney, NSW 2000, Australia
 - Email: csf.team@perpetual.com.au
 - Attention: Manager, Corporate Securities - Perpetual Corporate Trust

or to any other address specified to the sender by any party by notice;

- (b) must be signed by an officer of the sender;
- (c) is deemed to be given by the sender and received by the addressee:
- (1) when delivered by hand, to the street address during the hours of 9.00 am to 5.00 pm on a Business Day;
 - (2) if sent by post, within Australia, on the day following the day on which the envelope containing the same was posted with postage prepaid to the postal address and, outside Australia, on the seventh day following the day on which the envelope containing the same was posted with postage prepaid to the postal address;
 - (3) if sent by email, on production of a report by the system by which the email is sent indicating that the email has been transmitted to the correct electronic address and without error. However, if the time of the deemed receipt is after 5:00 pm local time on a Business Day at the address of the recipient it is deemed to have been received at the commencement of business on the next Business Day; or
 - (4) if a notice is published in a newspaper, on the first date that publication has been made in all the required newspapers; and
- (d) any information provided by the Issuer to the Trustee under clause 5 of this deed may be sent by email to the Trustee's email address specified in clause 19.1(a) above. In addition, any communication (including notices, consents, approvals, requests and demands) under or in connection with this deed to the Issuer or the Trustee may be given by email where the recipient has separately agreed in writing that such communication or communications of that type may be given by email. Any communication sent by email in accordance with this clause 19.1(d) is deemed to have been received on the date the email is received (unless the sender receives notice that there has been an error with the transmission of the email to the intended electronic address). However, if

the time of the deemed receipt is after 5:00 pm local time on a Business Day at the address of the recipient it is deemed to have been received at the commencement of business on the next Business Day.

19.2 Service of Notices by the Issuer or the Trustee to any Holder

A notice given to a Holder by the Issuer or the Trustee must comply with the notice provisions of the Terms of PERLS X.

19.3 Service of Notices by the Holders to the Issuer or the Trustee

A notice given by a Holder to the Issuer or the Trustee must:

- (a) be in writing and signed by a person duly authorised by the sender; and
- (b) be left at, or sent by prepaid post (airmail if posted from a place outside Australia) to the address set out in clause 19.1 or the address last notified by the Issuer or the Trustee (as applicable), or sent by email to the email address set out in clause 19.1 or the email last notified by the Issuer or the Trustee (as applicable).

Notices are considered to be received at the times set out in clause 19.1(c).

19.4 Notice to Transferor Binds Transferee

Every person who, by operation of law, transfer or any other means, becomes entitled to be registered as the Holder is bound by every notice which, prior to the person's name and address being entered in the Register, was properly given to the person from whom the person derived title to those PERLS X.

19.5 Notices when Issuer is in liquidation

If the Issuer or any of its assets are placed in liquidation, then the receiver, receiver and trustee, official trustee, liquidator, administrator or similar official appointed to the Issuer or its assets (as applicable) must:

- (a) if the Trustee has not already done so, notify the Holders of the receiver's, receiver and trustee's, official trustee's, liquidator's, administrator's or similar official's appointment; and
- (b) provide regular updates to the Trustee and the Holders as to the status of the liquidation and any other material developments affecting the Issuer or its assets.

19.6 Service on Deceased Holders

A notice served in accordance with this clause 19 is (despite the fact that the Holder is then dead and whether or not the Issuer has notice of the Holder's death) considered to have been properly served in respect of any of PERLS X, whether held solely or jointly with other persons by the Holder, until some other person is registered in the Holder's place as the Holder or joint Holder. The service is sufficient service of the notice or document on the Holder's legal personal representative and any person jointly interested with the Holder in PERLS X.



19.7 Prohibition and enforceability

- (a) Any provision of, or the application of any provision of, this deed which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.
- (b) If any clause is void, illegal or unenforceable, it may be severed without affecting the enforceability of the other provisions in this deed.

19.8 Governing law and submission to jurisdiction

- (a) This deed is governed by the laws of New South Wales.
- (b) The Issuer and the Trustee each submit to the non-exclusive jurisdiction of the courts of New South Wales for the purpose of any legal proceedings arising out of this deed.

19.9 Waivers

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

19.10 Cumulative rights

The rights, powers, authorities, discretions and remedies arising out of or under this deed are cumulative and do not exclude any other right, power, authority, discretion or remedy.

19.11 Further assurances

Each party must do all things and execute at the Issuer's cost all further documents necessary to give full effect to this deed.

19.12 To the extent not excluded by law

The rights, duties and remedies granted or imposed under the provisions of this deed operate to the extent not excluded by law.



19.13 Counterparts

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



Schedules

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Schedule 1

Terms of PERLS X



Schedule 2

Deed poll – Substitution of the Issuer – Full Successor (Clause 18.1(a))

This deed poll is given by:

CBA **Commonwealth Bank of Australia**
ABN 48 123 123 124 of Ground Floor, 201 Sussex Street,
Sydney NSW 2000

NOHC []
ABN [] of []
[Insert details of NOHC, if relevant]

In favour of:

Trustee The Trust Company (Australia) Limited
Part of Perpetual Limited group
ABN 21 000 000 993 of Level 18, Angel Place, 123 Pitt Street,
Sydney NSW 2000, Australia

Background

- 1 CBA and the Trustee have entered into a trust deed (**Trust Deed**) dated [] March 2018 for the purpose of issuing subordinated, unsecured PERLS X (**PERLS X**) under the Trust Deed.
- 2 The Trustee agreed to act as trustee on behalf of the Holders of PERLS X on the terms and conditions contained in the Trust Deed.
- 3 The NOHC wishes to become the Issuer under the Trust Deed on the terms and conditions set out in this deed poll.

The parties agree as set out in the operative part of this agreement, in consideration of, among other things, the mutual promises contained in this agreement.



1 Interpretation

Words and phrases defined in the Trust Deed (including by incorporation) have the same meaning when used in this deed poll and **Substitution** has the meaning in clause 2 of this deed poll.

2 Status of NOHC

- (a) The NOHC agrees that, with effect from the date that CBA satisfies the requirements in clause 18.2 of the Trust Deed it irrevocably becomes a principal debtor under, and the “Issuer”, as defined in, and for all purposes under, the Trust Deed and the Terms in place of CBA as if named in and as a party to the Trust Deed and the Terms, and accordingly is bound by the Trust Deed and the Terms as Issuer and becomes subject to all obligations of the Issuer as the case requires in the Trust Deed and the Terms or any provision or arrangement providing for the payment of amounts to the Trustee or any replacement arrangements put in place by the NOHC or alternative arrangements between the NOHC and the Trustee as are agreed (**Substitution**).
- (b) Upon Substitution all references to “Issuer” or “CBA” in the Trust Deed and the Terms will be deemed to be a reference to the “NOHC” and any reference to the “Ordinary Shares” of the Issuer or CBA will be deemed to be a reference to the “ordinary shares” of the NOHC.
- (c) If the NOHC is not incorporated in Australia, the NOHC agrees to pay additional amounts in respect of any deduction or withholding on account of Tax on payments on PERLS X to the same extent that those additional amounts would be payable if references to Australia in the definition of Relevant Jurisdiction and clause 9 of the Terms were references to the jurisdiction in which the NOHC is incorporated.
- (d) The NOHC agrees that if the Trustee and the Issuer have not amended the Trust Deed as contemplated by clause 18.2(c)(7) with effect prior to or as at the Date of Substitution, the NOHC (as Issuer) and the Trustee may amend the Trust Deed as provided in clause 14.2(c)(2) of the Trust Deed to the extent such amendment is, necessary or expedient for the purpose of complying with the provisions of Chapter 2L of the Corporations Act. APRA approval is required where the proposed amendment may affect the capital treatment of PERLS X under APRA’s prudential standards at the relevant time.

3 Amendment, termination and release

- (a) This deed poll may be amended to the same extent and in the same circumstances as provided in clause 14 of the Trust Deed and as if references in that clause to the Trust Deed included references to this deed poll.
- (b) This deed poll and the obligations of the Issuer and the NOHC terminate on the date the Trust Deed is terminated under clause 15 of the Trust Deed.



4 Governing law

This deed poll is governed by the laws of New South Wales.

5 Benefit of deed poll

This deed poll is given in favour of and for the benefit of each Holder and the Trustee and their respective successors and permitted assigns.

6 Address for notices

(a) The details for the NOHC service of notices are:

Address: [•]

Attention: [•]

Facsimile: [•]

(b) The details for [] service of notices are:

Address: [•]

Attention: [•]

Facsimile: [•]

7 Attorneys

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



Executed as a deed poll:

Signed sealed and delivered for

by its attorney

sign here ► _____
Attorney

print name _____

in the presence of

sign here ► _____
Witness

print name _____

Signed sealed and delivered for

by its attorney

sign here ► _____
Attorney

print name _____

in the presence of

sign here ► _____
Witness

print name _____






Schedule 3

Deed poll – Substitution of the Issuer – Partial Successor (Clause 18.1(b))

This deed poll is given by:


CBA **Commonwealth Bank of Australia**
ABN 48 123 123 124 of Ground Floor, 201 Sussex Street, Sydney
NSW 2000

NOHC 
ABN  of 
[Insert details of NOHC, if relevant]

In favour of:

Trustee The Trust Company (Australia) Limited
Part of Perpetual Limited group
ABN 21 000 000 993 of Level 18, Angel Place, 123 Pitt Street,
Sydney NSW 2000, Australia

Background

- 1 CBA and the Trustee have entered into a trust deed (**Trust Deed**) dated  March 2018 for the purpose of issuing subordinated, unsecured PERLS X (**PERLS X**) under the Trust Deed.
- 2 The Trustee agreed to act as trustee on behalf of the Holders of PERLS X on the terms and conditions contained in the Trust Deed.
- 3 The NOHC wishes to assume the obligations of the Issuer under the Terms to deliver Ordinary Shares on Exchange by instead delivering fully paid ordinary shares in its capital to Holders and accordingly the NOHC wishes to assume certain obligations of the Issuer under the Trust Deed on the terms and conditions set out in this deed poll.

The parties agree as set out in the operative part of this agreement, in consideration of, among other things, the mutual promises contained in this agreement.



1 Interpretation

Words and phrases defined in the Trust Deed (including by incorporation) have the same meaning when used in this deed poll and **Substitution** has the meaning in clause 2 of this deed poll.

2 Status of NOHC

- (a) The NOHC agrees that, with effect from the date that CBA satisfies the requirements in clause 18.2 of the Trust Deed it irrevocably agrees to deliver fully paid ordinary shares in its capital to Holders under all circumstances when CBA would otherwise have been required to deliver Ordinary Shares (these circumstances being the **Exchange Provisions**), subject to the same terms and conditions as set out in the Terms (with all necessary modifications) as if named in and as a party to the Trust Deed and the Terms in respect of the Exchange Provisions, and accordingly is bound by the Trust Deed and the Terms and becomes subject to the obligations of the Issuer as the case requires in the Trust Deed and the Terms in respect of the Exchange Provisions (**Substitution**).
- (b) Upon Substitution all references to “Issuer” or “CBA” in the Trust Deed and the Terms as issuer or deliverer of Ordinary Shares in the Exchange Provisions will be deemed to be a reference to the “NOHC” and any reference to the “Ordinary Shares” of the Issuer or CBA will be deemed to be a reference to the “ordinary shares” of the NOHC.
- (c) The NOHC agrees that if the Trustee and the Issuer have not amended the Trust Deed as contemplated by clause 18.2(c)(7) with effect prior to or as at the Date of Substitution, CBA (as Issuer) and the Trustee may amend the Trust Deed as provided in clause 14.2(c)(2) of the Trust Deed to the extent such amendment is, necessary or expedient for the purpose of complying with the provisions of Chapter 2L of the Corporations Act. APRA approval is required where the proposed amendment may affect the capital treatment of PERLS X under APRA’s prudential standards at the relevant time

3 Amendment, termination and release

- (a) This deed poll may be amended to the same extent and in the same circumstances as provided in clause 14 of the Trust Deed and as if references in that clause to the Trust Deed included references to this deed poll.
- (b) This deed poll and the obligations of the Issuer and the NOHC terminate on the date the Trust Deed is terminated under clause 15 of the Trust Deed.

4 Governing law

This deed poll is governed by the laws of New South Wales.



5 Benefit of deed poll

This deed poll is given in favour of and for the benefit of each Holder and the Trustee and their respective successors and permitted assigns.

6 Address for notices

(a) The details for the NOHC service of notices are:

Address: [•]

Attention: [•]

Facsimile: [•]

(b) The details for [] service of notices are:

Address: [•]

Attention: [•]

Facsimile: [•]

7 Attorneys

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



HERBERT
SMITH
FREEHILLS

Executed as a deed poll:

Signed sealed and delivered for

by its attorney

sign here ► _____
Attorney

print name _____

in the presence of

sign here ► _____
Witness

print name _____

Signed sealed and delivered for

by its attorney

sign here ► _____
Attorney

print name _____

in the presence of

sign here ► _____
Witness

print name _____



Schedule 4

Meetings of Holders

1 Notice of Meeting

- (a) At least 15 Business Days' notice in writing of any Meeting must be given to the Trustee, the Issuer and the Holders by the party convening the Meeting.
- (b) If a Holder does not receive notice, the Meeting is still valid.
- (c) The party convening the Meeting must notify the Trustee, the Issuer and Holders (as the case requires) in writing of:
 - (1) the place, day and time of the Meeting ; and
 - (2) the nature of the business to be transacted.
- (d) If either the Issuer or the Trustee omits to give notice under paragraph 1(c) of this schedule 4 or if either does not receive notice, the Meeting is invalid unless the person who did not receive notice waives the notice requirement.
- (e) For the purposes of any Meeting, or for determining whether any resolution is passed without holding a Meeting, any PERLS X held by the Issuer or any Related Body Corporate of the Issuer shall be treated as not being on issue, unless those PERLS X are held in connection with any wealth management business (including life company business), as a trustee, as the holder of an Australian Financial Services licence or in any circumstances imposing on the holder a duty to act having regard to the interests of any third party.

2 Who may attend and address Meeting

Each Holder of PERLS X is entitled to attend and vote at any Meeting or any rescheduled Meeting (which was adjourned pursuant to paragraph 3(c) of this schedule 4).

The Trustee, the Issuer, any person invited by any of them and the Auditor is entitled to attend and address a Meeting or rescheduled Meeting.

3 Quorum

- (a) No business may be transacted at any Meeting unless a quorum of Holders of PERLS X is present at the time when the Meeting proceeds to business.
- (b) A quorum for any Meeting is at least 5 persons holding or representing by attorney, representative or proxy at least 10% of PERLS X.



- (c) If a quorum is not present within half an hour from the time appointed for the Meeting must be adjourned as the chair directs.
- (d) At a rescheduled Meeting (which was adjourned pursuant to paragraph 3(c) of this schedule 4) the Holders with at least 5% of PERLS X who are present either in person or by proxy constitute a quorum and are entitled to pass the resolution.

4 Chair

- (a) A nominee of the Trustee (if any) may preside as chair at a Meeting.
- (b) If the Trustee does not appoint a person to be chairperson of a meeting, or the person does not appear within 15 minutes from the time appointed for the Meeting or is unwilling to act, the Holders present must elect one of their number to preside as chair.
- (c) The chair:
 - (1) need not be a Holder; and
 - (2) may be an officer or employee of the Issuer or the Trustee.

5 Voting

- (a) Subject to Holders being entitled to vote, any question submitted to a Meeting must be decided in the first instance by a show of hands, but a poll will be taken in any case where:
 - (1) it is required by this deed or by law that the question be decided by a majority which is to be measured by a percentage of the votes cast by those present; or
 - (2) either before or immediately after any question is put to a show of hands a poll is demanded by the chair of the Meeting, the Trustee, the Issuer, or at least 5 Holders of PERLS X, present personally or by proxy, representative or attorney, holding or representing by proxy, representative or attorney at least 5% of PERLS X.
- (b) In the case of equality of votes, the chair of a Meeting has a casting vote in addition to his votes (if any) as a Holder both on a show of hands and on a poll.

6 Votes

At a Meeting:

- (a) on a show of hands each Holder present personally or by proxy, attorney or representative with the right to vote at that Meeting has one vote; and
- (b) on a poll each Holder present personally or by proxy, attorney or representative with a right to vote at that Meeting is entitled to one vote for each PERLS X.



7 Voting by joint holders

- (a) If PERLS X are held jointly, the most senior Holder's vote either in person or by proxy is accepted to the exclusion of the other joint holders.
- (b) The most senior Holder is the person whose name appears first on the Register.

8 Voting by corporation

- (a) A corporation who is a Holder may vote through a representative authorised in writing.
- (b) The corporation's representative is regarded as a Holder and has the same rights as a Holder.

9 Voting by person of unsound mind

If a Holder is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health, the Holder's committee or Trustee or other person who properly has the management of the Holder's estate may exercise any rights of the Holder in relation to a Meeting as if the committee, Trustee or other person were the Holder.

10 Objection to voter's qualification

- (a) An objection may be raised to the qualification of a voter only at the Meeting where the vote objected to is given or tendered.
- (b) An objection must be referred to the chair whose decision is final.
- (c) The chair may consult with any representative of the Issuer and the Trustee present at the Meeting.
- (d) A vote allowed at a Meeting is valid for all purposes.

11 Proxies

A Holder is entitled to appoint another person as his proxy to attend and vote at a Meeting. Any person including a Holder may act as a proxy, and that proxy has the same rights as the appointer to vote whether on a show of hands, to speak, and be reckoned in the quorum.



12 Proxy instrument

- (a) If the appointer of a proxy is an individual, the instrument of appointment must be in writing and signed by the appointer or the appointer's attorney authorised in writing.
- (b) If the appointer of a proxy is a corporation, the instrument of appointment must be:
 - (1) under its common seal or in accordance with section 127 of the Corporations Act; or
 - (2) under the hand of an officer or attorney who has been authorised by the corporation.

13 Voting authority to be deposited with Issuer

- (a) The instrument appointing a proxy or a facsimile copy of it and the original or certified copy of the power of attorney or authority under which it is signed or a facsimile copy of it must be deposited with the Issuer at least 48 hours, or any shorter period determined by the Issuer from time to time, before the time appointed for the Meeting at which the proxy proposes to vote. The original of any facsimile instrument provided under this paragraph 13(a) must be deposited with the Issuer before the time appointed for the Meeting.
- (b) If paragraph 13(a) of this schedule 4 is not complied with, the proxy is invalid.
- (c) An instrument appointing a proxy is only valid for 12 months from its execution date.

14 Effect of death or insanity on vote under proxy

- (a) A vote given under an instrument of proxy is valid even though the principal is insane at the time, has died or has revoked the proxy or the authority under which the proxy was executed.
- (b) Paragraph 14(a) of this schedule 4 does not apply if the Issuer has notice in writing of the death, insanity or revocation before the Meeting at which the proxy is to be used.

15 Adjournments

The chair may adjourn a Meeting with the consent of the majority of Holders present.



16 Declaration by chair of voting

Unless a poll has been demanded, a declaration by the chair that a resolution has been carried or lost by a particular majority is conclusive evidence of that fact.

17 Demand for a poll and manner of poll

- (a) A poll is to be conducted as directed by the chair at the Meeting or any adjournment of the Meeting.
- (b) The demand for a poll may be withdrawn by the person who demanded it.
- (c) The demand for a poll does not discontinue the Meeting except to decide the question for which the poll is demanded.
- (d) The result of the poll is regarded as the resolution of the Meeting.

18 Poll on election of chair or question of adjournment

A poll demanded on the election of a chair (where a nominee of the Trustee is not appointed to preside at the Meeting) or on a question of adjournment must be taken forthwith.

19 Effect of resolution

A resolution passed at a Meeting held in accordance with this deed is binding upon all the Holders.

20 Minutes

- (a) The chair must ensure that minutes of proceedings at a Meeting are taken and entered in a minute book provided by the Issuer.
- (b) The signature by the chair of minutes of a Meeting is conclusive evidence of the matters stated in the minutes.
- (c) Unless there is proof to the contrary a minuted Meeting is regarded as properly held and a resolution passed at the Meeting is regarded as properly passed.

21 Resolution by Postal Ballot

- (a) A resolution of Holders may be passed by the Holders completing, signing and returning copies of a written resolution, which has been sent by the Issuer with the approval of the Trustee, within a period specified by the Issuer.

- (b) In respect of such a resolution each Holder is entitled to have one vote for each PERLS X held.

22 Powers

- (a) Without derogating from the powers conferred on the Trustee by this deed, a Meeting may exercise the following powers by Special Resolution:
- (1) power to authorise the Trustee to take or to refrain from taking any action which may be taken by the Trustee under any express or implied power or authority howsoever conferred;
 - (2) power to sanction the release by the Trustee or the Issuer from any obligation under this deed either unconditionally or upon such conditions as the Trustee may arrange with the Issuer;
 - (3) power to sanction agreement by the Trustee to any modification or compromise of any of the rights of all the Holders against the Issuer;
 - (4) power to authorise the Trustee to agree to the postponement of the repayment of the Face Value in respect of any part of PERLS X beyond their due dates and to the suspension or postponement of the payment of Distributions on any part of PERLS X;
 - (5) power to authorise the Trustee to sanction on behalf of all the Holders any scheme for reconstruction of the Issuer or for the amalgamation of the Issuer with any other corporation;
 - (6) power to authorise the Trustee to accept on behalf of the Holders any other property or securities instead of any part of the Holder's rights and in particular any debt securities of the Issuer;
 - (7) power to approve the appointment of a new trustee in accordance with the provisions of this deed;
 - (8) power to give any release or waiver in respect of anything done or omitted by the Trustee or any breach or default by the Issuer.
- (b) Without derogating from the powers conferred on the Trustee by this deed, a Meeting may, by Ordinary Resolution, do anything for which a Special Resolution is not required.
- (c) The Trustee may only take action, including with respect to any of the paragraphs of paragraph 22(a), if where required the Issuer has obtained APRA's prior written approval (APRA's approval is required where the proposed modification or waiver may affect the capital treatment of PERLS X under APRA's prudential standards).



HERBERT
SMITH
FREEHILLS

Signing page

Executed as a deed

Issuer

Signed sealed and delivered for
Commonwealth Bank of Australia
by its attorney

sign here ▶

Attorney

print name

PAOLO TONUCCI

in the presence of

sign here ▶

Witness

print name

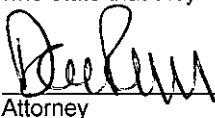
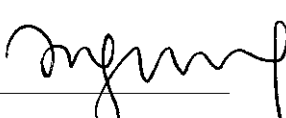
SALLY CHOI



Trustee


Executed and delivered

for and on behalf of The Trust Company (Australia) Limited ABN 21 000 000 993
by its attorney under power of attorney dated 16 September 2014,
who state that they have received no notice of revocation of the power of attorney:

sign here ▶  
Attorney

print name **Dan Rose** **Esther Ang**
Head of Corporate Securities **Senior Manager**

in the presence of

sign here ▶ 
Witness

print name **Genes Pasion**