Contents

[Background 2](#_Toc185993156)

[Operative Provisions 2](#_Toc185993157)

[1 Definitions and interpretation 2](#_Toc185993158)

[1.1 Definitions 2](#_Toc185993159)

[1.2 Interpretation 4](#_Toc185993160)

[2 Transfer 5](#_Toc185993161)

[3 Indemnity 6](#_Toc185993162)

[4 Obligations of New Licensee 7](#_Toc185993163)

[4.1 Responsibility of New Licensee 7](#_Toc185993164)

[4.2 Client Objection Notice 7](#_Toc185993165)

[4.3 Review of Financial Products 7](#_Toc185993166)

[4.4 Access 7](#_Toc185993167)

[5 Claims 8](#_Toc185993168)

[6 Warranties 8](#_Toc185993169)

[7 General 9](#_Toc185993170)

[7.1 Further assurances 9](#_Toc185993171)

[7.2 Severability 9](#_Toc185993172)

[7.3 Non-merger of provisions 9](#_Toc185993173)

[7.4 Revenue Administration Fee 9](#_Toc185993174)

[7.5 Assignment 9](#_Toc185993175)

[7.6 Waiver and consent 9](#_Toc185993176)

[7.7 Conflict of interest 9](#_Toc185993177)

[7.8 No amendments without agreement 9](#_Toc185993178)

[7.9 Remedies cumulative 10](#_Toc185993179)

[7.10 Survival of rights and obligations 10](#_Toc185993180)

[7.11 No payment required to claim indemnity 10](#_Toc185993181)

[7.12 Costs and expenses 10](#_Toc185993182)

[7.13 Duty 10](#_Toc185993183)

[7.14 Execution under power of attorney or agency 10](#_Toc185993184)

[Schedule 1 12](#_Toc185993185)

[Schedule 2 13](#_Toc185993186)

[Schedule 3 14](#_Toc185993187)

THIS DEED is made on the date set out in Item 1 of Schedule 1

BETWEEN

The party whose details are set out in Item 2 of Schedule 1

(**Current Licensee**)

AND

The party whose details are set out in Item 3 of Schedule 1

(**New Licensee**)

AND

The party whose details are set out in Item 4 of Schedule 1

(the **Corporate Authorised Representative**)

AND

The party whose details are set out in Item 5 of Schedule 1

(the **Sub-Authorised Representative**)

# Background

1. The Current Licensee is the holder of the AFSL identified at Item 2 of Schedule 1, and appoints Authorised Representatives in accordance with the Corporations Act.
2. The Representatives are Authorised Representatives of the Current Licensee pursuant to the Authorised Representative Agreement(s).
3. The parties enter into this Deed with the primary purpose of facilitating the transfer of the Servicing Rights of the Transferring Clients from the Representatives under the Authorised Representative Agreement with the Current Licensee to the Representatives and the New Licensee on the terms set out in this Deed.
4. Subject to the terms and conditions of this Deed, including the obligation to pay the Transfer Fee, the Authorised Representative Agreement will be terminated on and from the Transfer Date and the Representatives will cease to act as Authorised Representatives of the Current Licensee from that date.

# Operative Provisions

## 1 Definitions and interpretation

### 1.1 Definitions

In this Deed, unless the context otherwise requires:

**AFSL** means an Australian Financial Services Licence issued by ASIC under Chapter 7 of the Corporations Act.

**Authorised Representative** means an authorised representative as defined in Section 916A of the Corporations Act.

**Authorised Representative Agreement** means the agreement(s) identified at Item 6 of Schedule 1.

**ASIC** means the Australian Securities and Investments Commission.

**Business Days** means a day (not being a Saturday, Sunday or public holiday) on which Australian banks (as defined in Section 9 of the Corporations Act) are open for general banking business in Sydney.

**Claim** means, in relation to a person, a claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding, right of action, claim for compensation or reimbursement or liability incurred by or to be made or recovered by or against the person, however arising and whether ascertained or unascertained, or immediate, future or contingent.

**Client** means a person to whom the Representatives and/or the New Licensee provide or provided Financial Services prior to the Transfer Date.

**Client Letter** has the meaning given in clause 2(e).

**Client Objection Notice** has the meaning given in clause 2(e)(ii).

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

**Deed** means this Transfer Deed.

**Exit Processes** means the exit requirements and obligations set out in Schedule 3 of this Deed.

**Financial Product** has the meaning given in Chapter 7 of the Corporations Act. **Financial Product Advice** has the meaning given in Chapter 7 of the Corporations Act. **Financial Services** has the meaning given in Chapter 7 of the Corporations Act. **Forward Entitlements** has the meaning given to that term in clause 7.4.

**Governmental Authority** means a government or government department or other body, a governmental, semi-governmental or judicial person or a person who is charged with the administration of any law.

**Liabilities** means all liabilities (whether actual, contingent or prospective), losses, damages, costs and expenses of whatsoever description and **Liability** has a corresponding meaning.

**PI Year** means any 12-month period ending on 30 November or such other 12-month period as determined by the Licensee and advised to the Representative from time to time.

**Professional Indemnity Fee** means the professional indemnity fee for a PI Year payable by the Representative to the Licensee on a monthly basis.

**Related Body Corporate** has the meaning given in the Corporations Act.

**Remuneration** means all commissions, brokerage and other amounts payable by financial institutions, product issuers or clients in respect of Financial Products and Financial Services provided to the Clients.

**Representatives** means the Corporate Authorised Representative and the Sub-Authorised Representative.

**Representative**’**s Return** means:

Subject to the Representatives not being in breach of this Agreement nor their authorising agreements, the Current Licensee will pay the Corporate Authorised Representative (CAR) its entitlement to the percentage of its gross commission and fees received. The Current Licensee will calculate and pay within five business days following the 1st and 15th day of each month, the Representative’s Return in accordance with this Deed.

Any debit balance from time to time in any account of the Current Licensee relating to the CAR or its Sub-authorised Representatives is a debt due to the Current Licensee and is recoverable on demand.

The CAR is only entitled to payment of the Representative’s Return after deduction of any amounts due by it to the Current Licensee.

The CAR acknowledges that it is solely responsible for all taxes, levies and duties (if any) in respect of a payment received under this Deed.

**Revenue Administration Fee** means the fee equal to 10% of the then-current total Licence Fee for the administration of the Forward Entitlements.

**Servicing Rights** means the right to provide Financial Services and receive Remuneration in relation to the Transferring Clients.

**Transfer Date** means the date that the Representatives' authorisation is revoked by the Current Licensee, as recorded on the ASIC register and is the same date as the later of:

1. payment of the Transfer Fee; and
2. completion of the Exit Processes in Schedule 3 to the reasonable satisfaction of the Current Licensee as advised in writing by the Current Licensee.

**Transfer Fee** means the amount set out in Item 7 of Schedule 1, which is due and payable by the Representatives to the Current Licensee in satisfaction of the termination of the Authorised Representative Agreement.

**Transferring Client** means a Client who has not given a Client Objection Notice.

### 1.2 Interpretation

In this Deed, the following rules of interpretation apply unless the context requires otherwise:

1. headings are for convenience only and do not affect interpretation;
2. the singular includes the plural and conversely;
3. reference to one gender includes all other genders;
4. where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
5. words or phrases defined in the Corporations Act as at the date of this Deed have the corresponding meaning;
6. a reference to a person includes a body corporate, an unincorporated body or other entity and conversely;
7. a reference to a clause or schedule is to a clause or schedule of this Deed unless otherwise specified;
8. a reference to any party to this Deed or any other agreement or document includes that party’s successors or permitted assigns;
9. a reference to any agreement or document is to that agreement or document as amended, notated, supplemented, varied or replaced from time to time, except to the extent prohibited by this Deed;
10. a reference to any legislation or any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it;
11. a reference to dollars or $ is to Australian currency unless otherwise specified;
12. a reference to a right or obligation of any two or more persons confers that right or imposes that obligation, as the case may be, jointly or severally;
13. a reference to conduct includes any omission, statement or undertaking, whether or not in writing; and
14. a reference to “includes” means “includes without limitation”.

## 2 Transfer

1. The Representatives and New Licensee acknowledge and agree that they will be solely responsible and liable for the Financial Services and Financial Product Advice provided to the Transferring Clients on and after the Transfer Date.
2. The Representatives agree to faithfully and diligently complete the Exit Processes to the satisfaction of the Current Licensee (acting reasonably); and pay the Transfer Fee.
3. If any Remuneration received by the Current Licensee and paid to the Representatives is subsequently reversed by, or refunded to, a product provider on or after the Transfer Date (Clawback), the New Licensee must on written demand from the Current Licensee pay the amount of the Clawback to the Current Licensee within seven days of the written demand.
4. The Current Licensee may offset any commissions received on behalf of the Representatives against any outstanding amounts owed to the Current Licensee by the Representatives.
5. At least 14 days prior to the proposed Transfer Date, the Representatives must notify the Clients in writing (Client Letter) that:
6. on and from the Transfer Date the Representatives will no longer be Authorised Representatives of the Current Licensee, and it is proposed that Financial Services be provided to the Client by the New Licensee;
7. within 14 days from the date of the Client Letter, the Client may object to the transfer to the New Licensee in writing to the Representatives and/or advise the Current Licensee in writing that the Client wishes the Current Licensee to continue to deal with the Client in relation to any or all of the Financial Services previously provided by the Current Licensee (**Client Objection Notice**); and
8. if the Client does not provide the Representatives or Current Licensee with a Client Objection Notice within 14 days of the Client Letter, then on the Transfer Date:
* the New Licensee will assume the obligations in relation to the Financial Services provided to the Client, including Financial Product Advice arising from the review of Financial Products in accordance with clause 4.3 of this Deed; and
* their information will be transferred to the New Licensee.
1. The notification given under clause 2 (E) must comply with the relevant privacy legislation and must be in the form or to the effect of the letter at Schedule 2.

## 3 Indemnity

1. Each of the New Licensee and the Representatives agree to indemnify the Current Licensee and its Related Bodies Corporate against all Claims, actions, losses, demands, damages, Liabilities, costs or expenses arising out of or in connection with any act, matter, thing or omission by or on behalf of the Representatives (or any of their employees, contractors, agents) or a failure by the Representatives or the New Licensee to comply with the obligations under this Deed, including any breaches of this Deed and any third-party claims.
2. The Representatives indemnify and keep indemnified the Current Licensee for all Legal Costs on a full indemnity basis (that is, all Legal Costs paid by or on behalf of the Current Licensee, not only those Legal Costs subject of an order by a Court on a standard or party/party basis) incurred by the Current Licensee in obtaining, or conducting or defending an action for any Liability incurred or arising out of or related to this Deed, except Legal Costs incurred:
3. in defending or resisting any proceedings in which the Current Licensee is found to have a liability for which it could not be indemnified under clauses 3(a); or
4. in defending or resisting criminal proceedings in which the Licensee is found or pleads guilty,

and the parties agree that those costs are fully recoverable by the Current Licensee without any deduction, counterclaim or set off by the Representative. The indemnity shall not apply to any Legal Costs which have been incurred by the Current Licensee which are attributable to any part of the Liability which has been caused or contributed to solely by the Current Licensee.

1. On and from the date of this Deed, the Representatives agree to:
2. reimburse and compensate the Current Licensee on a full indemnity basis for any and all Liabilities or losses which may be made, brought against, suffered or incurred by the Current Licensee for, or in respect of, any complaint, regulatory or internal investigation, claim, proceeding, enquiry or other issue arising out any act or omission of the Representatives prior to the Transfer Date whether that Claim, or the right to make the Claim, arose before or after the date of this Deed. The indemnity does not apply to the extent that such Liabilities or losses have been caused or contributed to, by the Current Licensee.
3. pay the Licensee within three Business Days of the date of termination any outstanding portion of the Professional Indemnity Fee payable for the remainder of the PI Year.
4. Without limiting the generality of clause 3(c), the Representatives agree that they are liable and will indemnify the Current Licensee against:
5. any compensation payable to a third party (to be determined at the sole discretion of the Current Licensee);
6. all legal fees incurred;
7. all fees paid to external parties; and
8. any professional indemnity insurance excess incurred by the Current Licensee as a result of the conduct or omissions of the Representatives both prior to and post the Transfer Date.
9. In respect of each Transferring Client, the New Licensee assumes responsibility and indemnifies the Current Licensee for all Financial Services provided by the New Licensee or any representative of the New Licensee to that Transferring Client on and from the Transfer Date.
10. The obligation to provide the indemnities in this clause 3 continue, notwithstanding that the transactions and matters contemplated by this Deed may have been completed.
11. The New Licensee acknowledges that in the event that a cost, expense and/or liability is incurred by the Current Licensee, including but not limited to any internal review or investigation and the full professional indemnity insurance excess, as a result of a complaint, regulatory investigation, claim, proceeding or other issue arising out of any act or omission of the Representative prior to the Date of Termination, the New Licensee must on demand from the Current Licensee, pay to the Current Licensee all revenue due and ordinarily payable to the Representative or any related party or body of the Representative, until such time as the liability is met.

## 4 Obligations of New Licensee

### 4.1 Responsibility of New Licensee

1. The New Licensee agrees that it provides Financial Products, Financial Services or other services to Transferring Clients on its own behalf and not as an agent for the Current Licensee.
2. In addition to the Client Letters, the New Licensee must, within 20 Business Days of the Transfer Date, send each Transferring Client a letter to ensure that the Client is or has been made aware of the matters listed in Australian Privacy Principle 6.

### 4.2 Client Objection Notice

1. If a Client provides a Client Objection Notice to the New Licensee, then the New Licensee must immediately deliver the Client Objection Notice, the Client’s file and all other documents held by the New Licensee in relation to that Client to the Current Licensee.
2. If a Client provides a Client Objection Notice to the Representatives, then the Representatives must immediately deliver the Client Objection Notice, the Client’s file and all other documents held by the Representatives in relation to that Client to the Current Licensee.

### 4.3 Review of Financial Products

1. The New Licensee agrees that it will, as soon as practicable, but no later than twelve months after the Transfer Date, offer a complete review of all Transferring Clients’ Financial Products and investments, including the suitability of those Financial Products and investments in light of the Transferring Clients’ needs, circumstances and objectives as at the date of the review.

### 4.4 Access

1. The New Licensee and the Representatives acknowledge that in the event of a complaint, regulatory investigation, claim, proceeding, enquiry or other issue arising out of any act or omission of the Representatives prior to the Transfer Date:
2. the Current Licensee is entitled to access and make copies of all relevant information or documentation which is held in the custody or control of the Representatives; and
3. the Representatives must provide reasonable assistance to the Current Licensee.
4. Where the Current Licensee has permitted the Representatives to retain Client files, records and documents after the termination of the Authorised Representative Agreements, the Representatives will unconditionally provide the Current Licensee unrestricted and immediate access to, and the ability for the Current Licensee to make copies of, the Client files, records and documents for a period of not less than seven years, and for an unrestricted period for the purpose of any actual or threatened litigation or dispute resolution. The cost of this will be borne by the party who retains the original Client files, records and documents.
5. The New Licensee and Representatives agree that in the event that any one of them transfers to a third party (Third Party) any of the documentation in respect of a Transferring Client relating to the period prior to the Transfer Date, it will enter into an agreement with the Third Party requiring that the Third Party grant a right of access to the documents to allow the Current Licensee access to the documentation as noted in clauses 4.4 (A) and 4.4 (B) above.

## 5 Claims

1. The New Licensee and the Representatives agree to promptly inform the Current Licensee of any complaint, threat of litigation or claim against the Current Licensee which comes to the knowledge of the New Licensee or the Representatives.
2. The Representatives understand and agree that any compensation payable by the Current Licensee in relation to a Client where the compensation was payable as a result of an event which occurred before the Transfer Date will be subject to the surviving terms of the Representatives’ Authorised Representative Agreement with the Current Licensee.

## 6 Warranties

1. The New Licensee warrants that it:
2. holds an AFSL;
3. is licensed to provide Financial Services to the Clients; and
4. will appoint Authorised Representatives to provide Financial Services to the Clients effective on and from the Transfer Date,

in accordance with Chapter 7 of the Corporations Act.

1. Each party warrants that:
2. it has free and unqualified capacity and power to enter into and perform its obligations under this Deed;
3. execution of and performance of its obligations under this Deed do not contravene:
4. any law applying to the party; or
5. any order of a Government Authority applying to the party; and
6. it is not entering into this Deed as trustee of a trust.
7. Each party acknowledges that each other party enters into this Deed in reliance upon the warranties contained in this Deed.
8. Each party must keep confidential any information about the existence and terms of this Deed and any information obtained under or pursuant to this Deed and must not disclose such information to any person except:
9. any director, officer, employee, adviser or associated entity of the party that has a clear need to use that information; or
10. pursuant to any applicable law or order or rule of any court, regulatory body, government authority or stock exchange.

## 7 General

### 7.1 Further assurances

1. Each party will promptly execute all documents and do all things that another party from time to time reasonably requires of it to effect, perfect or complete the terms and conditions of this Deed and any transaction contemplated by it.

### 7.2 Severability

1. If anything in this Deed is unenforceable, illegal or void then it is severed and the rest of this Deed remains in force.

### 7.3 Non-merger of provisions

1. A provision of this Deed which can and is intended to operate after its conclusion will remain in full force and effect.

### 7.4 Revenue Administration Fee

1. On termination of this Agreement, subject to the Corporate Authorised Representative (CAR) complying with this and other current agreements, where the CAR has requested that Clients of the CAR be transferred to a New Licensee, any entitlement the CAR may have to receive the Representative’s Return in respect of the Clients will continue to be paid by the Current Licensee to the New Licensee of the CAR for a maximum period of 90 days (Forward Entitlements) and only after deduction of the Revenue Administration Fee.

### 7.5 Assignment

1. The rights and obligations of each party under this Deed are personal. No party may assign, encumber or otherwise deal with such rights and obligations without the prior written consent of all other parties.

### 7.6 Waiver and consent

1. A single or partial exercise or waiver of a right relating to this Deed will not prevent any other exercise of that right or the exercise of any other right.
2. A party will not be liable for any loss, cost or expense of any other party caused or contributed to by any waiver, exercise, attempted exercise or failure to exercise, or any delay in the exercise of, a right.
3. By giving its approval or consent, a party does not make or give any warranty or representation as to any circumstance relating to the subject matter of the consent or approval.

### 7.7 Conflict of interest

1. A party's rights and remedies under this Deed may be exercised even if it involves a conflict of interest or a party has a personal interest in their exercise.

### 7.8 No amendments without agreement

1. This Deed may not be modified, discharged or abandoned unless by a document signed by the parties.

### 7.9 Remedies cumulative

1. The rights and remedies provided in this Deed are in addition to other rights and remedies given by law independently of this Deed, except to the extent that those other rights and remedies are expressly excluded in this Deed.

### 7.10 Survival of rights and obligations

1. The following survive termination or expiration of this Deed:
2. rights accrued to a party up to the date of termination or expiration of this Deed; and
3. indemnities and obligations of confidence given by a party under this Deed.

### 7.11 No payment required to claim indemnity

1. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this Deed.

### 7.12 Costs and expenses

1. Each party will bear its own costs and expenses in relation to the negotiation, preparation, execution, delivery, registration and completion of this Deed and any related documentation.

### 7.13 Duty

1. The Current Licensee will pay, and indemnifies each other party against payment of, all duty (including any fines or penalties) payable:
2. in connection with this Deed; and
3. on any transaction contemplated by this Deed.

### 7.14 Execution under power of attorney or agency

1. Each person who executes this Deed as an attorney or agent of a party warrants that he or she has authority to do so and will produce written evidence of that authority to any party who requests it.

**7.15 Governing law**

1. This Deed is to be governed by and construed in accordance with all applicable laws in force in New South Wales from time to time and the parties submit to the non-exclusive jurisdiction of the courts of the New South Wales.

**7.16 Counterparts**

1. This Deed may consist of a number of counterparts and, if so, the counterparts taken together constitute one and the same instrument.
2. This Deed is not binding on any party unless one or more counterparts have been duly executed by, or on behalf of, each person named as a party to this Deed and those counterparts have been exchanged.
3. A copy of a counterpart emailed as a PDF:
4. must be treated as an original counterpart;
5. is sufficient evidence of the execution of the original; and
6. may be produced in evidence for all purposes in place of the original.

**7.17 Delivery as a deed**

1. Each party by signing or executing this Deed is deemed to unconditionally sign, seal and deliver this Deed, with the intention of being immediately legally bound by this Deed.

**7.18 Electronic signing**

1. To the extent permitted by law, a party may sign this document electronically, including by using software or a platform for the electronic execution of documents.
2. A print-out of this document electronically signed by a party or parties, will be an executed original counterpart of this document signed by all such parties.
3. Each party that signs this document electronically represents and warrants that:
4. it or anyone signing on its behalf has been duly authorised to execute this document and has affixed their own electronic signature; and
5. it intends to be bound by this document.

# Schedule 1

|  |  |  |
| --- | --- | --- |
| **Item 1** | Date of this Deed |   |
| **Item 2** | **Current Licensee**Name: ABN: AFSL: Address:  |  |
| **Item 3** | **New Licensee**Name: ABN: AFSL: Address: |  |
| **Item 4** | **Corporate Authorised Representative**Name: ABN: CAR Number:Address: |  |
| **Item 5** | **Sub-Authorised Representative**Name: AR Number:Address: |   |
| **Item 6** | **Authorised Representative Agreement(s**) | The authorised representative agreement between the Current Licensee and the Representatives dated on or about XX/XX/XX pursuant to which the Representatives were appointed as authorised representatives of the Current Licensee for the purposes of providing services on behalf of the Current Licensee. |
| **Item 7** | **Transfer Fee** | $XXX |

# Schedule 2

**Notification to Clients - Transfer to a new AFSL**

[date]

Client name

Client address

Dear [Client]

This letter is to inform you that [Corporate Authorised Representative] and [Sub-Authorised Representative] will relinquish their authority with [Current Licensee] (who we have been authorised to provide financial services to you through previously) and will join [New Licensee], as of [date]]. It is proposed that financial services from that [date] will be provided to you by [New Licensee] and [New Representativess].

Accordingly, please find attached the new Financial Services Guide, dated [date].This change will have no effect on your current policies, products and/or investments.

If you have any questions or concerns with the transfer, you do not wish to transfer your file to [New Licensee] and [New Representatives] or you wish for [Current Licensee] to continue to provide financial services to you, please write to us using the following contact details within 14 days of the date of this letter:

[Insert email and physical mailing address]

If we do not hear from you within 14 days from the date of this letter, then it will be assumed that you do not object to the transfer of your personal documents and information to [New Licensee] and [New Representatives].

If you have any questions in relation to this issue, please do not hesitate to contact me on [insert number]. Alternatively, you may choose to contact the Current Licensee on [insert number].

Yours faithfully

[Sub-Authorised Representative]

Director

[Corporate Authorised Representative]

# Schedule 3

**Exit Processes
NIL**

**EXECUTED** as a Deed

**SIGNED, SEALED and DELIVERED by** )

)

**ABN:** )
in accordance with section 127 of the

*Corporations Act 2001* (Cth)

Signature of Director Signature of Director

Name of Director Name of Director

Date Date

|  |  |
| --- | --- |
| **SIGNED, SEALED and DELIVERED by )**)**ABN :** ) in accordance with section 127 of the*Corporations Act 2001* (Cth)Signature of Director Signature of DirectorName of Director Name of DirectorDate Date |  |
|  |  |

**SIGNED, SEALED and DELIVERED by** )

)

**ABN:**in accordance with section ) 127 of the *Corporations Act 2001* (Cth)

Signature of Director Signature of Director

Name of Director Name of Director

Date Date

**SIGNED, SEALED and DELIVERED by**
in the presence of a witness

Signature of Witness Signature of Sub-Authorised Representative

Name of Witness

Date Date