

# Deed Poll

ClearView Financial Management Limited

ClearView WealthSolutions Investments

# Deed Poll

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## Table of Contents

<b>Definitions</b>	<b>1</b>
<b>Effective Date</b>	<b>1</b>
<b>Contract</b>	<b>2</b>
<b>Governing Law</b>	<b>2</b>
<b>Schedule</b>	<b>3</b>
1. Definitions and Interpretation	3
2. Investors bound	4
3. Entire agreement and inconsistency	5
4. Trust and powers	5
5. Investment services	6
6. ClearView's discretions	6
7. Transfers	6
8. Funding	7
9. Limitation on powers of investment	7
10. Settlement of transactions	9
11. Reports and communications	10
12. Transactions costs and charges	12
13. Fees and charges	12
14. Standard of care	15
15. Limitation of liability and indemnity	15
16. Compliance with IDPS Law	16
17. Joint names	16
18. Company, partnership and trust accounts	16
19. Transmission	16
20. Notices	16
21. Amendments	17
22. Termination	17
23. Governing law	17
24. Assignment	17
25. Force majeure	18
26. Severance	18

ClearView

# Deed Poll

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<b>Date</b>	3 November 2011
<b>Party</b>	
1.	<b>ClearView Financial Management Limited</b> (ABN 99 067 544 549 ) of , Sydney NSW 2000 ( <i>ClearView</i> ).
<b>Recitals</b>	
A	In November 2011 ClearView established an investor directed portfolio service known as ClearView WealthSolutions Investments (the <i>Service</i> ) in accordance with the IDPS Law.
B	The Service operates pursuant to a Contract between ClearView and each Investor which is entered into when the Investor completes the necessary application procedures to use the Service and their application is accepted by ClearView.
C	The Service may be offered simultaneously to different groups of Investors under different names. The Service may be offered to Investors under the ClearView brand or may be re-badged by ClearView and offered in the name of one or more other financial service providers.
D	ClearView wishes to include the terms set out in the Schedule in the Contract to be entered into by ClearView and each Investor in respect of the provision of the Service to the Investor by ClearView.

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**It is declared** as follows.

## Definitions

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- (a) **IDPS Law** means the Corporations Act, any regulation or other instrument made under the Corporations Act and any ASIC Regulatory Guide, in each case if and to the extent that they apply to investor directed portfolio services.
- (b) Unless the context requires otherwise, any word or phrase defined in:
  - (i) the Corporations Act has the same meaning in this Deed; and
  - (ii) ASIC Class Order CO 02/294 has the same meaning in this Deed.
- (c) Any word or phrase defined in the Schedule has the same meaning in this Deed.

## Effective Date

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This Deed comes into effect on and from 3 November 2011 (the *Effective Date*).

# Deed Poll

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## **Contract**

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Each Contract for the Service will include the terms set out in the Schedule.

## **Governing Law**

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This Deed is governed by the laws of New South Wales.

# Deed Poll

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## Schedule

### 1. Definitions and Interpretation

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#### 1.1 Definitions

Unless the context requires otherwise, the following words have the following meanings:

**Accessible Financial Products** means financial products that may be held through an IDPS.

**Accessible Investments** means assets that may be held through an IDPS, including Accessible Securities and Accessible Financial Products.

**Accessible Securities** means securities that may be held through an IDPS.

**Application Form** means the application form attached to or provided to Investors along with the IDPS Guide.

**ClearView Wrap Account Service** or **Service** means the IDPS provided by ClearView pursuant to the Contract, whether known by the name ClearView WealthSolutions Investments or any other name as ClearView determines.

**CMT** means the Adelaide Bank Cash Management Trust established by Adelaide Bank Limited or any other cash or cash-based investment offered through the Service from time to time, excluding cash deposit accounts with an Australian ADI.

**Contract** means the IDPS contract constituted by this deed poll, the IDPS Guide and the Application Form and, in relation to a particular Investor, means the terms set out in this deed poll, the IDPS Guide pursuant to which that Investor applied to participate in the Service and the Application Form submitted to ClearView by that Investor.

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

**Deed Poll** means the deed poll made by ClearView on 3 November 2011 in relation to provision of the Service to Investors as amended from time to time.

**IDPS** means investor directed portfolio service.

**IDPS Guide** means the IDPS guide prepared by ClearView and provided to prospective Investors in respect of the Service as amended from time to time.

**IDPS Law** means the Corporations Act, any regulation or other instrument made under the Corporations Act, including ASIC Class Order 02/294 and any ASIC Regulatory Guide, in each case if and to the extent that they apply to investor directed portfolio services.

**Investment Instruction** means a clear and unambiguous instruction given by or on behalf of an Investor to ClearView in relation to the Investor's Portfolio, including, without limitation, to acquire, redeem, sell, dispose or switch an Accessible Investment on behalf of the Investor or to

# Deed Poll

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withdraw cash from the Investor's Portfolio to be paid to or at the direction of the Investor. An Investment Instruction must be given in the manner and form determined by ClearView.

**Investment List** means a list of Accessible Investments which ClearView determines from time to time may be acquired or held through The ClearView Wrap Account Service.

**Investor** means a person who, at the relevant time, participates in The ClearView Wrap Account Service.

**Portfolio**, in respect of an Investor, means the Accessible Investments held by ClearView, or by a custodian appointed by ClearView, on behalf of the Investor and includes cash held on behalf of the Investor in an account with an Australian ADI and interests held in a CMT on behalf of the Investor.

## 1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural and the converse.
- (b) A gender includes all genders.
- (c) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (e) A reference to a clause, annexure or schedule is a reference to a clause of, or annexure or schedule to, this deed poll.
- (f) A reference to a party to this deed poll or another agreement or document includes the party's successors and permitted substitutes or assigns.
- (g) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (h) Mentioning anything after include, includes or including does not limit what else might be included.
- (i) A reference to any agreement or document is to that agreement or document as amended, novated, supplemented, varied or replaced from time to time, except to the extent prohibited by this deed poll.
- (j) Unless otherwise defined in this deed poll, a word or phrase defined in the Corporations Act or IDPS Law has the same meaning in this deed poll.

## 2. Investors bound

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Each Investor and the Investor's successors and assignees is bound by the terms of that Investor's Contract.

# Deed Poll

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## 3. Entire agreement and inconsistency

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- (a) Each Investor's Contract and any list of Accessible Investments which may be acquired or held through the Service from time to time constitute the whole understanding between that Investor and ClearView. Any prior arrangements, agreements, representations and warranties are superseded.
- (b) If there is any conflict between the terms of the documents comprising an Investor's Contract, the following order of priority applies:
  - (i) terms of the Investor's Application Form prevail to the extent of any inconsistency with the IDPS Guide or this deed poll; and
  - (ii) terms of the IDPS Guide prevail to extent of any inconsistency with this deed poll.

## 4. Trust and powers

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### 4.1 Portfolio held on trust

ClearView will:

- (a) ensure that the Investor's Portfolio is held by it or a custodian appointed by it on trust for the relevant Investor (and for no other Investor); and
- (b) retain, or ensure that any custodian appointed by it retains, full control of the Portfolio to be dealt with only in accordance with this deed poll.

### 4.2 Powers

ClearView has all powers necessary or convenient for it to provide the services referred to in the Contract and to comply with IDPS Law. Without limitation, ClearView:

- (a) may appoint any agent or delegate (who may be an associate of ClearView) necessary or convenient to ensure that the services referred to in the Contract are provided, including an administrator;
- (b) may determine and vary the Investment List; and
- (c) may specify features of, and make rules in relation to the operation of The ClearView Wrap Account Service including, without limitation, rules relating to procedures for making investments, the Investment List, minimum investments, holdings and withdrawals, valuations, transfers, establishment of a record of a mortgagee's interest in an investor's portfolio and exercise of corporate action rights. All rules will be consistent with the IDPS Law. Any rules and features may be varied by ClearView from time to time.

For the avoidance of doubt ClearView and any custodian appointed by it may mix assets in an Investor's Portfolio with other assets it holds as long as ClearView, the custodian, the administrator or any other person appointed by ClearView maintains adequate records to identify assets held for particular Investors.

# Deed Poll

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## 5. Investment services

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ClearView will perform or procure the performance of the following services in relation to an Investor's Portfolio:

**(a) Powers of acquisition or investment**

The investment in, or acquisition of, any Accessible Investments specified in a current Investment List in accordance with an Investment Instruction from that Investor.

**(b) Powers of redemption and sale**

The redemption, sale, other disposal or transfer of investments held in an Investor's Portfolio in accordance with:

- (i) an Investment Instruction from that Investor, or
- (ii) the procedure in clause 6.

**(c) Deposits**

The deposit of the commencing capital sum, ongoing contributions, all uninvested cash including redemption, sale and other disposal proceeds, and any income received from an Investor's investments by ClearView or its agents in an account with an Australian ADI which is designated as a trust account. If specified in the IDPS Guide, the application of those moneys to acquire interests in a CMT pending action in accordance with that Investor's Investment Instruction and in those circumstances (for the avoidance of doubt) each Investor gives ClearView a standing Investment Instruction to so acquire interests in a CMT on the Investor's behalf.

## 6. ClearView's discretions

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ClearView may deal with an Investor's Portfolio in any way (including, without limitation, invest in or acquire, or redeem, sell, transfer, withdraw or dispose of Accessible Investments) without a specific Investment Instruction from that Investor:

- (a) if the Investor has previously given an Investment Instruction, and ClearView adjusts the Investor's Portfolio periodically to give effect to the original Investment Instruction;
- (b) to maintain any agreed minimum cash or cash equivalent investment holding;
- (c) where an Investor is making regular additional investments to their Portfolio to be applied by ClearView in accordance with an Investment Instruction given previously;
- (d) where an Investor has made arrangements to make a regular withdrawal from their Portfolio;
- (e) to meet any amount due to ClearView under clause 12 or clause 13; or
- (f) if allowed under IDPS Law.

## 7. Transfers

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Subject to ClearView's agreement, an Investor's Portfolio includes the Accessible Investments which the Investor notifies to ClearView in writing that the Investor wishes to transfer to their



# Deed Poll

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Portfolio. ClearView is not obliged to accept any particular investment or transfer into an Investor's Portfolio. All assets ClearView refuses to accept do not form part of an Investor's Portfolio. The following applies in relation to investments which have been transferred in:

- (a) If the Investor directly receives a distribution of income or capital or other moneys or accretions in connection with that investment, the Investor must immediately forward to ClearView all such distributions or accretions to be held by ClearView or a custodian appointed by ClearView on the Investor's behalf. ClearView is not responsible for any error in or omission from any statement or other reports it has provided which are caused by the Investor's failure to comply with this clause.
- (b) The expenses and fees payable on transferred-in investments are calculated in accordance with clause 12 and clause 13.

## 8. Funding

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Each Investor must place or maintain sufficient cash or, if permitted by ClearView, cash equivalent investments in their Portfolio prior to any transaction to finance the acquisition, on their behalf, of any investment for their Portfolio. ClearView is not required to implement any Investment Instruction unless there is sufficient cash or cash equivalent investments in the Investor's Portfolio to do so. ClearView may specify a minimum cash or cash equivalent holding which must be maintained by each Investor. ClearView may vary any minimum specified from time to time.

## 9. Limitation on powers of investment

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### 9.1 Acquisition of an Accessible Investment

ClearView and its agents must not acquire an Accessible Investment for an Investor until ClearView or its agents (as the case may be) are reasonably satisfied that all:

- (a) disclosure requirements; and
  - (b) other prerequisites to the acquisition of an investment,
- specified in the IDPS Law and the Corporations Act have been met.

### 9.2 Disclosure documents

Subject to clause 6 and clause 9.6, ClearView must not, and must ensure that any custodian appointed by ClearView does not, acquire an Accessible Investment for an Investor unless ClearView is reasonably satisfied that:

- (a) the Investor has received an IDPS Guide that would comply with the IDPS Law if given at the time of acquisition of the Accessible Investment (but not necessarily immediately prior to the acquisition); and
- (b) in the case of an acquisition of Accessible Securities either:
  - (1) the Investor has been given a copy of the disclosure document for the Accessible Investment that would have been required had the Accessible Investment been offered to the Investor directly at the time of the acquisition of the Accessible Investment; or

# Deed Poll

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- (2) the Accessible Investment could lawfully have been offered and issued or sold, as the case may be, to the Investor directly without the Investor being required to have received a disclosure document, and ClearView has no reason to suspect that a disclosure document would have been required if all other holdings in the Accessible Investment by any IDPS custodian, or by any custodian of an IDPS-like scheme or nominee and custody service, had been acquired by the Investor directly; and
- (3) before a regulated acquisition of a new disclosure financial product is made for an investor as part of the Service where section 1012IA of the Act requires that the investor has been given a Product Disclosure Statement, the investor has been given a Product Disclosure Statement for the financial product that ClearView has no reason to believe is defective as defined in section 1021B of the Act is up to date at the time of the acquisition.

## 9.3 Underlying issuers

- (a) Where a disclosure document is required to be given to the Investor under clause 9.2(b), ClearView will not, and will ensure that any custodian appointed by it does not, acquire Accessible Investments which are Accessible Securities unless ClearView is reasonably satisfied that either:
  - (1) the issuer of the disclosure document for the securities has given its prior written agreement to the use of the disclosure document as disclosure to clients or prospective clients of the Service; or
  - (2) the disclosure document indicates that the issuer of the securities authorises the use of the disclosure document as disclosure to clients or prospective clients of the Service or of a class of IDPSs which includes the Service.
- (b) This clause 9.3 does not apply to rights issues.

## 9.4 Complying disclosure documents

ClearView must not, and must ensure that any custodian appointed by ClearView does not, acquire Accessible Investments if:

- (a) in the case of Accessible Investments that are securities, ClearView or its custodian is aware that the disclosure document for those Accessible Investments:
  - (1) does not comply with relevant requirements of the Corporations Act regarding contents of the disclosure document; or
  - (2) contains a material statement which is untrue or misleading; and
- (b) in the case of Accessible Investments that are other financial products, ClearView or its custodian has reason to believe that the disclosure document is defective as defined in section 1021B of the Corporations Act at the time of the acquisition.

# Deed Poll

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## 9.5 Managed investment schemes

- (a) Subject to clause 9.5(b), ClearView must not, and must ensure that any custodian appointed by ClearView does not, acquire Accessible Investments through the Service for an Investor that are:
  - (1) interests in a managed investment scheme that ClearView or its custodian is not reasonably satisfied is a registered scheme; or
  - (2) interests in a managed investment scheme that would be a managed investment scheme but for paragraph (e) of the definition of 'Managed Investment Scheme' in section 9 of the Corporations Act.
- (b) ClearView or a custodian appointed by ClearView may only acquire the Accessible Investments described in clause 9.5(a) on the following conditions:
  - (1) ClearView or its custodian is reasonably satisfied that if the Investor had invested directly in the scheme, the scheme would not have been required to have been registered; and
  - (2) so far as ClearView or its custodian is aware or has reason to suspect, if all interests in the scheme held by any IDPS custodian, or by any custodian of an IDPS-like scheme or nominee and custody service, had been held in the scheme directly, the scheme would not have been required to be registered.

## 9.6 Distribution reinvestment plan

Notwithstanding clause 9.2, ClearView or a custodian appointed by ClearView may acquire an additional holding of an Accessible Investment for the Investor under a distribution reinvestment plan if the Investor already has an existing holding of that Accessible Investment through the Service and ClearView or its custodian is reasonably satisfied that the Investor has received an IDPS Guide that is current and complies with IDPS Law at the time the additional holding is acquired.

## 9.7 Regular savings acquisition

Notwithstanding clause 9.2, ClearView or a custodian appointed by ClearView may make a regular savings acquisition if it is reasonably satisfied that the Investor has been given an IDPS Guide that is current and complies with IDPS Law at the time of the regular savings acquisition where:

- (a) the Investor already has an existing holding of that Accessible Investment through the IDPS; and
- (b) ClearView has complied with its agreement with the Investor in relation to the regular savings plan to give any missing documents.

## 10. Settlement of transactions

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Each Investor acknowledges that:

- (a) any acquisition, transfer, switch, withdrawal or redemption of investments may be subject to delays in the hands of the issuer of the Accessible Investment. ClearView and its agents will make every reasonable endeavour to effect the transaction as soon as practicable but are not liable for delays caused by third parties;

# Deed Poll

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- (b) certain investments may not be transferable to them in their personal capacity or to another person nominated by them, in which case they must provide ClearView with an Investment Instruction to which ClearView can give effect in relation to that investment as soon as practicable after ClearView advises the Investor that the investment cannot be transferred as originally instructed.

## 11. Reports and communications

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### 11.1 Continuous reporting

ClearView must either:

- (a) give the Investor a quarterly report within one month after the end of each quarter, being the period ending on 31 March, 30 June, 30 September and 31 December in each year unless the end of the quarter is also the end of a financial year; or
- (b) give electronic access to the information referred to in clause 11.3 on a substantially continuous basis if:
  - (1) the Investor has agreed to obtain information concerning transactions and holdings through the Service electronically in lieu of receiving a quarterly report; and
  - (2) ClearView has no reason to doubt the Investor can electronically access this information on a substantially continuous basis.

### 11.2 Contents of quarterly reports

The quarterly report must contain information about:

- (a) all transactions by or on behalf of the Investor through the Service during the quarter;
- (b) the quantity and value of assets held through the Service by the Investor and corresponding liabilities at the end of the quarter; and
- (c) the revenue and expenses of the Investor in relation to the Service and assets held through the Service by the Investor during the quarter.

### 11.3 Electronic access

If electronic access is provided instead of quarterly reports, the following information must be made available electronically:

- (a) all transactions which the Investor has conducted through the Service for a period of at least one year (or such shorter period as the Portfolio has been in existence) up to a time no more than 48 hours (excluding hours on a day that is not a business day) before the time of access;
- (b) the quantity and value of assets held through the Service by the Investor and corresponding liabilities at a time no more than 48 hours (excluding hours on a day that is not a business day) before the time of access, the value being determined in accordance with clause 11.5 as current as reasonably practicable;

# Deed Poll

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- (c) the revenue and expenses of the Investor in relation to the Service and assets held through the Service by the Investor during a period of at least one year (or such shorter period as the Investor's Account has been in existence) up to a time no more than 48 hours (excluding hours on a day that is not a business day) before the time of access; and
- (d) the time at which the information is current.

## 11.4 Annual reporting

ClearView will give or cause to be given to the Investor within three months of the end of each financial year:

- (a) a copy of the annual audit report that contains the information required by IDPS Law and is prepared by a registered company auditor; and
- (b) an annual statement containing:
  - (1) the information as required for the quarterly report but as at the end of the financial year and in relation to services and assets held during the financial year; and
  - (2) a summary of transactions carried out by or on behalf of the Investor through the Service during the financial year, that includes:
    - (A) particulars that the Investor may reasonably require in relation to those transactions;
    - (B) a statement that the Investor may request a copy of any quarterly report relating to their Account during the financial year.

## 11.5 Valuation

The value of assets for the purposes of clause 11.2, clause 11.3 and clause 11.4 is to be determined as follows:

- (a) for financial assets (as defined in Accounting Standard AASB 1033) - net market value (being the amount which could be expected to be received from the disposal of the asset in an orderly market after deducting costs expected to be incurred in realising the proceeds of such a disposal); and
- (b) for all other assets - the value which would be shown in the books of the Service.

## 11.6 Communications

ClearView will give or cause to be given to the Investor on request, a copy of all communications that are required to be given to the holder of an Accessible Investment (including communications that are required to be given on request) where that Accessible Investment is required to be held on trust for the Investor by ClearView or any custodian appointed by ClearView. An Investor may make a request in relation to a particular future communication or a standing request in relation to a class of future communications. ClearView must give or cause to be given a copy of the communication as soon as practicable after the information is received or otherwise becomes available to be provided to the Investor.

# Deed Poll

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## 11.7 Accessibility of information

If ClearView provides electronic access to information to investors during a quarter instead of a quarterly report:

- (a) the information that was displayed at the quarter's end for the quarter that purports to be the information required under clause 11.3 must remain readily accessible to the investor through the same facility by which electronic access was given to the investor during the quarter until the end of the IDPS financial year after the IDPS financial year in which the quarter day falls; and
- (b) the facility on which the information remains accessible must display to investors a statement to the effect that only information displayed at the quarter's end will be considered by the auditor in preparing its annual report relating to the information provided electronically.

## 12. Transactions costs and charges

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ClearView will debit the Investor's Portfolio for:

- (a) all transactions undertaken on the Investor's behalf including but not limited to the cost of purchase of any investments and any transaction costs including, without limitation, brokerage and stamp duty; and
- (b) all fees due at the rates stated in clause 13, or as otherwise advised in accordance with the provisions of the Contract; and
- (c) all government and other charges, taxes, levies and duties associated with the Investor's investments and the management of the Investor's Portfolio

plus any goods and services tax incurred or payable in relation to any of the amounts referred to in (a), (b) and (c).

The Investor remains liable for the full payment of all fees, transaction costs and government and other charges and amounts payable under the Contract despite there being insufficient funds in the Investor's Portfolio to pay them.

## 13. Fees and charges

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### 13.1 Contribution fee

ClearView may charge a contribution fee not exceeding 10% (or such other percentage specified in an IDPS Guide provided to an Investor) of investments into an Investor's Portfolio (whether cash investments or transfers), to be debited to the Investor's Portfolio. ClearView may allow some or all of the contribution fee to be deferred and charged by periodic instalments for up to 5 years (at a rate, frequency and term as determined by ClearView) up to 10% (or such other percentage specified in an IDPS Guide provided to an Investor) of the Investor's Portfolio at the time of debit. Any outstanding contribution fee may be debited if the account is closed within this period, or the balance falls below a level determined by ClearView.

# Deed Poll

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## 13.2 Ongoing management fee

ClearView may charge each Investor an ongoing management fee not exceeding \$500 plus 2.5% per annum (or such other percentage specified in an IDPS Guide provided to an Investor) of the value of the Investor's Portfolio at the relevant time, subject to a minimum annual fee of such amount as ClearView determines from time to time.

The fee may be debited to the Investor's Portfolio annually, or more frequently. If the fee is charged in more than one part, different parts may be charged in different frequencies.

## 13.3 Account keeping fee

ClearView may charge each Investor an account keeping fee not exceeding \$500 per annum, debited to the Investor's Portfolio annually, or more frequently.

## 13.4 Transaction fee

Every time:

- (a) cash is applied to acquire an Accessible Investment for an Investor; or
- (b) an investment in an Investor's Portfolio is redeemed, sold or otherwise disposed of and an amount of cash is credited to the Investor's Portfolio,

ClearView may charge a transaction fee not exceeding \$100 to be debited to the Investor's Portfolio.

## 13.5 Termination fee

ClearView may charge a termination fee not exceeding 5% of any withdrawal amounts that are paid (including by way of transfer of investments) from an Investor's Portfolio to the Investor or as the Investor directs.

ClearView may only charge a termination fee percentage on any such amounts that does not exceed the following formula:

$$\begin{array}{l} \text{Maximum} \\ \text{Termination Fee} \\ = \\ \text{Where:} \\ \text{Tfi} = \\ \text{Ii} = \end{array} \quad \frac{\text{Sum of (Tfi x Ii) for each investment in the Investor's Portfolio}}{\text{Sum of (Ii) for each investment in the Investor's Portfolio}} \\ \text{Termination Fee \% that was disclosed in the relevant prospectus} \\ \text{or IDPS Guide at the time the investment I was made at time i} \\ \text{amount of investment that was made at the time i}$$

## 13.6 Adviser's and Portfolio Manager's fees

ClearView may pay fees to:

- (a) a person providing ongoing financial advice to an Investor, in the amount advised to ClearView by the Investor from time to time on terms acceptable to ClearView; and
- (b) a person providing portfolio management services to an Investor in such amount as ClearView determines from time to time.

# Deed Poll

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Such amounts are to be charged and debited from the Investor's Portfolio at such frequency as ClearView determines from time to time.

## **13.7 Income fee**

In respect of any cash or cash equivalent held within an Investor's Portfolio, the return on that cash or cash equivalent is to be credited to the Investor's Portfolio at a percentage rate of not less than 2.5% below the actual rate of return, with ClearView entitled to retain the balance for its own purposes.

## **13.8 Adjustment of maximum fees**

ClearView may adjust:

- (a) the maximum dollar amount of any fee payable pursuant to this clause; or
- (b) and any fee expressed as a percentage,

with effect from any date nominated by ClearView (*review date*) to reflect any increase from 1 January 2012 to the relevant review date in the consumer price index or other measure of inflation determined by ClearView. ClearView may not increase any fee expressed as a percentage, by more than 0.5% per annum from 1 January 2012 to the relevant review date.

## **13.9 Actual fees**

ClearView may reduce or waive any fee payable under this clause, for such time as it determines and in respect of such Investor or Investors as it determines.

## **13.10 Increases in actual fees**

ClearView may, upon giving 30 days notice to affected Investors, increase any actual fee that it charges to Investors under this clause, to an amount not exceeding the fee set out in this clause.

## **13.11 Reimbursement of costs, charges and expenses**

ClearView will be paid or reimbursed out of the Investors' Portfolios for all internal and external expenses and liabilities which it may incur in connection with The ClearView Wrap Account Service or in performing its obligations or exercising its powers under the Contract. ClearView may make an estimate of expenses of The ClearView Wrap Account Service expressed as an annual percentage of the value of the Investors' Portfolios. This amount will be debited to the Investors' Portfolios at such frequency as ClearView determines.

## **13.12 Costs, charges and expenses incurred on behalf of an Investor**

Without limiting clause 13.11, To the extent that ClearView has incurred costs, charges and expenses on an Investor's behalf, these amounts will be paid or reimbursed out of the Investor's Portfolio at such time or frequency as ClearView determines.

## **13.13 Payments to Associates**

Payments under this clause may be made to an associate of ClearView.



# Deed Poll

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## 13.14 Changes to fees

ClearView may agree with an Investor a special fee or fees having regard to the particular circumstances.

## 13.15 Miscellaneous

Without prejudice to any other provision in this clause, ClearView is entitled to retain for its own purposes any commission or other amounts paid to it by a financial product issuer or seller for arranging investments or providing services in accordance with the Contract.

## 14. Standard of care

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ClearView will perform its obligations under the Contract honestly and with reasonable care and diligence. If ClearView or its agents do not act honestly and with reasonable care and diligence in relation to those obligations, ClearView will compensate the Investor for loss or damage suffered by that Investor:

- (a) in relation to the functions that ClearView has agreed to perform;
- (b) by the acts and omissions of any of its agents engaged to perform those functions or functions connected with the performance of those functions (including transactional functions), as if they were ClearView's acts or omissions.

Despite this clause 14, ClearView's liability to an Investor will be no greater than that which it is required to accept under IDPS Law.

## 15. Limitation of liability and indemnity

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To the extent ClearView and its agents perform the Contract honestly and with reasonable care and diligence:

- (a) ClearView is not liable for any; and
- (b) each Investor indemnifies ClearView and its officers, employees and agents, to the extent permitted by law but not exceeding the value of the Investor's Portfolio against all,

proceedings, claims, demands, expenses, losses and liabilities whatsoever suffered or incurred by ClearView or its officers, employees or agents occasioned by or arising from its or their performance of the Contract. In particular but without limitation:

- (a) ClearView may rely on the validity of any document (including any electronic communication) unless it reasonably believes the document not to be genuine and on any information provided by an existing or former Investor unless ClearView reasonably believes the information is not accurate;
- (b) ClearView will not be under any liability for failure to perform any act it is prevented by law from performing;
- (c) ClearView will not be liable to account for any payment or retention of moneys made in good faith, or to meet a liability, to a duly empowered fiscal authority;

## Deed Poll

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- (d) ClearView may rely on advice from any person believed in good faith to be expert in relation to the matter on which they are consulted.

### **16. Compliance with IDPS Law**

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ClearView will comply with IDPS Law. If a provision in IDPS Law that is required to be included in this deed poll is not included in this deed poll, that provision is deemed to be included in this deed poll. To the extent that a provision in this deed poll is inconsistent with IDPS Law, IDPS Law will override this deed poll to the extent of that inconsistency.

### **17. Joint names**

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If a Portfolio is held jointly by more than one Investor, each of those persons is authorised to issue Investment Instructions and give receipts to ClearView in relation to any of the matters to which the Contract relates, unless the Investors jointly notify ClearView in writing otherwise.

### **18. Company, partnership and trust accounts**

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- (a) If an Investor is a company or partnership or trust, the Investor must provide to ClearView a document properly executed by the Investor listing all personnel of the Investor who are authorised to provide instructions to ClearView in respect of the Investor's participation in the Service.
- (b) Investors must provide any amendments to the list referred to in clause (a) to ClearView in writing. The document containing such amendments must be properly executed by the Investor.

### **19. Transmission**

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If an Investor dies or becomes subject to a legal disability, only the survivor (in the case of joint Investors) or legal personal representative in the case of a sole Investor, will be recognised as having any claim to the beneficial interest of the Investor's Portfolio.

### **20. Notices**

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- (a) All notices, statements, payments and other communications of any kind may be sent by prepaid post to the address of the recipient notified in writing or any other address as notified from time to time in writing and is deemed (unless the contrary is proved) to have been received by the recipient two business days (at the place of receipt) after posting. Despite this, ClearView and an Investor may agree to a different method of delivery.
- (b) Investors authorise ClearView to provide a copy to the relevant Investor's financial planner of any notice that ClearView gives to Investors. ClearView is not obliged to provide financial planners with a copy of any notice.

# Deed Poll

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## 21. Amendments

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### 21.1 Amendment by ClearView

ClearView may amend this deed poll at any time by deed. ClearView must obtain an Investor's prior approval of any change it reasonably believes may be adverse to the rights of the Investor. Otherwise a change takes effect on the date ClearView decides.

### 21.2 Agreed amendments

If any part of this deed poll (a **Required Part**) is included to comply with the requirements of the Corporations Act, ASIC or IDPS Law (**Regulatory Requirement**) and that Regulatory Requirement ceases or changes, the Investor agrees that, unless ClearView determines otherwise, this deed poll will be automatically amended by removing the Required Part or amending it to reflect the altered Regulatory Requirement.

## 22. Termination

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- (a) The Investor may terminate its participation in The ClearView Wrap Account Service in writing, at any time, subject to payment of any outstanding fees and expenses.
- (b) ClearView may terminate an Investor's participation in The ClearView Wrap Account Service by giving the Investor 30 days' notice in writing of its intention to do so.
- (c) An Investor's participation in The ClearView Wrap Account Service also terminates immediately upon the withdrawal of the Investor's entire Portfolio from The ClearView Wrap Account Service, unless the Investor has made alternative arrangements with ClearView to retain its participation.
- (d) Upon termination the Investor may instruct ClearView to transfer the Investor's Portfolio to another person authorised to hold and deal with those assets on the Investor's behalf. The Investor will reimburse and indemnify ClearView in relation to any costs or expenses ClearView incurs in relation to such transfer and termination.
- (e) If the Investor does not provide instructions to transfer the Investor's Portfolio within a reasonable period from termination, ClearView may realise the Investor's Portfolio and pay the proceeds of realisation, less any costs or expenses in relation to such transfer and termination, to the Investor.

## 23. Governing law

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This deed poll is governed by the laws of New South Wales and ClearView and each Investor irrevocably submit to the non-exclusive jurisdiction of the courts of that State.

## 24. Assignment

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- (a) An investor's rights and obligations under the Contract are personal and may not be assigned, transferred, novated or delegated by the investor without ClearView's prior written consent.

# Deed Poll

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- (b) At any time, ClearView may or any Assign may introduce any one or more Persons to the investor as a nominated assignee, transferee, novatee or delegate (each such nominated Person being an Assign) to whom all or a part of ClearView's respective rights and/or obligations under the Contract are to be assigned, transferred, novated or delegated.
- (c) If ClearView or an Assign introduces an investor to an Assign then the investor must irrevocably consent and agree:
  - (i) to any such assignment, transfer, novation or delegation (as applicable) even though the identity of the Assign may not be known, or capable of being known, at the date of the Contract;
  - (ii) to enter into an agreement with, among others, any Assign as is necessary or desirable to give effect to such assignment, transfer, novation or delegation; and
  - (iii) without limiting ClearView's rights to vary the Contract on such varied terms, as ClearView determine in good faith is necessary or desirable to give workable commercial effect to the Contract following the assignment, transfer, novation or delegation, in particular, but without limitation, where ClearView's functions under the Contract are split among multiple persons.
- (d) Investors must acknowledge that rights and obligations may be assigned, transferred, novated or delegated (as applicable) multiple times to successive Assigns, and agree that each such Assign has the benefit of this Clause 24.
- (e) Investors must acknowledge that it is of fundamental importance to ClearView and any Assign (and essential to ClearView's ability to provide services under the Contract) that ClearView be able to deal with all or part of the investor's rights and/or obligations under the Contract without restriction and that accordingly intend that the provisions in this Clause 24 operate so as broadly as possible so as to provide ClearView and any Assign with maximum flexibility in dealing with rights and obligations under the Contract.

## 25. Force majeure

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When, as a result of an event beyond its reasonable control (force majeure event), ClearView or an Investor is prevented in whole or in part from carrying out its obligations under the Contract, the affected party will give notice of this to the other specifying the obligations it cannot perform and fully describing the force majeure event. Following this notice and for as long as the force majeure event continues the obligations which cannot be performed because of the force majeure event is suspended. The force majeure event must be remedied to the extent reasonably practicable and performance of the obligations will be resumed as soon as reasonably possible.

## 26. Severance

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Any provision of this deed poll which is prohibited or unenforceable in any jurisdiction will be ineffective in that jurisdiction to the extent of the prohibition or unenforceability. That will not invalidate the remaining provisions of this deed poll nor affect the validity or enforceability of that provision in any other jurisdiction.

# Deed Poll

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## 27. Appointment of Financial Planner as agent

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- (a) ClearView may permit an Investor to authorise a financial planner to do the following on the Investor's behalf:
  - (i) Issue Investment Instructions or other instructions to ClearView;
  - (ii) Prepare, sign and lodge or otherwise communicate a request to dispose of any investment;
  - (iii) Obtain information about the relevant Investor's Portfolio and Accessible Investments;
  - (iv) Act as the relevant Investor's agent, in accordance with IDPS Law.
- (b) An Investor must authorise the financial planner pursuant to sub-clause 27(a) by written notice to ClearView, in a form acceptable to ClearView.
- (c) The exercise by a financial planner of any powers referred to in sub-clause 27(a) will be treated as, and deemed to be, the exercise of those powers by the relevant Investor.
- (d) ClearView may refuse to:
  - (i) act on Investment Instructions, redemption requests and information requests issued by a financial planner;
  - (ii) provide to the financial planner any information about the relevant Investor's Portfolio and Accessible Investments; and
  - (iii) provide information and reports to the financial planner that IDPS Law requires to be provided to the relevant Investor.
- (e) Where ClearView refuses to act or provide information in accordance with sub-clause 27(d) ClearView must give the relevant Investor notice of such refusal and the reasons for the refusal as soon as is reasonably practicable.
- (f) By authorising the financial planner pursuant to sub-clause 27(a) the Investor agrees:
  - (i) That the Investor and any person claiming through the Investor will have no claim against ClearView or its agents in respect of any action taken by ClearView, the relevant Investor or its agents including the financial planner and including action taken on the financial planner's instructions;
  - (ii) To release, discharge and indemnify ClearView and its agents from and against any liabilities, costs or losses that ClearView or its agents suffer as a result of the authorisation of a financial planner pursuant to sub-clause 27(a).
- (g) ClearView may vary this clause by giving Investors 30 days written notice of the variation.

# Deed Poll

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**Executed** as a Deed Poll in Sydney.


**Signed Sealed and Delivered by ClearView:**



Director Signature

SIMON SWANSON.

Print Name



Director/Secretary Signature

CHRISTOPHER ROBSON

Print Name