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**Deed of Amendment to the Trust Deed for  
the Brooklands (NZ) Superannuation  
Scheme No. 1**

Brooklands Trustees (NZ) Limited

**DLA Phillips Fox** is a  
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## Parties

**Brooklands Trustees (NZ) Limited (Trustee)**

## Background

- A The Trustee is trustee of the Brooklands (NZ) Superannuation Scheme No. 1 (**Scheme**). The Scheme was established by trust deed dated 11 November 2010 (**Trust Deed**).
- B Pursuant to clause 9 of the Trust Deed, the Trustee is empowered to amend the Trust Deed provided that such amendment does not:
- vary the main purpose of the Scheme, namely to provide retirement benefits to Members and their Beneficiaries;
  - have the effect of:
    - reducing, postponing or otherwise adversely affecting the benefits whether vested, contingent or discretionary, that may in due course flow from or are attributable to, membership of the Scheme up to the date the amendment is made; or
    - removing any right of the Members or Beneficiaries to participate in the management of the Scheme; or
    - increasing the contributions, fees, or charges payable by any Member,
- without the written consent of every Member, and of every other Beneficiary who is in receipt of a Benefit under the Scheme at the date the amendment is made, who would be adversely affected by the amendment.
- C The Trustee wishes to make a number of amendments the Trust Deed. The Trustee considers that these changes comply with the provisions of the Trust Deed as set out above.

## Operative provisions

### 1 Amendment to Trust Deed

1.1 Effective from 6 April 2012, the Trust Deed is amended as follows:

- 1.1.1 The definition of 'Income Tax Law' in clause 1.1 is amended by inserting the following at the end of that definition:

and Tax Administration Act 1994 and subsequent equivalent enactments.

- 1.1.2 The following definitions are inserted in their alphabetical place in clause 1.1:

**New Member** means a Member who joins the Scheme on or after 6 April 2012.

**PIE Tax** means the tax liability or tax rebate for the Scheme as determined in accordance with Income Tax Law if the Scheme is a PIE.

**Portfolio Investment Entity** or **PIE** has the same meaning as that term is defined in Income Tax Law.

**Scheme Year** means the period commencing on 1 October in one year and ending on 30 September the next year PROVIDED THAT the Trustee may at any time determine that Scheme Year means such other period commencing and ending on another date or dates as it may determine in its discretion.

- 1.1.3 The definition of 'Normal Retirement Date' in clause 1.1 is amended by adding the following words to the end of that definition:

or such later date as the Trustee in its absolute discretion shall from time to time determine in respect of New Members, provided that any Normal Retirement Date so determined shall only apply to those Members who join the Scheme on or after the date on which that Normal Retirement Date is so determined, and further provided that the Trustee shall have the power to determine a new Normal Retirement Date in the event that, due to a change in relevant law, it is (in the opinion of the Trustee) necessary or advantageous (to the Scheme or to the Members) to do so.

- 1.1.4 The following is inserted as a new clause 6.6:

6.6 Notwithstanding the forgoing provisions of this clause 6, if the Scheme is a PIE, the Trustee will take all reasonable steps to ensure the Scheme continues to meet the eligibility requirements for PIE status under Income Tax Law, including, but not limited to, divesting from any investment which causes the Scheme to breach the eligibility requirements for PIE status as soon as reasonably possible.

- 1.1.5 Clause 8.1 is amended by inserting the word 'and' after the word 'Scheme' in the first line and replacing the word 'an' in the first line with the word 'any'.

- 1.1.6 Clause 10.3 is amended by replacing the phrase 'person shall be' with the phrase 'payment was'.

- 1.1.7 Clause 10.1 of Schedule 1 is amended by replacing the word 'do' in the fifth line with the word 'no'.

- 1.1.8 A new Rule 7.2 is inserted into Schedule 2 as follows:

The Scheme shall report to Members in New Zealand dollars or such other currency or currencies as is determined by the

Trustee from time to time, provided that the denomination of amounts in the currency or currencies so determined shall be in accordance with all applicable law, including any relevant accounting standards.

- 1.1.9 Rule 9.1 of Schedule 2 is amended by inserting the following at the end of the sentence:

or such other currency or currencies as is determined by the Trustee from time to time, provided that the denomination of amounts in the currency or currencies so determined shall be in accordance with all applicable law, including any relevant accounting standards.

- 1.1.10 Rule 10.1 of the Schedule 2 is amended by deleting the word 'A' and inserting the following at the beginning of the sentence:

Subject to Rules 14, 14A and 16, a

- 1.1.11 Rule 11.1 of the Schedule 2 is amended by deleting the word 'On' and inserting the following at the beginning of the sentence:

Subject to Rules 14, 14A and 16, and on

- 1.1.12 Rule 12.1 of the Schedule 2 is amended by deleting the word 'With' and inserting the following at the beginning of the sentence:

Subject to Rules 14, 14A and 16, with

- 1.1.13 Rule 13.1 of the Schedule 2 is amended by deleting the word 'The' and inserting the following at the beginning of the sentence:

Subject to Rules 14, 14A and 16, the

- 1.1.14 Rule 14.1 of Schedule 2 is amended by replacing that clause in its entirety and replacing it with the following:

Subject to Rule 14A and the Act, a Member may at any time apply to the Trustee to have a benefit payable under any other superannuation or pension plan transferred from that plan (the transferor plan) to the Scheme. If any benefit is transferred into the Scheme, the transfer value (which may include a transfer of assets) shall be credited to the Member's Account of the relevant Member and shall be transferred subject to such terms and conditions as are agreed between the transferor plan trustees and the Trustee and/or such other terms and conditions as the Trustee may determine as being necessary or desirable or in the interests of the relevant Member or the Scheme.

- 1.1.15 A new Rule 14A is inserted in Schedule 2 after Rule 14 as follows:

#### **14A UK Tax-Relieved Scheme Funds**

14A.1 Notwithstanding Rule 14, a Member may, subject to the Act, at any time apply to the Trustee to transfer to the Scheme **UK Tax-Relieved Scheme Funds** which means, in relation to a Member, the sum of the Member's UK tax-relieved fund and his or her relevant transfer fund as defined respectively by regulations 2 and 3 of The Pension Schemes (Application of UK Provisions to

Relevant Non-UK Schemes) Regulations 2006(b) (UK). The value of the UK Tax-Relieved Scheme Funds being transferred (**Transfer Value**) shall be credited to the Member's Account of the relevant Member and shall be transferred subject to the following terms and conditions:

- 14A.1.1 the Trustee shall designate at least 70% of the Transfer Value for the purposes of providing the relevant Member with an 'income for life' (as determined by the Trustee);
- 14A.1.2 the pension benefits (as that term is used in the Finance Act 2004 (UK) and regulations made thereunder) and any lump sum associated with those pension benefits payable to the Member under the Scheme, to the extent that they relate to the UK Tax-Relieved Scheme Funds, are payable no earlier than they would be if pension rule 1 in section 165 of the Finance Act 2004 (UK) applied; and
- 14A.1.3 such other terms and conditions as are agreed between the scheme manager of the pension scheme from which the Transfer Value is to be transferred and the Trustee and/or such other terms and conditions as the Trustee may determine as being necessary or desirable or in the interests of the relevant Member or the Scheme.

1.1.16 Rule 16.1 of Schedule 2 is amended by replacing the word 'become' in the third and fifth lines with the word 'becomes'.

1.1.17 A new Rule 16.3 is inserted into Schedule 2 as follows:

Notwithstanding anything to the contrary in the Deed or these Rules, in respect of New Members, no withdrawal or payment shall be made from the Scheme under Rules 10 to 15 (inclusive) where the Trustee considers that that such withdrawal or payment may be prejudicial to the status or treatment of the Scheme, or to any Member of the Scheme or to any contribution made by or in respect of a Member under the Scheme under any law (including, without limitation, tax status or treatment).

1.1.18 A new Rule 22 is inserted into Schedule 2 as follows:

## **22 Taxation**

### **Trustee actions**

22.1 The Trustee may take whatever actions are necessary to comply with the requirements which are obligatory or which the Trustee may elect in respect of the apportionment or allocation of taxation or benefits under Income Tax Law.

### **Tax charged to Members**

22.2 The Trustee shall ensure that all taxes payable by the Scheme are charged to Members as determined by the Trustee from time to time. In particular, the Trustee may for tax purposes treat each of the Member Accounts separately.

**Election as PIE and PIE Tax**

22.3 The Trustee may elect that the Scheme be a PIE, or cease to be a PIE at its discretion, and may allocate the costs of being a PIE as it considers appropriate. The Trustee shall ensure that any PIE Tax is attributed to Members taking into account such matters as the Trustee, acting reasonably, considers appropriate.

**Powers of Trustee in respect of PIE Tax**

22.4 Subject to the requirements of Income Tax Law, the Trustee shall have the power and discretion to:

22.4.1 make any elections as to the method of calculation for allocation or attribution of any income, PIE Tax or other amounts as it considers appropriate;

22.4.2 take all steps necessary to ensure that the Scheme is eligible or continues to be eligible as a PIE or otherwise to comply with the requirements of Income Tax Law relevant to PIEs, including but not limited to, crediting or debiting Member Accounts and divesting any investment;

22.4.3 elect to offset tax liabilities and rebates in respect of the Scheme and/or a Member and make such adjustments as the Trustee considers appropriate;

22.4.4 allocate any tax rebate received in respect of Members among the Members in such manner as the Trustee considers appropriate;

22.4.5 adjust Member Accounts (by crediting or debiting amounts (as applicable)), or withdraw or withhold any amount payable to a Member to the extent necessary to account for payments or rebates in respect of any tax or other amounts payable or receivable from time to time, as the Trustee reasonably considers appropriate; and

22.4.6 exercise, or decline to exercise, any power or discretion relevant to PIEs granted under any enactment as the Trustee considers appropriate.

## **2 Definitions and Interpretation**

2.1 Words and phrases not otherwise defined in this deed shall have the same meaning as in the Trust Deed.

### **3 Confirmation of the Trust Deed**

3.1 In all other respects, the terms of the Trust Deed are confirmed.



**Execution and date**

Executed as a deed.

Date: 22 March 2012

**Brooklands Trustees (NZ) Limited** by, and in the presence of:



Signature of witness

Tom Barnes

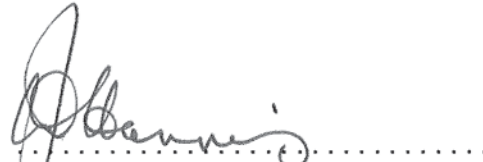
Name of witness (print)

Solicitor

Occupation of witness

Wellington

Address of witness



Signature of director

JOHN DAVID HANNING

Name of director (print)