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18 July 2023

Dear Committee Secretariat

KPMG Australia – response to question on notice

We refer to Question 1 of the questions on notice received by KPMG Australia (KPMG) on 28 June 2023 and our subsequent response dated 7 July 2023. Given further discussion on this matter at a recent hearing of the Senate Finance and Public Administration References Committee, please find attached KPMG's Partnership Agreement at Attachment A.

We have removed the two schedules attached to the Partnership Agreement. One schedule relates to the list of partners, which has been removed due to privacy concerns. The other schedule is a straightforward power of attorney template.

We trust that this information assists the Committee with its Inquiry. Please contact us if we can be of further assistance.

Yours sincerely

Andrew Yates
Chief Executive Officer



KPMG Australia Partnership Agreement 2022

Strictly confidential

Contents

Operative provisions	2
1 Definitions and Interpretation	2
2 The Partnership.....	8
Continuation of Partnership.....	8
Names.....	8
Place of practice.....	8
Continuity of Partnership.....	8
Effect of executing this agreement.....	9
3 Authority of Partners.....	9
4 Capital of the Partnership	9
Partner's interest in Partnership.....	9
Capital Contribution.....	9
Losses.....	9
5 Partner's obligations	9
6 Governance and management	11
7 National Board	11
8 National Chair	15
9 Chief Executive Officer	17
10 National Executive Committee.....	19
11 Partner Remuneration and Nominations Committee	19
12 Ethics and Independence Disciplinary Committee	21
13 Elections, appointment and rotation	21
14 Voting	22
Motions to be put to Partners	22
Voting entitlements.....	22
Required majorities	22
Voting and Meetings.....	22
Partners bound by resolutions	23
Issues requiring specific forms of approval.....	23
15 Meetings.....	23
16 Firm Business entities	23
17 Profit Pool.....	23
18 Profit Distributions to Partners	24
19 Salaried Partners.....	24
20 New Partners.....	24
Individual Partners.....	24
Mergers and acquisitions	24
Acceptance of offer.....	25
21 Partner leave	25

22 Voluntary retirement	25
Voluntary retirement	25
Voluntary retirement – Secondments and roles with KPMG Network Entities	25
23 Involuntary retirement	26
Involuntary retirement – Performance related	26
Involuntary retirement – Other	27
Involuntary retirement – Permanent total or partial disability and death	28
24 Retirement distributions	28
Application of retirement distribution provisions	28
Retirement distributions for Partners who transition from Equity Partner to Salaried Partner	29
Bases for calculating retirement distribution	29
Other	30
Wind-down of scheme	31
25 Expulsion	32
26 Consequences of retirement, expulsion or death	33
27 Suspension from Partnership	34
28 Assets and liabilities of the Partnership	35
29 Balance sheets and accounting	35
30 Goodwill of the Partnership	35
31 Intellectual Property	36
32 Moral Rights	36
33 Confidentiality and Legal Professional Privilege	36
34 Names and Service Marks	37
35 Employment of relatives	37
36 Restrictive Covenants	37
37 Uninsured Liabilities	39
38 Conduct of Claims	39
39 Dispute resolution	40
40 Permitted assignments	40
41 Miscellaneous	41
Amendment	41
Indemnities	41
Notices	41
Governing law and jurisdiction	41
Counterparts	41
Schedule 1	43
Schedule 2	47
Schedule 3	48

This Agreement has effect on and from 1 September 2022

between: **initially the persons named in Schedule 1 and thereafter the Partners from time to time**

and: **KPMG Australia Pty Limited (Company) ACN 008 644 728**

Recitals

- A. The persons named in Schedule 1 comprise a partnership of accountants and other professionals carrying on business throughout the Commonwealth of Australia under the name of KPMG (**Partnership**).
- B. The Company is a company incorporated in the Australian Capital Territory. The whole of the issued capital of the Company is held by nominees on behalf of the Partners who carry on business in Australia from time to time in the name of KPMG in accordance with the terms of this agreement.
- C. The Company has the exclusive right to the use in Australia of the Service Marks and the right to confer on persons practising as chartered accountants and other professionals the other benefits of participation in the KPMG Network.
- D. This agreement amends and supersedes the Previous Partnership Agreements but is not intended to change the principles upon which the Partnership operates.

Operative provisions:

1 Definitions and Interpretation

1.1 The following words have these meanings in this agreement unless the contrary intention appears.

Adjusted Fixed Retirement Amount has the meaning given to it in Clause 24.17.

Aggregate Board Tenure includes:

- (a) all periods served on the National Board whether as an appointed or as an elected National Board member and whether such periods are consecutive or not; and
- (b) for the purposes of Clause 7.9, where a Partner is standing for election to fill a casual vacancy and the commencement date for their term is other than 1 July (Casual Vacancy Start Date), the period on and from the Casual Vacancy Start Date to the next occurring 1 July,

but does not include any periods served on the National Board as the National Chair or the CEO.

Aggregate PRNC Tenure, for the purposes of Clause 11.7, includes:

- (a) all periods served on the PRNC whether such periods are consecutive or not; and
- (b) where a Partner is standing for election to fill a casual vacancy and the commencement date for their term is other than 1 October (PRNC Casual Vacancy Start Date), the period on and from the PRNC Casual Vacancy Start Date to the next occurring 1 October,

but does not include any periods served on the PRNC as the CEO.

Arbitration means an arbitration conducted in accordance with the rules of arbitration of the Australian Centre for International Commercial Arbitration as amended, updated and replaced from time to time with:

- (a) the seat of arbitration to be Sydney, Australia;
- (b) the language of the arbitration to be English; and
- (c) one appointed arbitrator who shall be a practising or former Australian judge, barrister or solicitor.

Associated Entity has the meaning given to that term in section 50AAA of the *Corporations Act 2001* (Cth).

Band Allocation means the band level allocation of an Equity Partner for the following Financial Year.

Base Distribution means the total base distributions made to a Partner from the Profit Pool for a given year, comprising:

- (a) for Salaried Partners, cash distributions made monthly; and
- (b) for Equity Partners:
 - (i) cash distributions made monthly; plus
 - (ii) other special cash distributions made from time to time,

and is, in each case, separate to any Performance Distribution and any Exceptional Distribution made to the Partner.

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Sydney, New South Wales.

Calculated Retirement Notice Period has the meaning specified in Clause 23.3.

Chief Executive Officer or CEO means the person who, under Clause 9, is the Chief Executive Officer of the Firm.

Claim means any claim, action, demand, suit, regulatory process or investigation, or proceeding whether brought in a court of law or not for damages, debt, restitution, equitable compensation, account, injunction, specific performance, remedy, claim for contribution or indemnity, monetary penalty or fine, or liability of any kind (including one which is prospective or contingent and one the amount of which is not ascertained), and costs (whether or not the subject of a court order).

Clause means a clause of this agreement.

Client means any past or present client of the Firm.

Code of Conduct means the KPMG Global Code of Conduct 2020 as amended, updated and replaced from time to time.

Competitive Business means any business or activity conducted anywhere in Australia which competes with, is intended to compete with, or is the same as or similar to any of the businesses carried on by the Firm and, for the avoidance of doubt, includes any Competitive Business newly established by former Partners of the Firm. Engaged or involved in a Competitive Business includes direct or indirect involvement as a principal, partner, agent, employee, director, consultant or adviser.

Confidential Information means information of whatever nature concerning the Firm Business and the finances (including but not limited to the balance sheet and the profit and loss accounts), assets, liabilities, actual or potential dealings or transactions, know-how, customers, suppliers, policies, processes, methodologies, models, manuals, pricing structure, strategy, or affairs of the Firm or its Clients, KPMG International or the KPMG Network which Partners may from time to time receive or obtain (whether verbally or in writing or in electronic form) as a result of or in connection with their involvement with the Firm (whether as a Partner, an officer of the Company or an Associated Entity, or otherwise) which is not in the public domain, and includes this agreement.

CPI means the Consumer Price Index (all groups – weighted average of eight capital cities) published by the Australian Bureau of Statistics or, in the event that this index ceases to be published, such replacement index as determined by the National Board.

De facto Relationship has the same meaning as is given to that term in section 4 of the *Property (Relationships) Act 1984* (NSW).

Deputy Chair means a person appointed to the role of deputy Chair of the National Board as contemplated in Clause 7.14(b).

Dispute means any dispute, controversy or Claim arising out of, relating to or connected with this agreement.

Dispute Document means a confidential document marked "Confidential: Dispute Document" that sets out all of the issues that are, or may be, in dispute. A notice provided under Clause 25.1 or Clause 27.1 is not a Dispute Document.

Election Procedures and Regulations Policy means the policy relating to election procedures and regulations as amended, updated and replaced from time to time.

Eligible Service means, for the purposes of determining the years of service of a Partner which shall be included in calculating the Partner's retirement distribution under Clause 24:

- (a) a Partner's years of service as an Equity Partner; plus
- (b) where a Partner is a Salaried Partner prior to first becoming an Equity Partner, those years of service as a Salaried Partner (but no other periods of service as a Salaried Partner).

Equity Partner means a Partner who is not a Salaried Partner.

Ethics and Independence Disciplinary Committee or EIDC means the Ethics and Independence Disciplinary Committee established under Chapter 12.11.1 of the Australian Quality and Risk Management Manual.

Exceptional Distribution means a distribution (if any) made to a Partner from the Profit Pool in respect of that Partner's performance for a given year for exceptional contribution to the Firm (and is separate to the Base Distribution and any Performance Distribution made to the Partner).

Financial Year means the period commencing on 1 July and ending on the following 30 June or such other period as is determined by the National Board from time to time.

Firm means the totality of the entities (including partnerships, trusts, companies and interests in joint ventures) carrying on business under any of the Service Marks (or any derivative of those Service Marks) from time to time including the Partnership, the Company and their Associated Entities, or any one of them.

Firm Business means the businesses carried on by the Firm, or any part of it, from time to time.

Fixed Retirement Amount has the meaning specified in Clause 24.16(b).

Flexible Working Arrangement means a work arrangement agreed between a Partner and the CEO under which the Partner works less than 37.5 hours per week.

General Counsel means the Firm's General Counsel from time to time.

Intellectual Property means all present and future rights conferred by law or in relation to copyright, trademarks, designs, patents, models, circuit layouts, inventions, improvements, know-how, processes and confidential information, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields arising anywhere in the world and whether or not registrable, registered or patentable. These rights include:

- (a) all licences to use these rights;
- (b) all rights in all applications to register these rights;
- (c) all renewals and extensions of these rights; and
- (d) all rights in the nature of these rights, excluding Moral Rights.

KPMG Global Board means the principal governance and oversight body of KPMG International from time to time.

KPMG International means, as applicable, any or all of:

- (a) KPMG International Cooperative, a Swiss Cooperative;
- (b) KPMG International Limited, a company limited by guarantee incorporated in England & Wales with company number 12474966;
- (c) KPMG International Services Limited, a company limited by guarantee incorporated in England & Wales with company number 12475099; and
- (d) the entity which is the sublicensee of the Asia Pacific entities (including the Company) in the KPMG Network pursuant to a sublicense agreement with such Asia Pacific entities and KPMG International Cooperative, currently KPMG ASPAC Limited (CR No. 2746180), a company existing under the laws of Hong Kong SAR,

and their respective subsidiaries with which some or all KPMG Member Firms are affiliated, or any successor entity or entities.

KPMG Member Firm means an entity (whether or not incorporated):

- (a) which is presently a member of KPMG International and which has signed membership agreements currently in effect with KPMG International (Member);
- (b) which has signed a participation agreement currently in effect with one or more other KPMG Member Firms and KPMG International for the purpose of defining such entity's relationship with KPMG International (Sublicensee); or
- (c) which directly or indirectly is wholly or dominantly owned and controlled by any Member or Sublicensee.

KPMG Network means the global network of KPMG member firms affiliated with KPMG International.

KPMG Network Entity has the meaning given in Clause 22.5.

KPMGi Chairman means the person who holds the role of Chairman of KPMG International Limited from time to time.

KPMGi Direction means any recommendation, direction, instruction or decision issued by or on behalf of KPMG International to the Firm, the Partnership or any of the Partners.

Membership Agreement means the agreement effective on or around 1 October 2020 between KPMG International Cooperative and the Company under which KPMG International Cooperative grants to the Company the right to use the Service Marks.

Moral Rights means rights of integrity of authorship, rights of attribution or authorship, rights not to have authorship falsely attributed, and rights of a similar nature conferred by Australian law that may now exist or that may come to exist in relation to the work. Work in this definition has the meaning given to that term in the *Copyright Act 1968* (Cth).

National Board means the Board established in accordance with Clause 7.

National Chair means the person elected Chair of Partners in accordance with Clause 8.

National Executive Committee or NEC means the committee established in accordance with Clause 10.

National Managing Partner means a person recommended for appointment by the CEO and approved by the Board to act as the leader of an area of the business or operation of the Firm.

Office Chair means, in respect of a State or Territory, a Partner nominated by the CEO and approved by the National Board to represent the Partnership in the business community of that State or Territory.

Operative Date means 1 September 2022.

Ordinary Resolution has the meaning specified in Clause 14.7.

Partner means a person who is a member of the Partnership and, unless otherwise indicated, includes a Salaried Partner.

Partner Leave Policy means the policy relating to Partner leave entitlements as amended, updated and replaced from time to time.

Partner Remuneration and Nominations Committee or PRNC means the committee established in accordance with Clause 11.

Partner Retirement Deed means a deed in substantially the same form as the deed which is an annexure to the Partner Retirement Policy.

Partner Retirement Policy means the policy relating to Partner retirement as amended, updated and replaced from time to time.

Partnership means the partnership between, at the Operative Date, the persons named in Schedule 1 and thereafter all persons who have agreed to be bound by this agreement by signing the Acknowledgement in Schedule 2 having been appointed as a Partner under the terms of this agreement.

Partnership Accounts means the profit and loss account and balance sheet of the Partnership and includes notes attached to or intended to be read with any such profit and loss account or balance sheet.

Performance Distribution means a distribution made to a Partner from the Profit Pool in respect of that Partner's performance for a given year (and is separate to the Base Distribution and any Exceptional Distribution made to the Partner).

Permitted Assignee means the trustee of a discretionary trust the trust deed of which complies with the requirements specified from time to time by the National Board.

PEU means a partnership equity unit in the Partnership.

Previous Partnership Agreements means one or more or all of the KPMG Partnership Agreements which took effect on and from 1 January 2003, the previous agreement which it replaced, the KPMG Partnership Agreement which took effect on and from 1 January 2009, the KPMG Australia Partnership Agreement which took effect on and from 1 October 2014, the KPMG Australia Partnership Agreement which took effect on and from 1 July 2018, the KPMG Australia Partnership Agreement which took effect on and from 1 October 2020 or the KPMG Australia Partnership Agreement which took effect on and from 1 July 2021.

Proceeding means any judicial, regulatory, professional or administrative proceeding instituted by or on behalf of the Firm or any Partner in any jurisdiction, other than court proceedings to seek Urgent Relief in respect of a Dispute or an appeal under section 34A of the *Commercial Arbitration Act 2010* (NSW).

Profit Distributions means, as the context requires, the Base Distributions, Performance Distributions and Exceptional Distributions (each where relevant) made to an individual Partner, or to the Partners in aggregate, for a financial year.

Profit Pool means all of the distributable profit of the Firm for a Financial Year as determined by the National Board.

Profit Sharing Entitlement in relation to an Equity Partner is the total number of PEUs allocated to that Equity Partner (as determined by the National Board from time to time) divided by the total number of PEUs on issue to all the Equity Partners (including those allocated to that Equity Partner) at the relevant time, expressed as a percentage.

Restraint Period for the purpose of Clause 36 means:

- (a) 12 months from when the Partner ceases to be a Partner, or if that is held to be unreasonable;
- (b) 9 months from when the Partner ceases to be a Partner, or if that is held to be unreasonable;
- (c) 6 months.

Salaried Partner means a Partner to whom Clause 19 applies.

Serious Criminal Offence means an offence that is:

- (a) an indictable offence against a law of the Commonwealth or any State or Territory of Australia, whether or not the offence is or may be dealt with summarily; or
- (b) an offence against the law of a foreign country that would be an indictable offence against a law of the Commonwealth or any State or Territory of Australia if committed in any Australian jurisdiction, whether or not the offence could be dealt with summarily.

Serious Mental Health Condition means any mental illness or condition which, in the opinion of an appropriately qualified and practising psychiatrist, is:

- (a) likely to result in a Partner being determined as a mentally ill person or mentally disordered person under the *Mental Health Act 2007* (NSW); or
- (b) otherwise is so serious as to result in:
 - (i) a Partner being permanently unable in any way to continue practising as a Partner; or
 - (ii) the Partner's ability to continue practising as a Partner is materially but not totally diminished.

Service Marks means the service marks which use one or more of the names "KPMG", "Klynveld", "Peat", "Marwick", or "Goerdeler" alone or in combination with other names or marks (including, without limitation, derivatives of them) which are the subject of the Membership Agreement and the Sublicense Agreement.

Service Trust means the KPMG Australian Service Trust ABN 87 160 010 116.

Scheme Partner has the meaning specified in Clause 24.15.

Seconded Partner has the meaning specified in Clause 24.15.

Significant Commercial Arrangement means any acquisition, merger, demerger, restructure, capital outlay, investment or divestment or any other transaction or arrangement determined by the National Board to be significant involving \$5 million or more.

Special Resolution has the meaning specified in Clause 14.7.

Specified Partner means a Partner who holds any of the following roles:

- (a) a role on or closely aligned to the activities of a 'Global Steering Group' of KPMG International or any similar or replacement groups or bodies;
- (b) the role of 'Global Lead Partner' for any actual or potential client of the Firm, being a Partner with the primary relationship with an actual or potential client approved as a 'Global Account' by KPMG International; or
- (c) a role as the leader of a key function or infrastructure area within the Firm,

but does not include a person merely because they occupy a role as National Chair, CEO, a member of the NEC, a member of the National Board or a National Managing Partner.

Sublicense Agreement means the agreement effective on or around 1 October 2020 between the Partnership, the Company and KPMG International Cooperative under which the Partnership is licensed to use the Service Marks.

Uninsured Liability means any liability, loss, damage, charge, penalty, fine, compensation, cost, or expense (including, but not limited to, legal fees) arising out of or in connection with Firm Business that is suffered or incurred by any Partner, former Partner or the Firm in connection with any Claim that is not recoverable under an insurance policy.

Urgent Relief means urgent injunctive, interlocutory or declaratory relief in respect of a Dispute.

- 1.2 The following rules apply in interpreting this document except where the context makes it clear that the rule is not intended to apply:

- (a) a reference to:
 - (i) a legislative provision or legislation (including subordinate legislation) is a reference to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document (including this document) or agreement, or a provision of a document (including this document) or agreement, is a reference to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this document or to any other document or agreement includes a successor in title, permitted substitute or a permitted assign of that party;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;
 - (v) anything (including a right, obligation or concept) includes each part of it;
 - (vi) an accounting term is to be interpreted in accordance with generally accepted principles and practices in Australia consistently applied by a body corporate or as between bodies corporate and over time;
 - (vii) any thing (including, without limitation, any amount) is a reference to the whole and each part of it;
 - (viii) the Partnership is a reference to the Partnership as it is constituted from time to time;
 - (ix) **information** is a reference to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programs, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets; and
 - (x) **dollars** or **\$** is a reference to an amount in Australian currency;
- (b) headings are for convenience only and do not affect the interpretation of this agreement;
- (c) a singular word includes the plural and vice versa;
- (d) a word which suggests one gender includes the other genders;

- (e) if a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning;
 - (f) if an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing; and
 - (g) the expression this document includes the agreement, arrangement, understanding or transaction recorded in this document.
- 1.3 If a party to this document is made up of more than one person, or a term is used in this document to refer to more than one person, then unless specified in this document:
- (a) an obligation of those persons is joint and several;
 - (b) a right of those persons is held by each of them severally; and
 - (c) any other reference to that party or term is a reference to each of those persons separately, so that (for example) an obligation or undertaking relates to each of them separately.
- 1.4 Despite the date on which this agreement is executed the parties intend that it is to take effect on and from the Operative Date and this agreement is to be read accordingly. Any reference to “the date of this agreement” in this agreement is to be read as if that date were the Operative Date.

2 The Partnership

Continuation of Partnership

- 2.1 The persons named in Schedule 1 were Partners of the Partnership prior to and on the Operative Date or were admitted to the Partnership on or about the Operative Date. All those persons continue to or will be Partners of the same Partnership on and from the Operative Date.
- 2.2 The Partners acknowledge that:
- (a) this agreement is an amendment and restatement of the Previous Partnership Agreements, approved in accordance with Clause 14.18 of the KPMG Australia Partnership Agreement 2021 which took effect on and from 1 July 2021; and
 - (b) the Partnership constituted in accordance with this agreement is a continuation of the partnership constituted under the Previous Partnership Agreements.

Names

- 2.3 The Partnership is to practise under the name “KPMG” or any other name which is agreed in accordance with this agreement.

Place of practice

- 2.4 The Partners agree to practise as professionals in various fields and to carry on the Firm Business in the places at which the Firm carried on the Firm Business immediately prior to this agreement or at any other place which is decided from time to time in accordance with this agreement.

Continuity of Partnership

- 2.5 Nothing dissolves the Partnership which but for this Clause may have that effect including, without limitation:
- (a) the amendment or restatement of this agreement;
 - (b) the admission of a new Partner;
 - (c) the retirement, resignation, suspension, expulsion, death or other cessation of a person as a Partner for any reason;
 - (d) the bankruptcy of a Partner; and

- (e) if a Partner has a Serious Mental Health Condition or the estate of a Partner becomes liable to be dealt with in any way under the law relating to mental health,

and in any or all of those circumstances the Partnership continues and the Partners continue to be bound by the terms of this agreement.

Effect of executing this agreement

- 2.6 A Partner who executed this agreement and gave specific authority to the National Board in the form of the irrevocable power of attorney set out in Schedule 3 before the Operative Date and therefore was a Partner in the Partnership before the Operative Date will be taken to have agreed to continue as a Partner in the same Partnership on the terms contained in this agreement.
- 2.7 Any person who becomes a Partner in the Partnership is bound by the terms contained in this agreement on and from the date of executing this agreement.

3 Authority of Partners

- 3.1 Subject to any limitations or restrictions imposed or authorised by this agreement or at law, the Partners have overall authority in respect of the Firm Business, which authority is to be exercised in accordance with this agreement.
- 3.2 Authority to perform particular acts for and on behalf of the Partnership may be delegated to one or more Partners or nominated employees of KPMG Australian Services Pty Limited ACN 069 182 958 as trustee for Service Trust by way of a written delegation or policy recommended by the CEO and approved by the National Board.

4 Capital of the Partnership

Partner's interest in Partnership

- 4.1 This Clause 4 does not apply to Salaried Partners.
- 4.2 On admission to the Partnership a Partner acquires an interest in the Partnership. Except as otherwise provided for in this agreement the extent of that interest is not affected by the Profit Sharing Entitlement of the Partner.

Capital Contribution

- 4.3 Each Partner agrees to make a capital or loan contribution to the Partnership in an amount and in the manner recommended by the CEO and approved by the National Board from time to time.
- 4.4 The capital of the Partnership is the amount shown in the books of the Partnership as having been contributed by the Partners as capital contributions.
- 4.5 If the National Board resolves to reduce the amount of capital contributed by the Partners then it must arrange for appropriate repayments to Partners.

Losses

- 4.6 All losses of the Partnership will be borne by the Partners of the Partnership in accordance with their Profit Sharing Entitlements in respect of the period in which the loss is recognised in the Partnership Accounts.

5 Partner's obligations

- 5.1 The Partners acknowledge that they are partners in a common enterprise conducted by the Firm and have important legal, fiduciary and ethical obligations to each other and the Firm. Subject to any limitations or restrictions imposed or authorised by this agreement, each Partner agrees to at all times:
 - (a) be engaged diligently and faithfully in the business of the Firm as a full time commitment subject to any Flexible Working Arrangement agreed with the Partner by the CEO or any leave of absence which may be granted to or required of the Partner by the CEO;

- (b) use the Partner's best skill and endeavour to carry on the business of the Partnership to the utmost benefit of the Firm and the KPMG Network;
- (c) be just and faithful to the other Partners;
- (d) comply with all laws, applicable regulations and policies of both the Firm and KPMG International, including but not limited to ethical rules, policies on independence and risk management, and the Code of Conduct;
- (e) to comply with all applicable professional rules and standards governing the conduct of the professional services the Firm provides in each of the places where the Firm carries on its business;
- (f) comply with any reasonable direction of the National Chair or the CEO;
- (g) comply with the contractual terms of agreements entered into for and on behalf of the Firm;
- (h) proactively give to the other Partners full information and truthful explanations of all matters relating to, or which may impact upon, the affairs of the Firm;
- (i) abide by the KPMG Values as amended from time to time and currently:
 - (i) Integrity – we do what is right;
 - (ii) Excellence – we never stop learning and improving;
 - (iii) Courage – we think and act boldly;
 - (iv) Together – we respect each other and draw strength from our differences;
 - (v) For Better – we do what matters;
- (j) support the social, cultural and community service strategies of the Firm from time to time;
- (k) where the National Board determines that the departure of the Partner (along with the departure of another Partner or Partners) has triggered a requirement that an amount be paid to KPMG International in connection with the Partner's retirement, promptly pay an amount determined by the National Board to be that Partner's proportionate share of the amount payable to KPMG International;
- (l) immediately pay all money, cheques and negotiable instruments belonging to the Firm received by the Partner into a bank account of the Firm;
- (m) conduct the Partner's personal financial affairs with integrity including, but not limited to punctual satisfaction of the Partner's private debts, regulatory obligations and agreements, and indemnify the other Partners against all liability in connection with them;
- (n) not undertake any activity which is detrimental to, or could put at risk, the financial, property or reputational interests of the Firm; and
- (o) not to transfer, assign, declare a trust over or otherwise deal with the Partner's interest in the Partnership or any part thereof unless it is:
 - (i) with the prior approval of, and in a manner approved by, the National Board; and
 - (ii) in accordance with Clause 40.

5.2 Each Partner indemnifies the other Partners against all loss incurred in connection with a breach by that Partner of Clause 5.1.

5.3 Despite any other provision in this agreement, if it is discovered that a Partner has been party to, or knowingly involved in, any fraud or theft of the assets of the Firm or any Client, then the other Partners may set off the amount required to make good the fraud or theft against any amount the first mentioned Partner (or the legal personal representatives or a nominee of that Partner) would be entitled to under this agreement.

- 5.4 Except under exceptional circumstances referred to in the Australian Quality and Risk Management Manual, a Partner may not accept an appointment as a director of or consultant to a publicly held company (including listed and unlisted public companies and other public interest entities such as banks, building societies, credit unions and insurance companies).
- 5.5 A Partner may not accept any appointment or role which could or does result in any damage to the reputation of the Firm, or the Firm being in breach of any law or applicable professional standard, including but not limited to audit independence requirements.
- 5.6 Subject to Clause 5.4 and Clause 5.5, a Partner may hold appointments or roles with third parties, including Clients, in their personal capacity if approved under Chapter 5.9.4 of the Australian Quality and Risk Management Manual as amended from time to time and so long as the totality of the Partner's external appointments or roles does not impact upon:
- (a) the Partner's ability to uphold their duties as a Partner and, in particular, under Clause 5.1(a); or
 - (b) the Firm Business.
- 5.7 Any remuneration, allowance, gift, benefit or legacy earned or received directly or indirectly by a Partner as a result of holding personal appointments or roles with third parties, including Clients, under Clause 5.6 is received or earned in the Partner's personal capacity and not in their capacity as a Partner. Each Partner indemnifies the other Partners and the Firm against any liability for loss incurred in connection with the Partner undertaking any such appointment or role.

6 Governance and management

- 6.1 The Firm is to be governed and managed by the National Board, the National Chair, the CEO, the NEC, the PRNC and the EIDC in accordance with their respective functions as set out in this agreement.
- 6.2 The Partners acknowledge and agree that the National Board, the National Chair, the CEO, the NEC, the PRNC and the EIDC have the power and authority to do those things which each is authorised to do under the terms of this agreement.

7 National Board

- 7.1 The Firm shall have a National Board. In electing or removing members of the National Board, regard is to be had to any applicable policy or other requirement of KPMG International.
- 7.2 The National Board is responsible and accountable to the Partners for:
- (a) the stewardship of the Partnership for the benefit of current and future Partners;
 - (b) the successful conduct of the Firm;
 - (c) enhancing the image and profile of the Firm; and
 - (d) the implementation of issues voted on by the Partners.
- 7.3 The composition of the National Board should seek to ensure:
- (a) appropriate representation across the Firm in terms of gender and diversity, the geographical location and size of the offices of the Firm, and the various professional service lines of the Firm; and
 - (b) that the National Board has the range of skills ordinarily expected of the governing body of a large commercial business.

7.4 The National Board shall comprise:

- (a) the National Chair;
- (b) the CEO;
- (c) seven elected members who are Partners (none of whom may contemporaneously serve on the NEC); and
- (d) a maximum of three members who may or may not be Partners and who may be independent of the Firm, appointed by the National Board on the recommendation of the National Chair (none of whom may contemporaneously serve on the NEC).

Where a casual vacancy of the kind described in Clause 7.11 occurs, the National Board shall be deemed to be properly constituted during the period on and from the date of the casual vacancy until the date on which a new member is elected under Clause 7.11.

7.5 To be eligible for election, re-election, appointment or re-appointment as a member of the National Board or as the National Chair, a Partner must not be alleged to have committed, or have committed, an egregious breach of the obligations of a Partner under this agreement and in particular Clause 5.1. Other than in connection with the re-election of the current National Chair, if there is any dispute in relation to a Partner's eligibility for election, re-election, appointment or re-appointment on the basis of this Clause 7.5, then the National Chair, with the approval of the National Board and exercising reasonable care and diligence, shall determine whether the Partner is eligible to be elected, re-elected, appointed or re-appointed (as applicable). The relevant Partner shall not have a vote on any matter relating to their eligibility under this Clause 7.5.

If there is any dispute in relation to the re-election of the current National Chair on the basis of this Clause 7.5, then, the National Board, after consultation with the KPMGi Chairman, by a resolution passed by 75% or more in number of the members of the National Board (excluding the National Chair), shall determine whether the National Chair is eligible to be re-elected. The National Chair shall not have a vote on any resolution under this Clause 7.5.

7.6 A quorum at meetings of the National Board is a majority of National Board members.

7.7 Except as set out in Clause 7.16, a majority vote of the National Board is required to pass a resolution. In the event of an even vote, the National Chair will have a casting vote. The CEO shall not have a vote on any resolution of the National Board to remove the CEO.

7.8 The term of office of an elected National Board member will ordinarily be a period not exceeding three years. An elected National Board member must retire from the National Board at the end of each term and may, subject to clause 7.9, stand for election for a further term(s).

7.9 A National Board member who, as at the next occurring 1 July, will have an Aggregate Board Tenure of:

- (a) between 5 and 7 years, may only stand for election for a further term in exceptional circumstances approved by the National Board, on the recommendation of the National Chair; and
- (b) more than 7 years, may not stand for election for a further term.

The relevant National Board member shall not have a vote on any matter relating to them under this Clause 7.9.

7.10 The term of office of an appointed National Board member, and any decision to appoint a National Board member for a further term(s), shall be determined by the National Board on the recommendation of the National Chair, provided that term may be for a period of up to three years. A National Board member may only be appointed for a term or terms that will result in that member's Aggregate Board Tenure exceeding 6 years in exceptional circumstances approved by the National Board on the recommendation of the National Chair. A National Board member may not be appointed for a term or terms that will result in that member's Aggregate Board Tenure exceeding 9 years. The relevant appointed National Board member shall not have a vote on any matter relating to them under this Clause 7.10.

- 7.11 A casual vacancy caused by the resignation or removal for any reason of an elected member of the National Board shall be filled by the election of a new member in accordance with the terms of this agreement. An election to fill a casual vacancy under this Clause 7.11 must occur within 3 months of the occurrence of the casual vacancy or such other period as determined by the National Board.
- 7.12 Clauses 7.8 to 7.11 (inclusive) do not apply to the National Chair or the CEO, whose terms are governed by Clauses 8.4 and 9.3, respectively.
- 7.13 An elected member of the National Board (including the National Chair) who ceases to be a Partner shall be deemed to have resigned from the National Board, but may be appointed to serve on the National Board under Clause 7.4(d).
- 7.14 Without limiting the generality of Clause 7.2, the National Board has the specific authority and responsibility to:
- (a) agree the procedures for the conduct of meetings of the National Board;
 - (b) approve the appointment and removal of a Deputy Chair of the National Board, on the recommendation of the National Chair;
 - (c) at any time, appoint or remove the CEO, on the recommendation of the National Chair;
 - (d) if for any reason the CEO is absent, appoint an acting CEO, on the recommendation of the National Chair;
 - (e) approve the appointment and removal of National Managing Partners and the membership of the NEC, on the recommendation of the CEO;
 - (f) approve the appointment and removal of any Office Chair, on the recommendation of the CEO;
 - (g) approve the appointment of Partners under Clause 20.4 and ratify the appointment of other Partners following the approval of the appointments by the National Chair;
 - (h) approve the capital contributions to be made by Partners from time to time, on the recommendation of the CEO;
 - (i) approve policies, strategic plans, business plans and budgets for the Partnership, including any material changes to policies, strategic plans, business plans and budgets previously approved, on the recommendation of the CEO;
 - (j) receive and review periodic reports from the CEO on the management and administration of the Partnership, including but not limited to the achievement of budgets, and ensure that Partners regularly receive financial and other information about the Firm;
 - (k) ensure that appropriate regulatory and risk management processes are instituted by the CEO;
 - (l) ensure there is adequate succession planning for key positions within the Firm;
 - (m) on the recommendation of the CEO and after consideration of the qualitative aspects relating to brand, reputation and risk profile, approve and cause the Firm to enter into any Significant Commercial Arrangement where the Significant Commercial Arrangement involves at least one other KPMG Member Firm and has been approved by the KPMG Global Board;
 - (n) approve and cause the Firm to enter any Significant Commercial Arrangement which does not fall within Clause 7.14(m) with a value of \$5 million or more, on the recommendation of the CEO. If the Significant Commercial Arrangement involves the payment or receipt of an amount in excess of 15% of the aggregate revenue of the Partnership for the previous Financial Year or results in an increase or decrease of more than 15% in the total number of Partners, the Significant Commercial Arrangement must be ratified by the Partners by way of Ordinary Resolution;
 - (o) approve and determine the Profit Pool of the Firm each Financial Year;

- (p) approve the principles and procedures with respect to the allocation of the Profit Pool in relation to Profit Distributions for Partners on the recommendation of the CEO and PRNC (as applicable);
- (q) approve, upon the recommendation of the CEO and endorsement of the PRNC, that an Exceptional Distribution be made to one or more Partners from the Profit Pool;
- (r) hear and determine appeals from members of the PRNC who are dissatisfied with their Band Allocation;
- (s) approve the appointment and removal of the Chair of the PRNC;
- (t) determine the term of office of members of the PRNC;
- (u) review and approve the report of the PRNC on the final Band Allocations and Profit Distributions from the Profit Pool each year to Partners, with particular reference to the allocations to the CEO, members of the NEC and the PRNC, and satisfy itself that the profit allocation process is operating fairly and equitably and in accordance with the approved principles and procedures;
- (v) determine which Partners are entitled to vote on any motion to be put to Partners;
- (w) approve the Partner Leave Policy, on the recommendation of the CEO;
- (x) on the recommendation of the National Chair, ask the CEO to retire from the Partnership if, in the reasonable opinion of the National Chair, any of Clause 23.1(a), Clause 23.1(b) or Clause 23.1(c) applies in respect of the CEO on terms determined by the National Board;
- (y) approve the retirement, suspension, termination or expulsion of Partners, including the terms of such retirement, suspension, termination or expulsion and related procedural issues, on the recommendation of the CEO;
- (z) approve the terms of reference of the EIDC, on the recommendation of the CEO;
- (aa) approve disciplinary actions for violations of the Firm's ethics and independence policies, on the recommendation of the CEO;
- (bb) ensure the Firm's corporate governance practices are appropriate and in line with good corporate practice;
- (cc) appoint such sub-committees as it deems appropriate, one of which must be an 'Audit Committee';
- (dd) delegate its duties and powers to any person as it determines, where records of such delegations (including any amendment to or termination of a delegation approved by the National Board) must be maintained;
- (ee) submit an annual financial report to Partners;
- (ff) arrange general meetings of Partners as required;
- (gg) agree as to how the Firm, through the National Chair, will vote on matters proposed to the KPMG Global Board in relation to KPMG Network matters such as amendments to the KPMG International statutes or the creation of new global corporate entities;
- (hh) subject to Clauses 14.16, 14.17 and 14.18 (Issues requiring specific forms of approval), consider and make decisions on behalf of the Partners in connection with any KPMGi Direction or any other matter arising under an applicable policy or requirement of KPMG International where such KPMGi Direction or matter is reasonably likely in the opinion of the National Board to result in:
 - (i) the withdrawal or removal of the Firm from the KPMG Network; or
 - (ii) a requirement to make a monetary payment in an amount of \$5 million or more being imposed on the Firm,
 including, without limitation, making any decision:

- (iii) to implement or follow a KPMGi Direction, including subject to such modifications as the National Board considers necessary or desirable;
 - (iv) to dispute or challenge a KPMGi Direction or applicable policy or requirement of KPMG International;
 - (v) to submit a motion to the Partners in connection with a KPMGi Direction or applicable policy or requirement of KPMG International under Clause 14.1; or
 - (vi) without the need for any recommendation that would otherwise be required under this agreement; and
 - (ii) vary this agreement if the variation is necessary to comply with any law, changes to professional ethical rules, to correct a manifest error or an error of a minor nature, or if the variation is only of a formal or technical nature.
- 7.15 Subject to Clause 7.16, any member of the National Board may call a meeting of the National Board to vote on the removal of another member from the National Board and, until that vote is held, all matters requiring the approval of the National Board shall be suspended. If the vote has not occurred within seven days from the date upon which the vote is called for, matters requiring approval by the National Board may be considered and approved by the National Board.
- 7.16 The National Board may, after consultation with the KPMGi Chairman, by a resolution passed by 75% or more in number of the members of the National Board (excluding the National Chair), remove the National Chair. The National Chair shall not have a vote on any resolution under this Clause 7.16.
- 7.17 For any period for which the National Board determines the National Chair is absent or is unable to perform the duties and functions of the National Chair, the Deputy Chair shall have the duties, and the authority to perform the functions, of the National Chair. In these circumstances, where there is also no Deputy Chair, the National Board may appoint another member of the National Board (other than the CEO) to have the duties, and the authority to perform the functions, of the National Chair until the earlier of (i) the date on which a new National Chair is elected in accordance with the terms of this agreement which election must occur within 3 months, and (ii) the date on which the National Board determines the National Chair is no longer absent or is able to perform their duties and functions. The authority under this Clause 7.17 includes the authority to amend or cancel any delegation made by the National Chair under Clause 8.6(i).
- 7.18 On the recommendation of the National Chair, the National Board may appoint a standing or ad hoc advisory board, including persons who are not Partners.
- 7.19 The Partners authorise any two members of the National Board as delegated by the National Board to execute any agreement, approval of which is within the authority and responsibility of the National Board, on behalf of the Partnership so as to bind the Partnership.
- 7.20 The National Chair, the CEO and the members of the National Board at any time will constitute the Board of Directors of the Company.

8 National Chair

- 8.1 The Firm shall have an elected National Chair. In electing, re-electing or removing the National Chair, regard is to be had to any applicable policy or other requirement of KPMG International.
- 8.2 Where more than three Partners propose to stand for election to the position of National Chair, the National Board may, having regard to the National Board's responsibilities and accountabilities set out in Clause 7.2, determine and implement a process to shortlist candidates eligible for nomination under Clause 7.5 for election to the position of National Chair. The shortlist must comprise a minimum of two candidates eligible for nomination under Clause 7.5.

- 8.3 The National Chair is responsible to the National Board and the Partners for:
- (a) providing leadership to the Firm;
 - (b) identifying development opportunities for the Firm;
 - (c) promoting and representing the Firm both nationally and internationally; and
 - (d) maintaining the high public profile of the Firm.
- 8.4 The term of office of the National Chair will ordinarily be a period not exceeding three years. The National Chair may serve two consecutive terms of three years. In exceptional circumstances approved by the National Board, the National Chair may serve three consecutive terms of three years.
- 8.5 A casual vacancy caused by the resignation of the National Chair for any reason shall be filled by the election of a new National Chair in accordance with the terms of this agreement. An election to fill a casual vacancy under this Clause 8.5 must occur within 3 months of the occurrence of the casual vacancy.
- 8.6 Without limiting the generality of Clause 8.3, the National Chair has the specific authority and responsibility to:
- (a) chair general meetings of Partners;
 - (b) chair meetings of the National Board;
 - (c) determine a Partner's eligibility for nomination as a member of the National Board under Clause 7.5;
 - (d) set the agenda for meetings of the National Board;
 - (e) recommend the appointment or removal of the CEO for approval by the National Board, taking into account any policy or other requirement of KPMG International to the extent applicable;
 - (f) recommend that the National Board ask the CEO to retire from the Partnership if, in the reasonable opinion of the National Chair, any of Clause 23.1(a), Clause 23.1(b) or Clause 23.1(c) applies in respect of the CEO;
 - (g) recommend the appointment or removal of an acting CEO for approval by the National Board, taking into account any policy or other requirement of KPMG International to the extent applicable;
 - (h) recommend the appointment or removal of a Deputy Chair for approval by the National Board, taking into account any policy or other requirement of KPMG International to the extent applicable;
 - (i) delegate their duties and powers to the Deputy Chair (or if there is no Deputy Chair, a member of the National Board (other than the CEO)), as they determine, where records of such delegations (including any amendment to or termination of a delegation approved by the National Chair) must be maintained;
 - (j) act as international liaison partner and represent the Firm at the highest level of KPMG International;
 - (k) monitor the performance of the members of the National Board in meeting their responsibilities and conduct an annual appraisal of the contribution of individual National Board members, taking into account any policy or other requirement of KPMG International to the extent applicable;
 - (l) monitor the performance of the CEO and have the right to receive notice and all documentation distributed in respect of, and to attend, but not vote at, all meetings of the NEC;
 - (m) conduct an annual performance assessment of the CEO (including taking into account any applicable policy or other requirement of KPMG International) and report the results to the National Board;

- (n) approve the appointment of new Partners nominated by the CEO and recommended by the PRNC; and
- (o) give a reasonable direction to a Partner.

8.7 Two members of the National Board (other than the CEO) shall conduct an annual performance assessment of the National Chair (including taking into account any applicable policy or other requirement of KPMG International) and report the results to the National Board.

9 Chief Executive Officer

- 9.1 The Firm shall have a CEO, appointed by the National Board on the recommendation of the National Chair. In appointing the CEO, regard is to be had to any applicable policy or other requirement of KPMG International.
- 9.2 The CEO is responsible to the Partners, through the National Board, for:
 - (a) the effective management of the Firm in accordance with the strategic direction, plans and policies approved by the National Board; and
 - (b) the implementation of appropriate regulatory and risk management procedures in each area of business of the Firm.
- 9.3 The CEO shall be appointed for a term of three years and may be appointed for a further term or terms of up to three years each at the discretion of the National Board.
- 9.4 The CEO will be the Chair of the NEC, a member of the National Board and a non-voting member of the PRNC.
- 9.5 Without limiting the generality of Clause 9.2 the CEO has the specific authority and responsibility to:
 - (a) recommend the appointment or removal of National Managing Partners for approval by the National Board, taking into account any policy or other requirement of KPMG International to the extent applicable;
 - (b) recommend the appointment or removal of members of the NEC for approval by the National Board, taking into account any policy or other requirement of KPMG International to the extent applicable;
 - (c) recommend the appointment or removal of any Office Chair, for approval by the National Board;
 - (d) appoint or remove a Partner into or out of a Specified Partner role, taking into account any policy or other requirement of KPMG International to the extent applicable;
 - (e) determine the procedures for the conduct of meetings of the NEC;
 - (f) prepare policies, strategic plans, business plans and budgets for the Firm for the approval of the National Board;
 - (g) provide periodic reports to the National Board on the management and the administration of the Firm and the achievement of budgets, and regularly report to Partners financial and other information about the Firm;
 - (h) consider, approve and cause the Firm to enter into any agreement with a value of less than \$5 million and recommend to the National Board any Significant Commercial Arrangement with a value of \$5 million or more;
 - (i) approve and execute on behalf of the Partnership agreements between the Partnership and any other entity within the Firm;

- (j) consider any KPMGi Direction or any other matter arising under an applicable policy or requirement of KPMG International and refer such KPMGi Direction or matter for consideration by the National Board where the KPMGi Direction or matter is reasonably likely in the opinion of the CEO to result in:
 - (i) the withdrawal or removal of the Firm from the KPMG Network; or
 - (ii) a requirement to make a monetary payment in an amount of \$5 million or more being imposed on the Firm;
- (k) subject to Clauses 14.16, 14.17 and 14.18 (Issues requiring specific forms of approval), consider and take such action as the CEO considers to be appropriate in connection with any KPMGi Direction or matter arising under an applicable policy or requirement of KPMG International which does not fall within Clause 9.5(j), including, without limitation, making any decision:
 - (i) to implement or follow such KPMGi Direction or applicable policy or requirement of KPMG International, including subject to such modifications as the CEO considers necessary or desirable;
 - (ii) to dispute or challenge such KPMGi Direction or applicable policy or requirement of KPMG International;
- (l) commence, defend and conduct proceedings on behalf of the Firm;
- (m) make recommendations to the National Board on the capital contributions to be made by Partners to the Partnership from time to time, for approval by the National Board;
- (n) nominate candidates for admission to the Partnership for the consideration of the PRNC;
- (o) recommend persons to be admitted as Partners on a merger with or acquisition of another professional practice, for approval by the National Board;
- (p) make recommendations for the retirement, suspension, termination or expulsion of Partners, including the terms of such retirement, suspension, termination or expulsion and related procedural issues, for approval by the National Board;
- (q) take steps considered necessary or desirable by the CEO for the recovery of any amounts which are payable by a Partner pursuant to Clause 5.1(k);
- (r) establish and implement a Partner performance and counselling process to set goals and assess the performance of individual Partners each year, taking into account any policy or other requirement of KPMG International to the extent applicable;
- (s) make recommendations for Profit Distributions and Band Allocations for Equity Partners each year, for the consideration of the PRNC and approval of the National Board;
- (t) make recommendations for the Profit Distributions from the Profit Pool for each Salaried Partner, for approval by the PRNC and the National Board (for Exceptional Distributions (if applicable));
- (u) monitor the performance of the other members of the NEC and conduct annual performance assessments of each of them, taking into account any policy or other requirement of KPMG International to the extent applicable;
- (v) recommend to the National Board the terms of reference of the EIDC;
- (w) determine or recommend to the National Board disciplinary actions in respect of violations of the Firm's ethics and independence policies;
- (x) determine and review from time to time the Partner Leave Policy for approval by the National Board;
- (y) request a Partner to undergo a medical examination;
- (z) grant a leave of absence to a Partner or direct a Partner to take a leave of absence from the Firm and determine the terms of any such leave of absence;
- (aa) give a reasonable direction to a Partner; and

(bb) issue a notice, with the approval of the National Board, to:

- (i) an Equity Partner, for the transition of that Partner to a Salaried Partner; and
- (ii) a Salaried Partner, for the transition of that Partner to an Equity Partner.

- 9.6 The CEO may delegate their authority to the NEC as a whole, to one or more members of the NEC, to an Office Chair or to other Partners or senior individuals within the Firm, to undertake certain functions or have certain responsibilities.
- 9.7 The Partners authorise the CEO to execute on behalf of the Partnership any agreement, approval of which is within the authority of the CEO, up to an amount of \$5 million.
- 9.8 The Partners authorise the CEO to execute any Partner Retirement Deed or any similar deed, agreement or document on behalf of the Partnership so as to bind the Partnership.

10 National Executive Committee

- 10.1 The Firm shall have a National Executive Committee which will comprise:
- (a) the CEO; and
 - (b) Partners or other senior persons within the Firm recommended for appointment by the CEO and approved by the National Board and will ordinarily include the National Managing Partners of the different service divisions of the business and operations of the Firm, none of whom may contemporaneously serve as members of the National Board.
- 10.2 The term of office of a member of the NEC shall be determined by the CEO on the basis of the person's performance as a member of the NEC and the strategic priorities of the Firm from time to time.
- 10.3 The NEC shall have such responsibilities and authority as the CEO delegates to it.
- 10.4 A quorum of the NEC is a majority of members.

11 Partner Remuneration and Nominations Committee

- 11.1 The Firm shall have a Partner Remuneration and Nominations Committee.
- 11.2 The PRNC is responsible to Partners to ensure that:
- (a) the systems for making Profit Distributions from the Profit Pool to Partners and determining Band Allocations for Equity Partners are administered fairly and equitably; and
 - (b) the Partner admission process is administered effectively.
- 11.3 The composition of the PRNC should seek to ensure appropriate representation across the Firm in terms of gender and diversity, the geographical location and size of the offices of the Firm, and the various professional service lines of the Firm.
- 11.4 The PRNC shall comprise:
- (a) the CEO; and
 - (b) a number of additional members to be determined by the National Board on the recommendation of the National Chair (being not less than five), elected by the Partners, who are Partners (other than Salaried Partners or current members of the National Board or the NEC).

Where a casual vacancy of the kind described in Clause 11.8 occurs, the PRNC shall be deemed to be properly constituted during the period on and from the date of the casual vacancy until the date on which the PRNC comprises the number of members determined by the National Board under clause 11.4(b) as provided under Clause 11.8.

- 11.5 The CEO will be a non-voting member of the PRNC, will not be eligible to act as Chair of the PRNC and will not participate in hearing appeals by the Partners or on interview panels but will be entitled to receive notice of and attend all meetings of the PRNC.

- 11.6 The term of office of the elected members of the PRNC will normally be a period not exceeding three years. An elected PRNC member must retire from the PRNC at the end of each term and may, subject to clause 11.7, stand for election for a further term.
- 11.7 A PRNC member who, as at the next occurring 1 October, will have an Aggregate PRNC Tenure of:
- (a) between 5 and 7 years, may only stand for election for a further term in exceptional circumstances approved by the National Board, on the recommendation of the National Chair; and
 - (b) more than 7 years, is ineligible to stand for election for a further term.
- 11.8 A casual vacancy caused by the resignation for any reason of an elected member that results in the PRNC comprising less than the number of members determined by the National Board under clause 11.4(b) shall be filled by the election of a new elected member in accordance with the terms of this agreement. An election to fill a casual vacancy under this Clause 11.8 must occur within 3 months of the occurrence of the casual vacancy or such other period as determined by the National Board.
- 11.9 From time to time members of the PRNC will elect one of its members to be Chair of the PRNC.
- 11.10 A quorum at meetings of the PRNC is 70% of the total number of members of the PRNC, where the quorum will not include the CEO.
- 11.11 Without limiting the generality of Clause 11.2 and taking into account any policy or other requirement of KPMG International to the extent applicable, the PRNC has the specific authority and responsibility to:
- (a) assess whether the Partner goal setting, performance appraisal and counselling processes are appropriate and are applied consistently and make recommendations to the National Board for changing the principles and procedures for allocation of the Profit Pool in relation to Profit Distributions for Partners and determining Band Allocations for Equity Partners to ensure it is fair and equitable overall;
 - (b) consider, assess and where appropriate, challenge the fairness and equity of, and endorse or vary, the recommendations of the CEO in relation to Profit Distributions and Band Allocations for Equity Partners to be approved by the National Board;
 - (c) consider, assess and where appropriate, challenge the fairness and equity of the recommendations of the CEO in relation to Profit Distributions for Salaried Partners and:
 - (i) approve (whether by endorsing or varying the recommendations of the CEO) the Base Distributions and Performance Distributions of Salaried Partners; and
 - (ii) endorse Exceptional Distributions of Salaried Partners, to be approved by the National Board;
 - (d) recommend to the National Board the final allocation of the Profit Pool each year in relation to Profit Distributions of Equity Partners;
 - (e) report to Partners on an annual basis on the processes and outcomes relating to profit allocations to Partners, including Partner performance ratings, Band Allocations and Exceptional Distributions;
 - (f) hear appeals from Equity Partners who are dissatisfied with their performance rating for the current year or Band Allocation, and make a final determination in respect of each such appeal;
 - (g) hear appeals from Salaried Partners who are dissatisfied with their performance rating, and make a final determination in respect of each such appeal;
 - (h) make recommendations to the National Chair for the admission of new Partners; and
 - (i) make recommendations to the CEO for changing the procedures to ensure that the Partner admission process is administered effectively.

12 Ethics and Independence Disciplinary Committee

- 12.1 The Firm shall have an Ethics and Independence Disciplinary Committee.
- 12.2 The EIDC is responsible to the Partners, through the National Board and the CEO, to:
- (a) investigate alleged violations of the Firm's ethics and independence policies by Partners and staff; and
 - (b) determine or recommend the disciplinary or other action appropriate for proven violations of the Firm's ethics and independence policies.
- 12.3 The EIDC shall comprise:
- (a) the Ethics and Independence Partner, who will be the Chair of the EIDC;
 - (b) a member of the National Board;
 - (c) the Chief Risk Officer; and
 - (d) the National Managing Partner – People and Inclusion.
- 12.4 The EIDC's powers and operations shall be set out in the terms of reference which shall be approved by the National Board, on the recommendation of the CEO.

13 Elections, appointment and rotation

- 13.1 Subject to the specific terms of Clauses 7 to 12 and taking into account any policy or other requirement of KPMG International to the extent applicable, all Partners are eligible to hold the positions referred to in Clauses 7 to 12.
- 13.2 The normal retirement date in any year for persons required to retire from positions referred to in Clauses 7 to 10 is 30 June and in Clause 11 is 30 September. Persons retiring from all such positions shall be eligible for election or appointment for a further term as the case may be in accordance with this agreement.
- 13.3 If no elected member of the National Board or the PRNC (as applicable) would be required to retire under Clauses 7 or 11, respectively, on the date required under clause 13.2 in a given year, then the elected member of the National Board and the PRNC who has been longest in office shall retire but, as between persons who are elected on the same date, the member to retire shall be determined by the National Chair in consultation with the remaining members of the relevant body, or the National Chair may decide that it be determined by lot.
- 13.4 If for any reason a person holding a position referred to in Clauses 7 to 11 resigns or ceases to hold that position before the normal expiry of their term of office, the person elected in their place will hold office from the date of that election (**Commencement Date**) until:
- (a) if the Commencement Date is within 6 months of the most recently past general election in respect of that position or body (other than to fill the casual vacancy) (**Previous Rotation**), the third anniversary of that Previous Rotation; or
 - (b) if the Commencement Date is more than 6 months after the Previous Rotation, the fourth anniversary of that Previous Rotation.
- 13.5 All Partners are entitled to vote in elections for the National Chair, membership of the National Board, and membership of the PRNC.
- 13.6 Voting in any election required under Clauses 7 to 11 is to be by ballot in accordance with the Election Procedures and Regulations Policy as amended, updated and replaced from time to time.

14 Voting

Motions to be put to Partners

- 14.1 The National Board may submit motions to the Partners on matters affecting their interests. Subject to this agreement, a decision by the National Board as to which Partners are entitled to vote on an issue is final and binding on all Partners.
- 14.2 Subject to Clause 7.14(m), where a Significant Commercial Arrangement involves \$5 million or more and does not reach the thresholds set out in Clause 7.14(n) of this agreement, and depending on the nature, size (in terms of number of Partners and staff) and value of the Significant Commercial Arrangement, the National Board shall consider whether to, but shall not be required to, submit a motion to the Partners to ratify by way of Ordinary Resolution the Firm entering into the Significant Commercial Arrangement.
- 14.3 Voting shall take place by ballot, or by any other means (including electronic means) as determined by the National Board.

Voting entitlements

- 14.4 Subject to Clause 13.5, Salaried Partners are entitled to vote on motions submitted to the Partners unless the National Board determines otherwise from time to time.
- 14.5 Subject to Clause 14.6, each Partner is entitled to exercise one vote on a motion or in an election.
- 14.6 A Partner is not entitled to vote on a motion or in an election if at the time the vote is taken:
- (a) the Partner has a Serious Mental Health Condition or is a person whose estate is liable to be dealt with in any way under the law relating to mental health; or
 - (b) due to physical disablement caused through bodily injury, illness, disease, infirmity or accident, the Partner is, or if present would be, incapable of rationally signifying the Partner's assent or dissent; or
 - (c) the Partner has been so informed by the National Chair or the CEO because the Partner has given notice of their retirement from the Partnership and is intending to be engaged or involved in a Competitive Business; or
 - (d) the Partner is excluded from voting by this agreement.

Required majorities

- 14.7 If in aggregate:
- (a) more than 50%; or
 - (b) at least 75%,
- of the votes of those Partners who vote in respect of a motion of which due notice has been given are cast in favour of the motion then an Ordinary Resolution and a Special Resolution respectively will have been passed and not otherwise.
- 14.8 Unless otherwise provided for in this agreement, a motion will be carried if an Ordinary Resolution in support of it is passed.

Voting and Meetings

- 14.9 A Partner may vote in person or by proxy given to another Partner. A proxy must be given in writing and, if more than one proxy is appointed by a Partner, the later appointment revokes the earlier one. A proxy's authority to vote is suspended whilst the granting Partner is in attendance at a Partners' meeting or is available to vote electronically if the vote is to be taken in electronic form. A Partner who holds a proxy must declare it to the Chair before a vote is taken. The Chair must record the declaration.

- 14.10 A minimum of 14 days' notice of a proposed motion is to be given to all Partners entitled to vote on the motion whether voting is to occur at a meeting or by electronic means. Notice of the proposed motion may take the form of paper, email or any other recognised written and commonly used communication device adopted by the Partnership.
- 14.11 The aggregate quorum for resolutions put to a meeting of Partners is one third of those Partners eligible to vote on that motion present in person or by proxy. For the purpose of achieving a quorum, a proxy holder will be counted once in their own right and separately for every proxy they hold.
- 14.12 Subject to Clause 14.10, a meeting of Partners or any proceeding at such a meeting is not invalidated by reason only of:
- (a) the failure to give notice of the meeting or the agenda; or
 - (b) the non-receipt by a Partner of that notice or agenda.
- 14.13 A written motion of which notice has been given in accordance with Clause 14.10 and signed by the requisite number of Partners whose votes in support of the motion would be required to pass it under Clause 14.7, is as valid and effective as a motion duly voted upon. The written motion may take the form of several copies each signed by one or more Partners.
- 14.14 The minimum number of electronic votes required to decide a resolution is one third of those Partners eligible to vote on that motion, or any higher percentage determined by the National Chair.

Partners bound by resolutions

- 14.15 All Partners are bound by a decision properly made by an Ordinary Resolution or a Special Resolution.

Issues requiring specific forms of approval

- 14.16 The Partnership may not be dissolved unless the National Board approves of the dissolution and the Partners so resolve by Special Resolution. Unless the necessary approvals are obtained under this Clause 14.16 the Partnership is not capable of dissolution by notice by one or more Partners to the others.
- 14.17 This agreement may not be terminated unless so resolved by Special Resolution of the Partners.
- 14.18 Motions in respect of the following matters require approval by Special Resolution:
- (a) to revoke any action by the National Board;
 - (b) dissolution of the Partnership;
 - (c) amendment of this agreement other than under Clause 7.14(ii); and
 - (d) termination of this agreement.

15 Meetings

- 15.1 Meetings to address matters affecting the interests of the Partners may be called by any member of the National Board, and must be called by the National Board on receipt of a request signed by not less than 25% of the total number of Partners.

16 Firm Business entities

- 16.1 The CEO may determine that any part of the Firm Business may be carried on by a new or existing Firm entity controlled by the Partnership and established in accordance, and complying, with the Firm's policies and procedures.

17 Profit Pool

- 17.1 As soon as practical after the end of each Financial Year the Profit Pool for that year is to be determined in accordance with the terms of this agreement.

18 Profit Distributions to Partners

- 18.1 Profit Distributions to Partners are to be based on a fair and equitable assessment of the relative performance and contribution of each individual Partner to the Firm each year against a background of appropriate goal setting, counselling and review.
- 18.2 The distributions to any Partner on a Flexible Working Arrangement will be determined on a pro-rata basis.

19 Salaried Partners

- 19.1 A Salaried Partner:
- (a) shall receive Base Distributions that are fixed on an annual basis, and may receive Performance Distributions, in each case, as recommended from time to time by the CEO and approved by the PRNC; and
 - (b) may receive Exceptional Distributions (if any), as recommended from time to time by the CEO, endorsed by the PRNC and approved by the National Board.
- 19.2 A Salaried Partner:
- (a) is not required to make a capital contribution to the Partnership;
 - (b) is entitled to share in and receive an allocation from the Profit Pool as determined consistent with Clause 19.1;
 - (c) does not bear any part of the losses or liability of the Partnership; and
 - (d) is not entitled to a retirement distribution under Clause 24, except where the Salaried Partner has years of Eligible Service for the purposes of Clause 24.

20 New Partners

- 20.1 Subject to a right of readmission as a Partner agreed by the National Board and confirmed in writing to a Partner who has been seconded to another KPMG Member Firm, no person may become a Partner after the date of this agreement unless the requirements of this Clause 20 are satisfied.

Individual Partners

- 20.2 Subject to Clauses 20.4 and 20.5, a proposal for the admission of a candidate as a Partner shall not be considered by the National Chair unless the admission is recommended by the PRNC, based on a nomination approved by the CEO, and the candidate has given a preliminary commitment to accept an offer.
- 20.3 When a proposal for the admission of a candidate has been considered and approved by the National Chair, the National Chair must make a written offer to the candidate to become a Partner in the Partnership on the terms proposed in that offer. The written offer must contain a copy of, or otherwise provide access to an electronic copy of, this agreement (as amended from time to time).

Mergers and acquisitions

- 20.4 If it is proposed that a group of persons comprising another professional practice are to become Partners then Clause 20.2 does not apply and instead the proposal for the admission to the Partnership of each person in the group must be recommended by the CEO and approved by the National Board.
- 20.5 If the merger or acquisition proposal is approved by the National Board then the National Chair must make written offers to the nominees approved to become Partners on the terms proposed in that offer. The written offer must contain a copy of, or otherwise provide access to an electronic copy of, this agreement (as amended from time to time).

Acceptance of offer

- 20.6 A person to whom an offer of partnership is made under this Clause 20 will be taken to have accepted the offer on signing an acknowledgment in the form of Schedule 2. The person shall be a Partner in the Partnership and subject to this agreement on and from the commencement date specified in the acknowledgment.
- 20.7 In addition to an acknowledgment in the form of Schedule 2, each new Partner, as a condition of Partnership, is required to give the specific authority in the form of the irrevocable power of attorney set out in Schedule 3.

21 Partner leave

- 21.1 Each Partner is entitled to annual leave, sabbatical leave, sick leave, leave of absence, parental leave, compassionate leave or any other form of leave in accordance with the Partner Leave Policy recommended by the CEO and approved by the National Board from time to time.

22 Voluntary retirement

Voluntary retirement

- 22.1 A Partner may, retire on giving at least six months' notice in writing to the CEO, or such lesser notice period as may be agreed between the Partner and the CEO or, failing such agreement, as the CEO may determine.
- 22.2 During the notice period referred to in Clause 22.1, the CEO in their absolute discretion may direct the retiring Partner to do any one or more of the following:
- (a) not attend any premises of the Firm;
 - (b) not have any communication with any Client;
 - (c) not provide professional services to any person;
 - (d) work under the supervision and control of another Partner or group of Partners;
 - (e) not do any work or do work of a kind which is different to the work normally undertaken by the Partner;
 - (f) not have any communication with any other Partner or employee of the Firm;
 - (g) not email or have any other electronic access to other Partners, employees of the Firm or Clients;
 - (h) not have access to any systems, information or files of the Firm; and
 - (i) not have notice of, attend or vote at any meeting at the Firm.
- 22.3 If a Partner fails to give the notice required under clause 22.1, unless the CEO determines otherwise, the Partner (or their nominee) shall not be repaid any capital contributions for a period of 12 months from the date of retirement.
- 22.4 A Partner who retires from the Partnership under Clause 22.1 shall be eligible for a retirement distribution determined under the provisions of Clause 24 that apply to the circumstances in which the Partner retired, subject to any special terms and conditions recommended by the CEO and approved by the National Board.

Voluntary retirement – Secondments and roles with KPMG Network Entities

- 22.5 Where a Partner is requested or directed by the Partnership to undertake a secondment to, or accept a role with KPMG International or another KPMG Member Firm (each a KPMG Network Entity), and the Partner agrees to do so, the Partner shall retire from the Partnership (unless otherwise approved by the National Board) but shall be entitled to be re-admitted to the Partnership on completion of the secondment or conclusion of the role, as applicable, and return to Australia on such terms and conditions as the CEO recommends and the National Board approves.

- 22.6 Where a Partner undertakes a secondment to, or accepts a role with, a KPMG Network Entity in circumstances other than those specified in Clause 22.5, the Partner shall retire from the Partnership (unless otherwise approved by the National Board) and shall only be entitled to be re-admitted to the Partnership on completion of the secondment or conclusion of the role, as applicable, if the CEO recommends and the National Board approves the re-admission prior to the Partner's retirement. The re-admission shall be on such terms and conditions as the CEO recommends and the National Board approves.
- 22.7 If there is uncertainty or a dispute as to whether Clause 22.5 or Clause 22.6 applies in a particular circumstance, then the CEO shall determine the provision which applies.
- 22.8 If a Partner retires under Clause 22.5 or under Clause 22.6 with the approval of the National Board to be re-admitted to the Partnership, and that Partner is not re-admitted to the Partnership on completion of the secondment or at the conclusion of the role, then:
- (a) the Partner's retirement distribution shall be calculated as at the date upon which the Partner retired from the Partnership to undertake the secondment or accept the role and as if the Partner had retired under Clause 22.1;
 - (b) the Partner shall be entitled to any leave entitlement accrued as at the date upon which the Partner retires from the Partnership to undertake the secondment or to assume the role, as applicable; and
 - (c) any retirement distribution and leave entitlement shall be made once the Partner has executed and delivered a Partner Retirement Deed.
- 22.9 If a Partner retires under Clause 22.6 and has not received the approval of the National Board to be re-admitted to the Partnership, then:
- (a) the Partner's retirement distribution shall be calculated under the applicable provisions of Clause 24 as at the date upon which the Partner retires from the Partnership to undertake the secondment or to assume the role, as applicable, subject to any special terms and conditions recommended by the CEO and approved by the National Board; and
 - (b) the Partner shall be entitled to any leave entitlement accrued as at the date upon which the Partner retires from the Partnership to undertake the secondment or to assume the role, as applicable.
- Subject to the execution and delivery of a Partner Retirement Deed by the retiring Partner, the retirement distribution shall be made and any leave entitlement shall be paid at the time the Partner retires from the Partnership.
- 22.10 If a Partner is re-admitted to the Partnership on completion of the secondment or at the conclusion of the role, then:
- (a) the term of the secondment or the role, as applicable, up to a maximum of 3 years (provided for the avoidance of doubt those 3 years cannot include any period after 30 June 2026) shall be added to the Partner's Eligible Service for the purpose of calculating any future retirement distribution entitlement; and
 - (b) the Partner's retirement distribution shall be calculated under the applicable provisions of Clause 24 as at the earlier to occur of 30 June 2026 and the date upon which the Partner retires from the Partnership following the Partner's re-admission.

23 Involuntary retirement

Involuntary retirement – Performance related

- 23.1 A Partner may be asked by the CEO, with the approval of the National Board, to retire from the Partnership if in the reasonable opinion of the CEO:
- (a) the Partner's performance is not expected to meet the current or future strategic or performance objectives of the Firm or KPMG International;

- (b) the Partner is unwilling or unable to redress the areas where their performance, contribution or conduct has been assessed as unsatisfactory; and/or
- (c) the Partner has breached any of the Firm's or KPMG International's values or policies in a way which is material and/or sustained.

23.2 Where a Partner has been asked to retire from the Partnership under Clause 23.1, the Partner must be given, at the election of the CEO:

- (a) an amount of notice up to the Calculated Retirement Notice Period; or
- (b) where the notice given to the Partner under Clause 23.2(a) is less than the Calculated Retirement Notice Period (Shortfall Period), a payment in lieu of notice for that Shortfall Period equal to the amount the Partner would ordinarily have received during that Shortfall Period.

23.3 The Calculated Retirement Notice Period that will apply in any given case will be determined by the CEO (with the approval of the National Board) and must be within the ranges specified below:

- (a) if the Partner is asked to retire under Clause 23.1(a) or (b):

Length of service as Partner (in whole years)	Calculated Retirement Notice Period
Less than 10 years	Between 3 and 6 months.
10 years or more	Between 6 and 9 months.

- (b) If the Partner is asked to retire under Clause 23.1(c):

Length of service as Partner (in whole years)	Calculated Retirement Notice Period
Less than 10 years	Between 0 and 3 months.
10 years or more	Between 0 and 6 months.

23.4 A Partner who retires from the Partnership following a request under Clause 23.1 shall be eligible for a retirement distribution determined under the provisions of Clause 24 that apply to the circumstances in which the Partner retired, subject to any special terms and conditions recommended by the CEO and approved by the National Board.

23.5 If a Partner asked to retire under Clause 23.1 refuses to do so, or does not do so within a period determined by the National Board to be reasonable in the circumstances and notified to the Partner, then the National Board may determine that the Partner be expelled from the Partnership and Clause 25 will apply.

Involuntary retirement – Other

23.6 A Partner shall be deemed to have retired from the Partnership on the date upon which any one or more of the following occur:

- (a) the Partner has voluntarily applied for bankruptcy or is adjudicated bankrupt;
- (b) the Partner ceases to be a person approved for membership by any relevant professional association to which the Partner belongs for the purpose of undertaking their work for the Firm or has otherwise ceased for any reason to be legally or professionally eligible to be a Partner of the Firm or does not hold a professional qualification that the National Board considers, acting reasonably, to be essential to continuation as a Partner; or
- (c) the Partner has a trustee, committee or custodian appointed to take control of the Partner's property under any law relating to mental health.

- 23.7 A Partner who is deemed to have retired involuntarily from the Partnership under Clause 23.6 shall be eligible for a retirement distribution determined under the provisions of Clause 24 that apply to the circumstances in which the Partner retired, subject to any special terms and conditions recommended by the CEO and approved by the National Board.

Involuntary retirement – Permanent total or partial disability and death

- 23.8 The CEO may ask a Partner to undergo a medical examination by an appropriately qualified and practising medical practitioner agreed by the CEO and the Partner or, failing agreement, appointed by the CEO for the purpose of that medical practitioner providing the Firm with an opinion as to whether the Partner has:
- (a) an illness or physical disability which results in the Partner being permanently unable in any way to continue practising as a Partner or the Partner's ability to continue practising as a Partner is materially but not totally diminished; or
 - (b) a Serious Mental Health Condition.
- 23.9 Subject to Clause 23.6, a Partner must retire from the Partnership on a date agreed with the National Chair and approved by the National Board if either the Partner is permanently unable in any way to continue practising as a Partner or if the Partner's ability to continue practising as a Partner is materially but not totally diminished because of sickness or physical disablement however arising.
- 23.10 If a Partner's ability to continue practising as a Partner is materially but not totally diminished because of sickness or physical disablement, the Partner may request the National Board to consider a proposal for the Partner to remain a Partner, specifying the basis on which the Partner will conduct the Partner's practice and the basis on which the Partner proposes to be remunerated. The proposal will be accepted if so determined by the National Board.
- 23.11 A Partner who becomes disabled such that the Partner qualifies for cover under a total and permanent disability or salary continuance insurance policy shall not be required to retire from the Partnership until the waiting period under that policy has expired.
- 23.12 A Partner who dies before they retire shall be deemed to have retired on the date of their death.
- 23.13 If a Partner involuntarily retires under Clause 23.9 or dies, the Partner or the legal personal representatives of the deceased Partner shall be eligible for a retirement distribution determined under the provisions of Clause 24 that apply to the circumstances in which the Partner retired or died, subject to any special terms and conditions determined by the National Board in its absolute discretion.

24 Retirement distributions

Application of retirement distribution provisions

- 24.1 This Clause 24 does not apply to Partners who have not been Equity Partners.
- 24.2 In addition, this Clause 24 does not apply to Partners who first become Equity Partners on or after 1 July 2021.
- 24.3 Subject to the remaining provisions of this agreement, Partners who retire in accordance with Clause 22.1 (Voluntary retirement) shall be eligible to receive a retirement distribution determined under Clause 24.7 or Clause 24.10, as applicable to the circumstances of that Partner's retirement.
- 24.4 Subject to the remaining provisions of this agreement, Partners who retire in accordance with, or are deemed to have retired for the purposes of:
- (a) Clause 22.6 (Voluntary retirement – Secondments and roles with KPMG Network Entities) without approval to be re-admitted to the Partnership;
 - (b) Clause 23.1 (Involuntary retirement – Performance related);
 - (c) Clause 23.6 (Involuntary retirement – Other);

(d) Clause 23.9 (Involuntary retirement – Permanent total or partial disability and death), shall be eligible to receive a retirement distribution determined under Clause 24.7, 24.9 or 24.10, as applicable to the circumstances of that Partner's retirement.

- 24.5 The following table provides an overview as to which of Clauses 24.7, 24.9 and 24.10 may apply in determining retirement distributions based on the age of the retiring Partner and their years of Eligible Service. The table is intended as a guide only and is subject to the remaining provisions of this agreement.

PARTNERS	Length of Eligible Service					
	Less than 10 years		10 to 20 years		20 years or more	
Age at retirement	Distribution entitlement	Relevant Clause	Distribution entitlement	Relevant Clause	Distribution entitlement	Relevant Clause
Less than 58 years old	No	Not applicable	Yes	Clause 24.10	Yes	Clause 24.7
58 years or older	Yes	Clause 24.9	Yes	Clause 24.9	Yes	Clause 24.7

Retirement distributions for Partners who transition from Equity Partner to Salaried Partner

- 24.6 The retirement distribution to be made to a Partner who has been an Equity Partner but who at the date of the Partner's retirement is a Salaried Partner:
- (a) will be calculated as at the date on which the Partner ceased to be an Equity Partner; and
 - (b) subject to Clauses 25.2(b), 26.2, 26.4 and 26.5 will be made to the Partner upon their retirement from the Partnership.

Bases for calculating retirement distribution

20 years or more Eligible Service as a Partner

- 24.7 A Partner who retires with 20 years or more Eligible Service as a Partner will be eligible to receive a lump sum retirement distribution equivalent to:
- (a) where the Partner served as an Equity Partner for the Preceding Five Years, one fifth of the aggregate of the Profit Pool allocated to that Partner over the Preceding Five Years, excluding:
 - (i) any allocation of distributable profit/loss during the five year period which in the opinion of the CEO was derived from transactions of an unusual and non-recurring nature; and
 - (ii) any Exceptional Distributions in respect of the five year period; or
 - (b) where the Partner served as both a Salaried Partner and an Equity Partner during the Preceding Five Years, one fifth of:
 - (i) the aggregate of the Profit Pool allocated to that Partner over the preceding five years, excluding:
 - (A) any allocation of distributable profit/loss during the five year period which in the opinion of the CEO was derived from transactions of an unusual and non-recurring nature; and
 - (B) any Exceptional Distributions in respect of the five year period; plus
 - (ii) the aggregate of the Base Distributions and any Performance Distributions made to that Partner as a Salaried Partner over the Preceding Five Years, excluding any distribution which in the opinion of the CEO was made to the Salaried Partner by way of exceptional distribution or other unusual or non-recurring payment.

24.8 For the purpose of calculating the lump sum retirement distribution referred to in Clause 24.7:

- (a) Preceding Five Years means the five years (including the year in which the Partner retires) preceding the date on which:
 - (i) an Equity Partner retired;
 - (ii) an Equity Partner is deemed to have retired from the Partnership; or
 - (iii) an Equity Partner transitioned to being a Salaried Partner,
 as applicable (the Retirement Date);
- (b) to the extent that an Equity Partner's band level reduces in any of the three Financial Years (including the Financial Year in which the Equity Partner retires) preceding the Retirement Date, that reduction will be ignored and it will be deemed that the Equity Partner achieved an "Effective Performance" (or other equivalent performance rating) for the highest band held over that three year period; and
- (c) should an Equity Partner's income in the lower band level in any of the three Financial Years preceding the Retirement Date (including the Financial Year in which the Equity Partner retires) exceed the "Effective Performance" (or other equivalent performance rating) income of the highest band referred to in sub-Clause 24.8(b), then the higher amount will be used.

Over 58 years of age, less than 20 years Eligible Service as a Partner

24.9 A Partner who retires with less than 20 years' Eligible Service as a Partner and who has attained 58 years of age prior to the Partner's retirement will be eligible to receive a lump sum retirement distribution equivalent to the amount determined in accordance with Clause 24.7, reduced to reflect the proportion their period of Eligible Service as a Partner bears to a period of 20 years.

Under 58 years of age, 10 to less than 20 years Eligible Service as a Partner

24.10 A Partner who:

- (a) retires from the Partnership;
- (b) has not yet attained 58 years of age;
- (c) has achieved 10 but less than 20 years' Eligible Service as a Partner; and
- (d) is not joining a competitor,

shall be eligible to receive 25% of the retirement distribution calculated in accordance with Clause 24.7. For each completed year of Eligible Service in excess of 10 years' Eligible Service a sliding exponential scale will apply until full vesting at 20 years. The formula for the calculation of this retirement distribution is as follows:

$$A = P (1 + i)^n$$

Where: A = Amount of retirement distribution calculated under this section

P = 25% of retirement distribution calculated under Clause 24.7

i = Compound interest rate of 14.87%

n = Completed years of Eligible Service greater than 10 years

Less than 10 years Eligible Service as a Partner

24.11 A Partner who retires from the Partnership and has not achieved at least 10 years' Eligible Service as a Partner shall not be eligible to receive a retirement distribution under this Clause 24 unless Clause 24.9 applies.

Other

24.12 Any retirement distribution made pursuant to this Clause 24 constitutes a distribution from the Profit Pool unless the CEO indicates otherwise in writing to the recipient.

Wind-down of scheme

- 24.13 The retirement distribution scheme outlined in Clauses 24.1 to 24.11 will cease to operate on 30 June 2026.
- 24.14 No person will accrue any Eligible Service, and for clarity no person will be entitled to any retirement distribution that relates to a period, after 30 June 2026.
- 24.15 Each person (except a person to whom this Clause 24 does not apply by reason of Clauses 24.1 or 24.2) who is on 30 June 2026:
- (a) a Partner of the Firm; or
 - (b) on secondment to a KPMG Network Entity or who has taken a role with a KPMG Network Entity under Clause 22.5 or Clause 22.6 (a Seconded Partner),
- will be a Scheme Partner.
- 24.16 On 1 July 2026, each Scheme Partner will be provided with a statement that will specify:
- (a) the Scheme Partner's Eligible Service (which, for a Seconded Partner will comprise two Eligible Service Periods: one period in the case that Clause 22.10 applies and one period in the case that Clause 22.10 does not apply);
 - (b) the Scheme Partner's respective fixed retirement amount, being an amount equal to the distribution that would be made to the Scheme Partner in respect of that Scheme Partner's Eligible Service up to 30 June 2026, as determined in accordance with Clauses 24.6 to 24.11 (which for a Seconded Partner will comprise their Eligible Service period following the end of the relevant secondment or role, subject to whether any of Clauses 22.8 to 22.10 apply) (Fixed Retirement Amount); and
 - (c) the methodology for adjustments that will be made to the Fixed Retirement Amount, to account for inflation (that is, movements to the CPI over the period from 1 July 2026 to the date of the Scheme Partner's retirement).
- 24.17 Each Scheme Partner will be entitled to receive their Fixed Retirement Amount (which for Seconded Partners will be the amount dependent on whether any of Clauses 22.8 to 22.10 apply), adjusted for inflation in accordance with the mechanism set out in the statement referred to in clause 24.16, (Adjusted Fixed Retirement Amount) after the Scheme Partner has retired from the Partnership, subject to Clause 24.18.
- 24.18 Clauses 26.4, 26.5 and 25.2(b) apply in respect of every Adjusted Fixed Retirement Amount as though each reference to:
- (a) 'distribution' or 'retirement distribution' in those Clauses were a reference to 'Adjusted Fixed Retirement Amount' and;
 - (b) 'Partner' were a reference to 'Scheme Partner'.

For the avoidance of doubt, where a Clause of this agreement would operate so as to vary, reduce or cancel a Partner's entitlement to retirement distributions, that same Clause will operate to vary, reduce or cancel a Scheme Partner's entitlement to payment of any Fixed Retirement Amount or Adjusted Fixed Retirement Amount in a like manner.

Wind-down of scheme – additional provisions to apply to certain Partners with less than 10 years' of Eligible Service

- 24.19 Clauses 24.19 to 24.21 apply to each Scheme Partner who has less than 10 whole years of Eligible Service and who is less than 58 years old as at 30 June 2026.

- 24.20 Despite Clause 24.11, for the purposes of Clause 24.16 the Fixed Retirement Amount for a Scheme Partner to whom Clause 24.19 applies will be calculated in accordance with the following formula.

$$\text{FRA} = P \times (n / 10)$$

Where:

FRA = the Fixed Retirement Amount for the Scheme Partner for the purposes of Clause 24.16.

P = 25% of the retirement distribution calculated under Clause 24.7 (assuming, for the purposes of this calculation that Clause 24.7 applied to the Scheme Partner).

n = the number of whole years of Eligible Service completed by the Scheme Partner.

- 24.21 Where a Scheme Partner to whom Clause 24.19 applies is a Seconded Partner, their Fixed Retirement will comprise their Eligible Service period following the end of the relevant secondment or role, subject to whether any of Clauses 22.8 to 22.10 apply.

25 Expulsion

- 25.1 A Partner who:

- (a) is charged with or convicted of a Serious Criminal Offence;
- (b) admits to having committed, or is found by a court of law of competent jurisdiction, or is alleged by a prosecutor or regulator, to have committed fraud or acted dishonestly or unethically;
- (c) has failed to pay for a period of 12 months or more any tax which is due and payable to the Commissioner of Taxation unless the Partner's liability is, in the reasonable opinion of the National Board, the subject of a reasonable challenge or dispute with the Commissioner of Taxation;
- (d) admits to having, has been alleged by a prosecutor or regulator to have or has been found guilty of having engaged in or encouraged insider trading, market misconduct, other conduct prohibited under Part 7.10 of the *Corporations Act 2001* (Cth) or other similar professional misconduct;
- (e) has, in the opinion of the National Board, acting reasonably, been reckless in respect of, or had intentional disregard for, the performance of the business of the Firm;
- (f) has committed a material breach of any legal undertaking or obligation that the Partner owes KPMG International, any KPMG Network Entity or the Firm and such undertaking or obligation is either incapable of remedy or the Partner has failed to remedy the breach within a reasonable period;
- (g) the National Board considers, acting reasonably, that the Partner's continuation in the Partnership would give rise to a material risk of damage to the reputation of the Firm and/or the KPMG brand and/or reputation and/or good standing with regulators; and/or
- (h) having been asked to resign under Clause 7.14(x) or 23.1 refuses to do so, or does not do so within a period determined by the National Board to be reasonable in the circumstances and notified to the Partner,

may be served with a notice of expulsion indicating that the Partner shall be expelled from the Partnership.

- 25.2 If a Partner is served with a notice or notices of expulsion under Clause 25.1:

- (a) the Partner's expulsion from the Partnership takes effect immediately after the notice or notices are served;
- (b) the Partner shall not be entitled to any retirement distribution under Clause 24 unless the National Board decides the Partner should be so entitled, which it may do conditionally or on the basis that some but not all of a retirement distribution be made;

- (c) subject to sub-paragraph (b), the Partner shall receive their Base Distribution (determined on a pro-rata basis) only up until the date upon which the expulsion takes effect and shall not be entitled to any Performance Distribution or Exceptional Distribution for the then current Financial Year unless otherwise determined by the CEO and approved by the National Board;
- (d) the Partner shall have no further Claim against the Firm (or any of its constituent entities) or in relation to the profits or assets of the Partnership, and each Partner hereby irrevocably releases the Firm from any such Claims; and
- (e) the Firm may deduct any amount owing (including contingent amounts) by the Partner to the Firm from the amount the Partner would otherwise be entitled to receive.

25.3 Notwithstanding any Clause of this agreement or principle of law to the contrary:

- (a) the Partner need not be given any reasons for the Partner's expulsion; and
- (b) the Partner need not be given a hearing before any notice of expulsion is served on the Partner.

26 Consequences of retirement, expulsion or death

26.1 If the aggregate amount of the retirement distributions to be made to Partners in any one Financial Year as calculated under Clauses 22 to 25 inclusive is greater than 10% of the prior Financial Year's Profit Pool after adding back Partner retirement payment amortisation, then:

- (a) the National Board, on the recommendation of the CEO, will determine:
 - (i) the proportion of the retirement distribution to be made to individual retiring Partners during the relevant Financial Year; and
 - (ii) the proportion of the retirement distributions to be made that may be carried forward to the following Financial Year or other period as determined by the CEO; and
- (b) any amount carried forward will attract interest at a rate equivalent to the Reserve Bank of Australia 30 day Bank Bill Swap Reference Rate on 30 June of the relevant Financial Year.

26.2 Each Partner agrees that:

- (a) they shall (except where they retire under Clause 22.5 or 22.6 with a right to be re-admitted to the Partnership or where Clause 22.8 applies) execute a Partner Retirement Deed upon retiring from the Partnership under Clauses 22 or 23; and
- (b) any retirement distribution for which a Partner is eligible under Clause 24:
 - (i) shall (except where a Partner retires under Clause 22.5 or 22.6 with a right to be re-admitted to the Partnership or where Clause 22.8 applies), subject to Clause 26.5, be made at the time the Partner retires from the Partnership; and
 - (ii) is subject to the execution and delivery of a Partner Retirement Deed by the retiring Partner.

26.3 Unless the CEO otherwise determines, a Partner who retires on any basis or is expelled from the Partnership:

- (a) must immediately resign as an office holder of any entity in the Firm on the basis that the retiring or expelled Partner has no right to any termination pay from that entity as a consequence of that Partner holding office in that entity; and
- (b) shall be deemed, if the notice of retirement is given under Clause 22.1, to have resigned as an office holder of any relevant entity in the Firm with effect from the date of the written notice.

26.4 Unless the CEO otherwise determines, a Partner who retires from the Partnership under Clause 22.1 in order to be engaged or involved in a Competitive Business shall not be entitled to:

- (a) any retirement distribution payment under Clause 24; or

- (b) any Performance Distribution or Exceptional Distribution for the Financial Year in which the Partner gives notice under Clause 22.1 and any period after such notice is given.

26.5 If the CEO or National Chair reasonably determines that a Partner retiring under Clause 22 or Clause 23 has:

- (a) breached this agreement;
- (b) failed to sign a Partner Retirement Deed;
- (c) breached the Partner Retirement Deed; or
- (d) through the Partner's retirement, triggered (or contributed to the triggering of) a requirement that an amount be paid to KPMG International in connection with the Partner's retirement,

then, with the approval of the National Board, the CEO or National Chair may vary, suspend or terminate any right to payments or distributions the retiring Partner may have under this agreement or any Partner Retirement Deed, or may withhold any such payment or distribution.

27 Suspension from Partnership

27.1 Where the CEO:

- (a) reasonably suspects that there has been a potential serious breach by a Partner of an applicable law, this agreement, the Firm's policies or the Code of Conduct; or
- (b) forms the view that it is otherwise in the best interests of the Partnership,

a Partner may be served with a notice of suspension indicating that the Partner shall be suspended from the Partnership:

- (c) for a period of time set out in the notice and ordinarily not exceeding 12 months (**Suspension Period**); and
- (d) on any terms and conditions which the CEO recommends and the National Board approves.

27.2 Notwithstanding any Clause or principle of law to the contrary:

- (a) the Partner need not be given any reasons for the Partner's suspension; and
- (b) the Partner need not be given a hearing before any notice of suspension is served on the Partner.

27.3 During the Suspension Period, a Partner shall continue to receive their Base Distribution and will continue to accrue entitlements as if they had not received the notice, but the Partner shall not be entitled to any Performance Distribution or Exceptional Distribution for the period they are suspended under Clause 27.1 unless otherwise determined by the CEO and approved by the National Board.

27.4 During the Suspension Period, the CEO in their absolute discretion may direct the Partner to do any one or more of the following:

- (a) not attend any premises of the Firm;
- (b) not have any communication with any Client;
- (c) not provide professional services to any person;
- (d) work under the supervision and control of another Partner or group of Partners;
- (e) not do any work or do work of a kind which is different to the work normally undertaken by the Partner;
- (f) not have any communication with any other Partner or employee of the Firm;
- (g) not refer to or comment upon matters to the media or other persons or entities;

- (h) not email or have any other electronic access to other Partners, employees of the Firm or Clients;
- (i) not have access to any systems, information or files of the Firm; and
- (j) not have notice of, attend or vote at any meeting at the Firm.

27.5 A Partner who has received a notice under Clause 27.1 shall return to the Partnership:

- (a) when the Suspension Period has expired;
- (b) at such other earlier time as the CEO notifies to the Partner; or
- (c) unless the Partner retires during the period of suspension, or is expelled, from the Partnership.

28 Assets and liabilities of the Partnership

28.1 This Clause 28 does not apply to Salaried Partners.

28.2 As from the date of the retirement, expulsion or death of a Partner, and subject only to the right of such Partner or the legal personal representatives of the deceased Partner to receive from the Partnership the moneys representing the income and capital referred to in this Clause 28:

- (a) the whole of the assets and business of the Partnership shall belong to, and the whole of the liabilities of the Partnership as from the date shall be borne by, the ongoing Partners; and
- (b) a Partner must divest themselves, or procure that any nominee of the Partner divest themselves, of any interest in the Firm held by the Partner or the nominee of the Partner.

28.3 Each of the Partners agrees that they, or the Partner's nominee or personal legal representatives, as the case may be, and the ongoing Partners will execute all documents necessary to:

- (a) give effect to Clause 28.2; and
- (b) subject to the provisions of Clause 37 with regard to any liability of a Partner for Uninsured Liabilities, indemnify the retired or expelled Partner or legal personal representatives of the deceased Partner against any liabilities of the Partnership; and
- (c) release each other from all Claims on account of the Partnership as are usual in such cases.

29 Balance sheets and accounting

29.1 Proper books of account must be prepared and kept in respect of the Firm in relation to its operations, and as soon as reasonably practicable after 30 June in each year a balance sheet and profit and loss account must be prepared and made available to the relevant Partners.

29.2 No value or amount will be attributed in any Firm accounts to goodwill except to the extent that it represents unamortised goodwill purchased from third parties.

30 Goodwill of the Partnership

30.1 The Partners agree that:

- (a) the goodwill of the business conducted by the Firm has no monetary value;
- (b) no Partner has any individual right or interest in any goodwill; and
- (c) in all calculations for any reason, the goodwill is to be considered and assessed as being of no value.

30.2 Each Partner acknowledges and agrees that this Clause 30 survives termination of this agreement.

31 Intellectual Property

- 31.1 The Partners agree that the Partnership or its nominee owns all the Intellectual Property in any thing that the Partner conceives, develops, produces or otherwise contributes to in the course of their involvement with the Firm whether as a Partner, an officer of the Company or an Associated Entity, or otherwise.
- 31.2 Each Partner agrees to do all things necessary, or otherwise reasonably requested by the National Chair or the CEO, to ensure that any Intellectual Property referred to in Clause 31.1 is owned by the Firm or to perfect the Firm's title to such Intellectual Property.
- 31.3 Each Partner acknowledges and agrees that this Clause 31 survives termination of this agreement and shall continue to bind the Partner even after the Partner ceases to be a Partner.

32 Moral Rights

- 32.1 Each Partner agrees, to the extent permitted by applicable law, to provide an unconditional and irrevocable consent to the Firm or any of its employees, contractors or agents to use, vary, add to or delete from any work (as that term is defined in the *Copyright Act 1968* (Cth)) created by the Partner, either alone or in conjunction with other Partners or persons, and in which the Partner may have Moral Rights, whether before or after the Operative Date.
- 32.2 Each Partner:
- (a) irrevocably consents to any act or omission of the Firm which infringes that Partner's Moral Rights but which otherwise complies with this agreement;
 - (b) agrees that the consent given in paragraph (a) is a genuine consent given under Part 9 of the *Copyright Act 1968* (Cth) and has not been induced by duress or any false or misleading statement; and
 - (c) acknowledges and agrees that this Clause 32 survives termination of this agreement and shall continue to bind the Partner even after the Partner ceases to be a Partner.

33 Confidentiality and Legal Professional Privilege

- 33.1 Each Partner undertakes that, subject to Clause 33.2, they shall keep confidential and shall not by failure to exercise due care or otherwise, by any act or omission disclose to any person whatsoever, or use or exploit commercially for their own purposes, any of the Confidential Information without the prior written consent of the National Chair or the CEO, except:
- (a) to the extent the Confidential Information is in the public domain otherwise than by breach of this agreement or any obligation of confidentiality owed by the Firm;
 - (b) to the extent disclosure is required under an applicable law or to any regulatory body or governmental agency; or
 - (c) to the Partner's legal or other professional advisers and then only on the basis that the professional adviser is informed that the information is confidential.
- 33.2 Clause 33.1 shall not apply to restrict any disclosure of Confidential Information to another Partner, the Firm or its officers, employees, advisers or agents in each case to the extent required in the proper performance of the Partner's duties to the Firm and for the purposes of the Firm Business.
- 33.3 A Partner must destroy, delete or return to the Partnership all Confidential Information (however constituted or stored) in the Partner's possession or under the Partner's control on or before the Partner's retirement date or immediately upon expulsion from the Firm.
- 33.4 Each Partner undertakes:
- (a) that under no circumstances shall the retiring Partner disclose Confidential Information which is or may be the subject of a claim for legal professional privilege by the Firm; and

- (b) to notify the General Counsel immediately of any request for disclosure of such information.

33.5 Each Partner acknowledges and agrees that this Clause 33 survives termination of this agreement, and shall continue to bind the Partner even after the Partner ceases to be a Partner.

34 Names and Service Marks

34.1 Each Partner acknowledges and agrees that:

- (a) the licence granted to the Firm under the Membership Agreement and the Sublicense Agreement is granted to the Partners in their capacity as members of a Partnership;
- (b) if the Partner ceases to be a member of the Partnership the Partner has no further right to use the Service Marks except as the National Board determines;
- (c) if for any reason the Partnership is dissolved or all of its Partners cease to be partners of the Partnership or if for any reason the Partnership ceases to be bound by the terms of this agreement, then the licence granted to the Partnership under the Membership Agreement and the Sublicense Agreement terminates; and
- (d) this Clause 34 survives termination of this agreement and shall continue to bind the Partner even after the Partner ceases to be a Partner.

34.2 After a Partner ceases to be a Partner of the Partnership, the Partner may not carry on any business (whether alone or in partnership with others) or be directly or indirectly interested in any entity which carries on any business under the name KPMG, or otherwise use:

- (a) the name KPMG or any name which incorporates any of the words "KPMG", "Peat", "Marwick", "Klynveld" or "Goerdeler"; or
- (b) the logo "KPMG",

without the prior written approval of the National Board.

35 Employment of relatives

35.1 A Partner may not be involved in the recruitment process for, the decision to hire, any performance assessment of or any decision to promote or offer a secondment (whether within Australia, to another KPMG Member Firm or to KPMG International) to, the spouse, a person with whom they are in a De facto Relationship, parent, brother, sister, child or grandchild (or spouse or De facto partner of any of them) of that Partner. Any such close relative may not be employed in, transferred to, or placed in a position that may influence or be influenced by the Partner.

35.2 To ensure compliance with Clause 35.1, a Partner who marries or enters into a De facto Relationship with another Partner or employee of the Firm must inform the CEO of that fact within seven days of it occurring.

36 Restrictive Covenants

36.1 During the Restraint Period, a former Partner must not directly or indirectly undertake any of the following activities without the prior written consent of the National Board:

- (a) approach, canvass work from, solicit, accept any business from, entice away from the Firm (or attempt to do any of those things) any person who at the time the Partner ceases to be a Partner is, or who at any time during the period of 12 months before the Partner ceased to be a Partner was:
 - (i) a Client with whom the Partner worked;
 - (ii) a person from whom the Partner sought work in their capacity as Partner;
 - (iii) a Client of the business units in which the Partner worked (Relevant Business Unit);

- (iv) a person with whom the Partner or the Relevant Business Unit was in discussions, had contact or dealings for the purposes of the Partner or the Relevant Business Unit developing opportunities for work during the period of 12 months before the Partner ceased to be a Partner;
 - (b) canvass, solicit, interfere with or attempt to entice away any professional staff of the Firm, including but not limited to other Partners or employees of the Firm; or
 - (c) counsel, procure or otherwise assist any person to do any of the acts referred to in Clauses 36.1(a) or (b).
- 36.2 Without limiting the provisions of Clause 36.1, a Partner who ceases to be a Partner of the Partnership may not for a period of six months from the date upon which the Partner ceased to be a Partner, without the express prior approval of the National Board in its absolute discretion and on such terms as it may consider appropriate, be engaged or involved in any capacity in any Competitive Business.
- 36.3 For any Partner who has held a position on the National Board, the NEC, the PRNC, the KPMG Global Board or its committees, the KPMG Global Management Team or one of the KPMG Global Steering Groups, and/or the KPMG Asia Pacific Regional Board or its committees in the 12 month period prior to their retirement or expulsion from the Partnership, the six month period in Clause 36.2 shall be increased to 12 months.
- 36.4 The CEO, with approval of the National Board, may consent to a former Partner accepting business from or continuing business with a Client and may impose as a condition of the consent that the former Partner makes a payment in respect of the Client to the Firm:
 - (a) within 9 months of the former Partner first being engaged by the Client; and
 - (b) in an amount agreed between the CEO and the former Partner or, if agreement cannot be reached, an amount equal to half the total fees charged or chargeable to that Client by the Firm for services provided in the Financial Year preceding the date on which the former Partner is first engaged by the Client.
- 36.5 Each Partner acknowledges and agrees that:
 - (a) each of the restraints in Clause 36.1 and Clause 36.2 or Clause 36.3 is a fair and reasonable restraint in scope and duration and goes no further than is reasonably necessary to protect the interests of the Firm;
 - (b) they have received substantial and valuable consideration for each separate restraint in Clause 36.1 and Clause 36.2 or Clause 36.3;
 - (c) a contravention of Clause 36.1, Clause 36.2 or Clause 36.3, alone or in conjunction, would be unfair and would cause harm and loss to the Firm for which damages may not be an adequate remedy;
 - (d) injunctive relief to restrain any breach by the Partner of Clause 36.1, Clause 36.2 or Clause 36.3 may be necessary to protect the interests of the Firm;
 - (e) if a former Partner accepts business from or continues to do business with a Client without obtaining the consent set out in Clause 36.4, the Partnership may seek to recover from the former Partner by way of damages an amount greater than that provided for in Clause 36.4; and
 - (f) this Clause 36 survives termination of this agreement and shall continue to bind the Partner after the Partner ceases to be a Partner.
- 36.6 A Partner must notify the Firm's Ethics and Independence Partner if the Partner intends to discuss with any listed audit client of the Partnership or any other KPMG Member Firm potential employment, directorship or an independent contractor role with the audit client.
- 36.7 Each Partner agrees not to take any steps to accept appointment to a Board or senior management position with an audit client of the Partnership or any other KPMG Member Firm that may prejudice the retention of that audit client by the Partnership or a KPMG Member Firm after ceasing to be a Partner.

37 Uninsured Liabilities

- 37.1 This Clause 37 does not apply to Salaried Partners.
- 37.2 Each Partner agrees that whilst a Partner, or after the Partner ceases to be a Partner, the National Board in its absolute discretion may determine that a Partner or former Partner at the time of circumstances giving rise to an Uninsured Liability shall indemnify or contribute towards indemnifying the Partnership against the cost of meeting such Uninsured Liability.
- 37.3 Unless the National Board resolves otherwise, in making the determination under Clause 37.2 the National Board, in its absolute discretion, must also determine:
- (a) the date or dates of the circumstances giving rise to the Uninsured Liability;
 - (b) if the circumstances relate to more than one date, how the Uninsured Liability is to be apportioned between the dates;
 - (c) the identity of all the Partners or former Partners at the time of the circumstances giving rise to an Uninsured Liability;
 - (d) that any Partner or former Partner required to indemnify or contribute towards indemnifying the Partnership against the cost of meeting such Uninsured Liability shall do so in proportions equivalent to that Partner or former Partner's Profit Sharing Entitlements at the time of the circumstances giving rise to the Uninsured Liability;
 - (e) when payments are to be made by a Partner or former Partner; and
 - (f) whether interest is to be payable on any amount not paid by a Partner or former Partner by a date specified under this Clause 37.3, the rate of any such interest and on what dates the interest is payable.
- 37.4 Subject to the National Board having passed a resolution in accordance with this Clause 37, each Partner or former Partner referred to in the resolution shall take all necessary steps to honour and make payments in accordance with the indemnity.
- 37.5 The National Board in its absolute discretion may determine that the Uninsured Liability is to be paid in full or in part from the Profit Pool in any Financial Year irrespective of the date or dates upon which the circumstances giving rise to the Uninsured Liability occurred.
- 37.6 Each Partner agrees that this Clause 37 survives termination of this agreement and shall continue to bind the Partner even after the Partner ceases to be a Partner.

38 Conduct of Claims

- 38.1 If a Claim is made by or against the Firm then the only persons entitled to conduct legal proceedings relating to the Claim are the then current Partners (other than Salaried Partners).
- 38.2 Each Partner agrees that they shall make themselves available to assist and provide all information reasonably requested by the CEO in relation to any Claim in which the Partner was involved or about which the Partner may have knowledge.
- 38.3 The Partners authorise the CEO to conduct all legal proceedings relating to Claims by or against the Firm on their behalf including, but not limited to, such matters as accepting service, entering appearances, making interlocutory applications, filing pleadings, making admissions, engaging legal representatives, conducting the defence, instituting cross claims against third parties, negotiating and effecting settlements and dealing with insurers and underwriters. In confirmation of this authority each Partner shall execute an irrevocable power of attorney in the form set out in Schedule 3.
- 38.4 In consideration of the Partners continuing to include the interests of former Partners in the professional indemnity insurance policy from time to time taken out by the Firm, each Partner acknowledges that the specific power of attorney executed under Clause 38.3 is irrevocable and shall endure after the Partner ceases to be a Partner.
- 38.5 Each Partner agrees that this Clause 38 survives termination of this agreement and shall continue to bind the Partner even after the Partner ceases to be a Partner.

39 Dispute resolution

- 39.1 Each Partner agrees that no Proceeding to resolve a Dispute shall be commenced against the Firm or another Partner.
- 39.2 If a Dispute arises, before commencing an Arbitration in respect of a Dispute:
- (a) if a Partner is raising the Dispute with the Firm, the Partner shall provide the General Counsel with a Dispute Document;
 - (b) if the CEO or National Board is raising the Dispute with any Partner, the CEO or National Board shall instruct the General Counsel to prepare and provide a Dispute Document to the Partner or Partners concerned;
 - (c) the National Chair or CEO and any Partner raising a Dispute or having received a Dispute Document shall engage in confidential negotiations within 14 days of provision of the Dispute Document; and
 - (d) should such negotiations not be successful in resolving the Dispute within a further 14 days, the National Chair or CEO and any Partner raising a Dispute or having received a Dispute Document shall participate in a mediation as soon as is practicable.
- 39.3 Each Partner agrees that the Dispute Document is not a notice of arbitration.
- 39.4 If, having complied with Clause 39.2 the Dispute remains unresolved, any party may refer that Dispute to Arbitration to be finally resolved. The parties agree that an appeal of an arbitral award may be made in accordance with the section 34A of the *Commercial Arbitration Act 2010* (NSW).
- 39.5 Each party acknowledges and agrees that all activities and information concerned with any confidential negotiations, mediation, or Arbitration conducted in accordance with this Clause 39 shall be confidential and shall not be used for any purpose other than the resolution of the Dispute in accordance with this Clause 39.
- 39.6 Nothing in this Clause 39 shall prevent the Firm or a Partner from instituting court proceedings limited to the determination of an application for Urgent Relief.
- 39.7 Each Partner agrees that this Clause 39 survives termination of this agreement and shall continue to bind the Partner even after the Partner ceases to be a Partner.

40 Permitted assignments

- 40.1 This Clause 40 does not apply to Salaried Partners.
- 40.2 A Partner may, subject to compliance with any relevant law and with Clause 40.3, assign over a percentage of the share held by the Partner from time to time in the Partnership, such percentage share not to exceed the percentage share from time to time specified by the National Board.
- 40.3 Any assignment under Clause 40.2:
- (a) may only take place with the prior approval of the National Board and in a manner approved by the National Board;
 - (b) shall only be to, or in favour of, a Permitted Assignee;
 - (c) shall prohibit the Permitted Assignee from transferring, assigning, encumbering, declaring a trust over or otherwise dealing with the percentage of the share, or any part thereof or interest therein, assigned to or held in trust for the Permitted Assignee;
 - (d) shall require that the Permitted Assignee:
 - (i) releases the Partner to which the interest relates from all claims, losses, damages, liabilities, charges, costs or expense, however arising, directly or indirectly from the actions of the Partner in connection with the Partnership; and
 - (ii) undertakes not to make any claim, demand or allegation or take any action,

proceeding or suit against the Partner to which the interest relates in the event the Partner retires, resigns or otherwise ceases to be a Partner of the Partnership; and

- (a) must comply with such other requirements as may be specified by the National Board from time to time.

40.4 If a Partner assigns over a percentage of the share held by the Partner from time to time in the Partnership, the Partner must indemnify the Partnership and each of the other Partners against, and must pay (but without double recovery) to the Partnership or other Partners on demand the amount of, all losses, costs, liabilities and expenses incurred by the Partnership or other Partners, as the case may be, in connection with the assignment.

41 Miscellaneous

Amendment

41.1 This agreement may be amended from time to time in accordance with Clause 7.11(hh) or Clause 14.18(c). Any such amendment is valid and binding on all Partners from the time the relevant resolution is made or the date upon which the amendment is expressed to become operative.

Indemnities

41.2 Each indemnity in this agreement is a continuing obligation separate and independent from each other obligation and survives termination of this agreement and the cessation of a person being a Partner for any reason. It is not necessary for a person to incur expense or make payment before enforcing a right of indemnity conferred by this agreement.

Notices

41.3 Any notice required to be served by or on a Partner or the Firm must be in writing and signed, and shall be deemed to have been properly served if:

- (a) it is served personally on the Partner or National Chair, or left at the office of the National Chair;
- (b) posted or delivered to the Partner at the Partner's address last known to the Partnership; or
- (c) sent by email or other electronic means similar to email to the National Chair or the Partner at their Firm email address or an email address made known to the Partnership and which the Firm knows to be active, and the sender receives an email message or electronic acknowledgment from the addressee acknowledging its receipt or the sender receives confirmation on its server that the message has been transmitted:
 - (i) if it is transmitted by 5.00 pm (Sydney time) on a Business Day – on that Business Day; or
 - (ii) if it is transmitted after 5.00 pm (Sydney time) on the Business Day, or on a day that is not a Business Day – on the next Business Day.

41.4 A notice sent by post shall be deemed to have been served two Business Days after it is posted.

Governing law and jurisdiction

41.5 This agreement is governed by, and shall be interpreted in accordance with, the laws of New South Wales.

41.6 Without limiting the application of Clause 41.5, each Partner and the Company unconditionally and irrevocably submits to the exclusive jurisdiction of the courts of New South Wales and courts competent to hear appeals from those courts.

Counterparts

41.7 This agreement may consist of a number of counterparts and all counterparts taken together shall be deemed to constitute one and the same instrument.

EXECUTED AS AN AGREEMENT:

Executed on behalf of the Partners named in Schedule 1 by Two members of the KPMG

National Board:

Name:

Signature of Board member

Name:

Signature of Board member

Executed by KPMG Australia Pty Limited ACN 008 644 728

Name:

Signature of Director

Name:

Signature of Director