

Client Custody Agreement Terms and Conditions

1 January 2016

Contents

1. Definitions and Interpretations	3
2. Agreement and Appointment	6
3. Custodian Services	6
4. Client's Representatives	11
5. Proper Instructions	12
6. Communications relating to Client's Assets	13
7. Encumbrances over Client's Assets	14
8. Agents	14
9. Custodian's liability	15
10. Client's obligations and indemnity	16
11. Access to information	17
12. Fees and expenses	17
13. Termination	19
14. Action on termination	19
15. Representation and warranties	20
16. Settlement of disputes	21
17. Confidentiality and privacy	22
18. Tax matters	22
19. Notices	23
20. General	24

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1. Definitions and Interpretations

1.1 Definitions

Acquired Assets means fixed income investments, fixed income products or securities acquired by the Custodian as a function of its role in providing financial services to the Client under its AFSL or previously acquired by the Client.

ADI means an Authorised Deposit-taking Institution as defined in the policies of the relevant Regulator or the SIS Act.

AFSL means Australian Financial Services Licence.

Agent includes any agent of the Custodian from time to time (including a Sub-custodian), and any nominee of the Custodian and its agents.

Agreement means the agreement between the Client and the Custodian incorporating these Client Custody Agreement Terms and Conditions, the FIIG CAAF and the Terms and Conditions of Dealing with FIIG Securities Limited set out in FIIG Securities Limited's Financial Services Guide.

Applicable Law means all applicable provisions of laws and regulations of Australia including all relevant rules, policies, directions and codes of Government Agencies, exchanges, trade, industry and clearing associations and self-regulatory organisations in Australia, including without limitation, the Corporations Act, the SIS Act, the SIS Regulations, the Regulator's Policy (as applicable) and the National Privacy Principles and includes any relief granted from any such laws or regulations.

ASIC means the Australian Securities and Investments Commission or such other government authority that performs the role undertaken by ASIC in relation to the regulation of financial services.

ASIC Policy means any published ASIC publication or regulatory guide regarding the minimum requirements or expectations made by ASIC that apply to custodial arrangements such as those contained in this Agreement.

Authenticated Communication means any form of communication referred to in clause 5.9.

Authorised Person is a person designated as the primary contact in Section 6 or Section 7 of the FIIG CAAF or as otherwise notified to the Custodian in accordance with the procedure outlined in Section 6 of the FIIG CAAF.

Bank Account means, in the context either:

- a. an account established and maintained with an ADI in the name of the Client and nominated by the Client. If a Client is a New Client, this account must be a Funding Account unless the Custodian determines otherwise in its absolute discretion; or

- b. in the absence of an account of that nature, the Trust Account the Custodian maintains with an ADI.

Business Continuity Plan means the business continuity plan maintained by the Custodian from time to time.

Business Day means a day which is not a Saturday, a Sunday or a public holiday in Brisbane.

Business Hours means between the hours of 9:00am and 5:00pm Australian Eastern Standard Time on a Business Day.

Claim means any claim, cost, damages, debt, expense, Tax, liability, loss, allegation, suit, action, demand, cause of action or proceeding of any kind irrespective of:

- a. how or when it arises;
- b. whether it is actual or contingent;
- c. whether it is fixed or unascertained;
- d. whether or not it is in respect of legal or other costs, damages, expenses, fees or losses;
- e. whether or not it is in respect of a breach of trust or of a fiduciary or other duty or obligation; and
- f. whether or not it arises at law or in any other way.

Client means the person identified in the FIIG CAAF.

Client's Assets means all Acquired Assets in which the Client has a beneficial interest including money to which the client is entitled which may be held by the Custodian including in its Trust Account maintained by it as an AFSL holder under the Corporations Act 2001 and:

- a. which may be identified in writing by the Custodian or its agents as the Client's Assets for the purpose of this Agreement; and
- b. which are transferred or delivered, from time to time, after the date of this Agreement to the Custodian by the Client or its agents and accepted by the Custodian for holding in accordance with this Agreement, together with:
 - i. all investments, certificates and other instruments, from time to time, representing those moneys or Acquired Assets;
 - ii. any earnings or interest in respect of the same; and
 - iii. all Securities or other instruments into which such money or Acquired Assets are converted or sub-divided and held in accordance with this Agreement.

Compliance Officer means a person appointed by the Custodian to monitor and ensure compliance with the Regulator's Policy and this Agreement.

Confidential Information means this Agreement and the fact that this Agreement exists and any information relating to the business, systems, operations, properties, assets or affairs of the Client or its related

bodies corporate which is or has been disclosed by the Client (or its representatives) to the Custodian (or its representatives) or learnt or acquired by the Custodian (or its representatives) under or in connection with this Agreement, whether orally, electronically or in writing other than any such information which:

- a. was in the public domain at the time of its disclosure to or acquisition by the Custodian;
- b. became part of the public domain after its disclosure to or acquisition by the Custodian, otherwise than through a disclosure in breach of an obligation of confidence;
- c. is or came lawfully into the possession of the Custodian otherwise than as a result of a disclosure in breach of an obligation of confidence;
- d. was independently known by the Custodian at the time of its disclosure to or acquisition by the Custodian, where a representative of a party means an officer, employee, agent, adviser, auditor, consultant or contractor of that party.

Consideration means the promises made by the parties to this Agreement and any amounts paid or payable by the Client to the Custodian pursuant to this Agreement.

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

Custodian means FIIG Securities Limited ABN 68 085 661 632.

Custodian Services means the services provided to the Client by the Custodian in respect of the Client's Assets in accordance with this Agreement and such further services as may be agreed in writing between the Client and the Custodian.

Custody Account means the description of the system where a Third Party holds assets for the Custodian on a pooled basis where such assets can comprise Clients' Assets.

Derivatives Contract includes any interest rate, currency, stock or commodity, futures contract, option, forward sale or purchase agreement, index contract or other contract, whether settled by delivery or by payment of differences or any other derivative as defined by section 761D of the Corporations Act (as relevant).

Dishonour Fee means the Fee described in clause 12.3a.

Distribution means any proceeds of an Acquired Asset disposal interest, (regardless of frequency of payment or whether the interest rate is fixed or floating), dividend, right, bonus or other similar entitlement (whether in the form of cash, Securities or otherwise) distributed, issued, paid or provided to the Custodian as representing the beneficial interests of the Client.

Effective Date means the date the Client's Assets are first provided to the Custodian for the purposes of this Agreement.

Electronic Transmission Service means any electronic communication platform or service acceptable to the Custodian for the transmission of communications and information for the purpose of this Agreement.

Event of Default means:

- a. the appointment of a receiver, manager or administrator of the other party, or the making of an order or the passing of an effective resolution for the winding up of the other party;
- b. if the other party makes any composition or arrangement with its creditors (other than for the purposes of a reconstruction) or is placed under official management; or
- c. if the other party ceases to carry on business.

Fees mean fees and charges charged by the Custodian and payable by Client in connection with this Agreement.

FIIG CAAF means the 'FIIG Client Account Application Form' completed as part of the Custodian's account opening procedures.

Force Majeure Event means a matter which is not reasonably within the control of the Custodian, including, without limitation, acts of God, strikes, lockouts or other interferences with work, war (declared or undeclared), blockades, disturbances, lightning, fire, earthquakes, storms, floods, explosions, governmental or quasi-governmental restraints, expropriations, prohibitions, interventions, directions or embargoes.

Foreign Exchange Rate means, the exchange rate at which one currency is to be or may be converted to another currency applicable as at the time the conversion is to occur as determined by the Custodian or its agent:

- a. as notified or supplied to the Custodian by a third party supplier engaged by the Custodian from time to time; or
- b. if there is no such third party or no such rate is supplied, then the rate determined by the Custodian (acting reasonably) having regard to prevailing market rates as at the relevant time.

Fund means:

- a. initially, any fund/trust or funds/trusts referred to in the FIIG CAAF;
- b. any other fund/trust notified in writing by the Client to the Custodian and accepted by the Custodian, from time to time; and
- c. the holding of the Client's Assets beneficially for the Client where details of the Client's Assets are to be recorded in Sub-account Records.

Funding Account means a Bank Account of a particular type with a particular ADI specified by the Custodian from time to time.

Government Agency means any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity.

GST Law has the same meaning as "GST Law" in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

In-Specie Fee means the Fee described in clause 12.3c.

Investment Manager means any person or persons appointed from time to time by the Client to act as investment manager of the Client's Assets or a Portfolio thereof, and who has or have been notified to the Custodian as an Authorised Person.

Know Your Customer Procedures means the customer identification procedures notified by the Custodian to the Client from time to time for the purposes of clause 4.8.

Loss means any losses, damages, costs, expenses and liabilities, however arising, including those that are prospective or contingent and those the amount of which is not ascertained or ascertainable, and includes loss of profit or expected profit, and diminution in value.

Monthly Statement means the statement issued by the Custodian on a monthly basis disclosing the Client's monthly balance and including a tax invoice in respect of applicable Fees.

National Privacy Principles means the National Privacy Principles set out in the Privacy Act 1988 (Cth).

New Client means a Client who enters into this Agreement with FIIG on or after 1 July 2015.

Notice means a notice, approval, consent or other communication, including Proper Instructions, in connection with this Agreement.

Portfolio means a division of the Client's Assets having common characteristics and terms.

Post-October 2015 Client means a Client (whether a New Client or a Pre-Existing Client) who:

- a. is a Retail Client; and
- b. enters into this Agreement, or in relation to whom this Agreement is varied, after 31 October 2015.

Pre-Existing Client means a Client who is not a New Client.

Proper Instructions means any instruction, direction, demand, request or approval (which may include a Standing Instruction) made or given in accordance with Applicable Law and clause 5, in the form reasonably required by the Custodian and notified to the Client in writing, from time to time.

Records means up to date, complete and accurate records relating to the Custodian Services provided by the Custodian or its Sub-custodian/s under this Agreement including, without limitation, records of the daily trade transactions by the Client and records made up to identify the Client's Assets designated by the Sub-account.

Regulator means ASIC and/or any of its successors.

Regulator's Policy means any published ASIC Policy, in writing which directly affects the discharge by the Custodian of its obligations under this Agreement.

Related Entity has the meaning given to the expression related body corporate in the Corporations Act.

Reports means each one of the custodial or other reports which the Custodian is required to provide pursuant to clause 3.14.

Retail Client has the meaning given in section 761G of the Corporations Act.

Securities means any securities, bonds, notes, deposits, financial products, negotiable debt instruments, instruments of every type, evidences of indebtedness, other instruments representing any interests, rights or obligations to receive, purchase, deliver or sell any of those interests, from time to time, forming part of the Client's Assets and Security has a corresponding meaning.

Securities Account means an account established and maintained by the Custodian with a Securities System.

Securities System means a securities depository system or any other book entry system for the central handling of securities in order to facilitate the settlement of transactions.

SIS Act means the *Superannuation Industry (Supervision) Act 1993* (Cth).

SIS Regulation means the *Superannuation Industry (Supervision) Regulations 1994* (Cth).

Standing Instruction means a Proper Instruction which is expressed to be a standing instruction and which is to apply in respect of like transactions until revoked by further Proper Instructions.

Sub-account means the circumstances where the Custodian holds a Client's Assets in the Custodian's name for a Client under an agreement in this form or substantially similar to the form of this Agreement so that the beneficial interests of each Client is recorded in Records attributable to one or more individual assets held by the Custodian or held for multiple Clients or which can be distinguished as being held solely for the Client.

Sub-custodian means a party appointed by the Custodian pursuant to clause 8 of this Agreement for the purposes of holding and safekeeping the Client's Assets.

Successor means a person appointed by the Client to provide all or part of the Custodian Services for the Client's Assets instead of the Custodian (which the successor may be the Client).

Tax means taxes, levies, imposts, charges and duties imposed by any authority (including stamp and transaction duties) together with any related interest, penalties, fines and expenses.

Third Party means a company with an AFSL authorised to provide custodial or depository services to the public and meeting the Regulator's Policy.

Transfer Period means the period of not more than 60 days (unless the parties agree otherwise in writing) from the termination of this Agreement until the Client's Assets have been transferred to the Client or a successor custodian under clause 14.

1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- a. headings and underlinings are for convenience only and do not affect the interpretation of this Agreement;
- b. words importing the singular include the plural and vice versa;
- c. an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency;
- d. a reference to anything includes a part of that thing;
- e. a reference to a part, clause, party, annexure, attachment or schedule is a reference to a part and clause of, and a party, annexure attachment and schedule to this Agreement;
- f. a reference to a document includes an amendment or supplement to, or replacement or novation of, that document and also includes, but is not limited to, a certificate, notice, instrument or an agreement in writing;
- g. a reference to a party to a document includes that party's successors and permitted assigns;
- h. no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Agreement or any part of it;
- i. a reference to this Agreement includes any schedule or annexure to this Agreement;
- j. a reference to dollars or \$ is a reference to the legal currency of the Commonwealth of Australia;
- k. if the day on which any act or matter is required to be done is a day other than a Business Day, such act or matter must be done on the immediately succeeding Business Day;
- l. a reference to an Act includes any regulations or delegated legislation made under that Act and any amendment to that Act or Act replacing that Act;
- m. a reference to this document or Agreement is a reference to the Client Custody Agreement Terms and Conditions and the FIIG CAAF (including the schedule) which together form the agreement between the parties; and
- n. if there is any inconsistency between the provisions of the FIIG CAAF and these Client Custody Agreement Terms and Conditions, the provisions of these Client Custody Agreement Terms and Conditions apply to the extent of the inconsistency.

2. Agreement and Appointment

2.1 Agreement

The Client and Custodian enter into this Agreement in exchange for the Consideration.

2.2 Term

This Agreement commences from the Effective Date and will continue to have full force and effect until terminated in accordance with clause 13.

2.3 Appointment of Custodian

On and from the Effective Date the Client appoints the Custodian to provide the Custodian Services and the Custodian consents to and accepts that appointment.

2.4 Holding of Client's Assets

The Custodian reserves the right, in its absolute discretion, to decline to hold any Client's Asset proposed by the Client for the purposes of this Agreement.

2.5 Beneficial ownership of Client's Assets

The Custodian acknowledges and agrees that the beneficial interest in the Client's Assets held under this Agreement shall, at all times, vest in the Client. Nothing in this Agreement shall affect the beneficial ownership of the Client's Assets.

3. Custodian Services

3.1 Custodian Services

- a. The Custodian agrees with the Client that the Custodian will, without limitation:
 - i. take custody of the Client's Assets and any documents evidencing title to the Client's Assets and hold them for the account of and on behalf of the Client or for the account of and on behalf of the Client in a Sub-account and, where a Fund or Funds are described in the FIIG CAAF, the Custodian will hold such Client's Assets and documents in respect of each Fund in accordance with this Agreement;
 - ii. hold the Client's Assets as bare trustee either in the name of the Custodian or in the name of a Sub-custodian or a Securities System (as appropriate) whereby the beneficial interest in the Client's Assets is held by the Client;
 - iii. hold the Client's Assets separate and distinct from other assets held by the Custodian in its own capacity or on behalf of any other Client or Fund except where it is not practical or cost effective to do so, in which case the Custodian may, subject to Applicable Law, pool the Client's Assets in the Custody Account with assets of other persons and agrees to keep records in a way that enables the Client's Assets to be identified;
 - iv. subject to clauses 12.3b and 12.5, credit all Distributions, income and other payments due in respect of Client's Assets to the relevant Bank Account;
 - v. act on Proper Instructions in accordance with this Agreement;
 - vi. provide the Reports to the Client, in accordance with clause 3.14;
 - vii. keep the Records in accordance with clause 11.1;
 - viii. prepare and lodge returns and other documents required by Applicable Law to be lodged by a custodian of the Client's Assets;

- ix. provide such other services as custodian as may be agreed in writing between the parties, subject to clause 3.1b;
 - x. comply with the Applicable Law at all times; and
 - xi. act with reasonable care and in the Client's interests in performing the functions required of it under this Agreement.
- b. From time to time the parties may agree that the Custodian will provide other services to the Client in accordance with this Agreement. The Custodian will not be required to provide any such additional services unless this Agreement is amended to the reasonable satisfaction of the Custodian.
- c. Subject to the Client indemnifying the Custodian in accordance with clause 3.1d, upon receipt of a request in writing from the Client, and without limiting any other provision of this Agreement, the Custodian will:
- i. institute or defend legal proceedings in connection with the Client's Assets, including without limitation taking action to recover Distributions, income or payments;
 - ii. assign to the Client the benefit of all actions, suits and claims available to the Custodian in respect of any proceedings instituted or defended pursuant to clause 3.1c(i);
 - iii. subject to clause 6.2, act as the Client's proxy in respect of resolutions of meetings of members of companies or trusts in which the Custodian holds an interest for the Client which include voting rights; or
 - iv. provide other services as may be agreed between the Client and the Custodian from time to time (other than such additional services as may be agreed under clause 3.1b).
- d. The Client agrees to indemnify the Custodian to the Custodian's reasonable satisfaction for all costs, including the Custodian's internal or administrative costs (including an allocation of overhead costs) incurred by the Custodian in complying with any request of the Client under clause 3.1c provided that this indemnity will not apply where the request by the Client arises (either directly or indirectly) from the default or negligence of the Custodian.

3.2 Authority of Custodian

- a. The Custodian may (but is not obliged or under a duty to) do anything which the Custodian considers necessary or desirable in order to give effect to this Agreement or to comply with any obligations imposed upon it by Applicable Law.
- b. Without limiting clause 3.2a, the Custodian is authorised to:
 - i. open and maintain Bank Accounts and Securities Accounts;
 - ii. appoint any Agent or Sub-custodians or use any Securities System;
 - iii. enter into all types of foreign exchange transactions on behalf of the Client which the

Custodian considers are necessary to give effect to settlement of transactions entered into by the Client;

- iv. make deductions from the Client's Assets from time to time for the purposes of satisfying any obligation entered into in accordance with this Agreement;
 - v. seek and act upon legal, professional and other advice; and
 - vi. defend any legal proceedings in connection with the Client's Assets.
- c. In the event that any fractional interests arise as a result of a Distribution in relation to any Securities held by the Custodian for and on behalf of the Client or for and on behalf of the Client's customers in a sub-account of the Client's account, the Custodian will, subject to Applicable Law, retain that fractional entitlement after rounding down to the nearest whole Distribution owing to the Client.

3.3 Custodian's Standard of Care

- a. To the maximum extent permitted by law, all obligations which might otherwise be implied or imposed by law on the Custodian are excluded. This includes any restriction or obligation of the Custodian in its capacity as bare trustee of the Client's Assets arising under any legislation. The Custodian owes no duties to the Client in relation to the Client's Assets or otherwise, other than:
 - i. to provide custody for the Client's Assets;
 - ii. to act honestly and in good faith; and
 - iii. to exercise (and ensure that any person the Custodian directly or indirectly engages to hold the Client's Assets exercises) the degree of care, diligence and skill that a reasonable person would exercise, as applicable in the relevant markets, if they were experienced in undertaking the duties described in clause 3.1; and
 - iv. to observe (and ensure that any person the Custodian directly or indirectly engages to hold the Client's Assets observes) reasonable standards generally applied by providers of custodial or depository services for holding the Client's Assets.
- b. Other than in respect of the Client as described in clause 3.3a, the Custodian owes no duties, and has no liability, to any other person with an interest in the Client's Assets including without limitation an investor in any Fund.

3.4 Custodian not Responsible

- a. Without limiting clause 3.3, the Custodian is not responsible for:
 - i. the title, validity, genuineness, good deliverable form or freedom from encumbrance, of any Acquired Asset;
 - ii. providing advice to the Client in respect of any acquisition, disposal or other dealing with any Acquired Asset;

- iii. making any enquiry or investigation or ensuring that each Client's Asset is an authorised or permitted investment of the Client;
 - iv. ensuring the adequate price, payment, value or consideration is received for the acquisition or disposal of any Client's Asset other than in accordance with Proper Instructions;
 - v. the accuracy or completeness of any information received from any third party or the Client; or
 - vi. except as provided in clause 3.15, holding or maintaining insurance in respect of the Client's Assets.
- b. The Client acknowledges that the Custodian is not responsible for monitoring or supervising the Client's Assets or their issuer in any way whatsoever. The duties and obligations of the Custodian under this Agreement do not include a duty to disclose any information the Custodian may have acquired or otherwise become aware of (unless expressly required to do so under another provision of this Agreement) or to monitor the compliance of the Client or its agents or any other person with any restriction or guidance imposed on the Client or any other person under any constituent document, law or obligation which is binding on the Client in respect of the Client's Assets.

3.5 Entry into contracts

- a. The Custodian shall not be required to enter into contracts (including, without limitation, mortgages, charges or leases) unless and until the contract includes a limitation of liability clause in a form acceptable to the Custodian.
- b. In addition to the Custodian's absolute discretion to hold any Client's Asset proposed by the Client as provided in clause 2.4, the Custodian shall not be required to enter contracts involving the purchase of an interest in real property, unless and until the Custodian is reasonably satisfied that there is or will be adequate insurances in place in respect of such interest and that, where appropriate, such insurance policies note the Custodian as an insured party.

3.6 Conflicts and Client Consents

- a. Without limiting clause 3.6b, the Client consents to and agrees that the Custodian:
 - i. may acquire, dispose of or otherwise deal with any Securities or other obligation of the issuer of any Security, whether for its own account or otherwise;
 - ii. when appointing an Agent under clause 8 the Custodian may appoint a Related Entity as the Agent of the Custodian;
 - iii. is not obliged to account to the Client for any income, profit or other benefit arising out of anything described in this clause 3.6;
 - iv. may retain a margin on deposits, interest on the Trust Account and other amounts, benefits and advantages as set out in this Agreement; and

- v. act for other persons who are also designated as 'clients' who have entered into an agreement either in this form or substantially in the form of this Agreement.
- b. Nothing in this Agreement shall prevent or restrict the Custodian or its Agents from:
 - i. dealing as principal or agent in any acquisition or disposal of assets for any purpose to or from:
 - a. the Client; or
 - b. the Custodian or its Agents, for the account of the Client; or
 - ii. acting as custodian and/or trustee in any other capacity for any other person; or
 - iii. buying, holding and dealing in any assets for its own account or for the account of the Client notwithstanding that the same or similar assets may be held or dealt in by or for the account of the Client, and

the Custodian, its Agents shall not be affected by notice of or be under any duty to disclose any information which has come into their possession or knowledge as a result of the arrangements described in this clause 3.6b.

3.7 Bank Accounts and Interest

Cash held by the Custodian in any Bank Account (regardless of which currency that cash is denominated in) is held in its capacity as an AFSL holder and shall not confer any entitlement to interest on the Client.

3.8 Sufficient funds

- a. The Client:
 - i. will take all reasonable and practical steps to cause the Bank Account to have sufficient cleared funds in it to facilitate the completion on time of all transactions in connection with the Client's Assets or the acquisition of Client's Assets, and to pay all Fees as they are due; and
 - ii. agrees that the Custodian is not obliged to complete any transaction in connection with the Client's Assets or the acquisition of Client's Assets unless the Bank Account contains sufficient cleared funds for that purpose.
- b. If the Custodian is aware a Bank Account is overdrawn:
 - i. the Custodian will take reasonable steps to promptly notify the Client of the overdraw; and
 - ii. the Client must arrange for such Bank Account to be credited with monies to ensure that the Bank Account is not overdrawn.
- c. The Client acknowledges that:
 - i. the Custodian may deduct Fees from Distributions in accordance with clause 12.5; and
 - ii. the full amount of Distributions may not be credited to the Bank Account.

3.9 Transaction completion

- a. Notwithstanding clause 3.8a if:
 - i. for any reason a Bank Account has insufficient cleared funds in it to complete a transaction

- in connection with the Client's Assets or the acquisition of Client's Assets in accordance with a Proper Instruction; and
- ii. it is not prohibited under Applicable Law, the Client authorises the Custodian to make outlays from the Custodian's funds to complete the transaction.
- b. If the Custodian outlays its own money to complete a transaction, the Client will promptly arrange for the Custodian to be reimbursed for any amounts duly paid or incurred for or on behalf of the Client pursuant to this Agreement.
- c. Nothing in this clause:
 - i. obliges the Custodian to:
 - a. extend credit, grant financial accommodation or otherwise advance monies to or on behalf of the Client; or
 - b. incur any obligation or make any outlay or payment on behalf of the Client out of the Custodian's own funds, if, for any reason, it chooses not to do so; or
 - ii. will permit or require the Client to borrow money or maintain an existing borrowing of money.

3.10 Revocable direction to sell and apply proceeds

- a. If, in connection with the acquisition of Securities in the performance of any Custodian Services, the Custodian has at any time made, or become liable to make, an outlay for which there are insufficient cleared funds in the Bank Account or relevant sub-account and for which it has not been reimbursed, the Client directs the Custodian (who does not have the obligation to do so):
 - i. to sell the relevant Security; and
 - ii. to apply the net proceeds of any sale in, or towards satisfaction of due payment of the outlay (or if the Custodian has already made the payment, towards the Custodian's own account).
- b. Prior to instructing the Custodian to purchase any Security, the Client may notify the Custodian in writing that this direction is not to apply to a particular acquisition of Security, but without prejudice to accrued rights or obligations.

3.11 Internal controls

The Custodian must:

- a. maintain at all times an organisational structure that, unless permitted by Applicable Law or any relief from the Applicable Law, ensures the segregation of the Client's Assets in respect of each Fund (where applicable) from the Client's Assets of each other Fund and from the Custodian's assets and the assets of the Custodian's other clients;
- b. maintain at all times proper internal control structures and compliance systems that are designed to:
 - i. prevent any material and/or systemic breaches of this Agreement by the Custodian; and
 - ii. ensure that any material and/or systemic breaches are promptly detected and reported to the Client;

- c. ensure that there is a separation of powers, functions and responsibilities between the officers, employees and staff of the Custodian in relation to:
 - i. the Custodian Services;
 - ii. the internal auditing by the Custodian of the compliance with its internal control structures and compliance systems; and
 - iii. the processes in place relating to the Custodian's deduction of Fees, expenses, outlays and other amounts from Distributions.
- d. ensure that officers, employees and staff of the Custodian at all times have the experience, knowledge and skills necessary to carry out the Custodian Services under this Agreement; and
- e. document its internal control structures and compliance systems.

3.12 Compliance

- a. The Custodian will ensure that its internal control structures and compliance systems are accessible for audit over each financial year by the Custodian's auditor and shall ensure that, at least annually, documentation recording the internal control structures and compliance systems are reviewed by the Compliance Officer for the purposes of assessing accuracy and ongoing relevance of those structures and systems with the Compliance Officer being required to report within 2 months of the end of each financial year to the board of directors of the Custodian on any significant irregularities which may have been detected or with respect to system improvements considered desirable. The report to be made by the Compliance Officer may be delegated to the Custodian's auditor and shall also contain details of any exceptions to compliance with the Regulator's Policy.
- b. The Custodian must, at the written request of the Client or a Regulator, and at the cost of the Client, arrange for an independent auditor retained by the Custodian to provide a report to the Client on the effectiveness of the Custodian's internal controls, policies and the Custodian's compliance with them in relation to the Custodian's obligations to the Client under this Agreement.
- c. If the Custodian becomes aware or reasonably considers that it has not or may not comply with any representation or warranty in this Agreement or that it has or may materially breach a provision of this Agreement, the Custodian will:
 - i. as soon as practicable, provide a written report notifying the Client of the non compliance or material breach (as the case may require); and
 - ii. use its reasonable endeavours to comply with Proper Instructions of the Client in relation to the non compliance, material breach or likely material breach.
- d. The Custodian may from time to time prepare records and reports which contain taxation calculations and which relate to taxation payments made by the Custodian in the course of providing the Custodian Services. The Custodian will prepare such records and reports in accordance with the standard of care set out in clause 3.3.

3.13 Force Majeure

- a. If a Force Majeure Event occurs which, in the opinion of the Custodian, significantly interrupts the Custodian Services, the Custodian will:
 - i. notify the Client of the Force Majeure Event and the extent of its effect on the provision of the Custodian Services;
 - ii. put into action its Business Continuity Plan; and
 - iii. deliver the Custodian Services with a minimum of interruption to, and reduction of, the Custodian Services, as soon as practicable after the occurrence of the Force Majeure Event.
- b. If the Custodian Services are not provided in full and without interruption within 20 Business Days after receipt of the notice under clause 3.13a)(i) (or such longer period as may be agreed by the Custodian and the Client) the Client may immediately terminate this Agreement by giving notice in writing to the Custodian.

3.14 Reports

- a. In order for the Client to monitor the performance of the Custodian and any Sub-custodian, the Custodian will provide the Client with reports.
- b. The Reports shall comprise:
 - i. a written transaction report whenever Client money is invested or expended by the Custodian for the acquisition of a Security pursuant to Proper Instructions or where a Security is sold or disposed of by the Custodian for the Client pursuant to Proper Instructions;
 - ii. a written monthly holding statement showing the Client's interest at that time in the Client's Assets held by the Custodian;
 - iii. A Monthly Statement;
 - iv. a written yearly summary report made up to 30 June in each year showing the Client's interest at that time in the Client's Assets held by the Custodian;
 - v. other written reports which the Client may reasonably request of the Custodian relative to the Client's Assets.
- c. The Client acknowledges and agrees with the Custodian that:
 - i. the Custodian does not advise on taxation matters;
 - ii. the records and reports described above may not be sufficient or accurate for the purposes of the Client discharging its obligations under any relevant law, regulation or other obligation of the Client;
 - iii. the Client should seek and obtain confirmation of the adequacy of such records and reports from its internal or external tax advisers; and
 - iv. the Custodian will not be liable to the Client or any other person for any loss or damage resulting from the insufficiency or inaccuracy of such reports for the purposes of the Client's compliance with any relevant law, regulation or other obligations of the Client.

3.15 Insurance

The Custodian must maintain adequate insurance coverage the greater of:

- a. the level, if any, required by the Regulator's Policy (as applicable); and
- b. levels consistent with usual market practice.

3.16 Anti-Money laundering and sanctions

- a. The Client agrees that the Custodian may delay, block or refuse to make any payment, receive any money, process any transaction or deal with any Client's Assets without incurring any liability if the Custodian suspects that:
 - i. making or receiving the payment, processing the transaction or dealing with the Client's Assets in connection with the provision of the Custodian Services may breach any law or regulation in Australia or any other country relating to anti-money laundering, criminal or terrorist activities or economic and trade sanctions;
 - ii. the transaction involves any person (natural, corporate or governmental) that is itself sanctioned or is connected, directly or indirectly, to any person that is sanctioned under economic and trade sanctions imposed by the United States, the European Union or any country; or
 - iii. that transaction may directly or indirectly involve the proceeds of, or be applied for the purposes of, unlawful conduct.

To the extent permitted by law, the Custodian will promptly provide the Client with notice which if practicable will be prior notice, if it's unable to act under this clause.

- b. The Client must provide all information to the Custodian which the Custodian reasonably requires in order to manage anti-money laundering, counter-terrorism financing or economic and trade sanctions risk or to comply with any laws or regulations in Australia or any other country in connection with anti-money laundering, criminal or terrorist activities or economic and trade sanctions as they affect the provision of the Custodian Services.
- c. The Client agrees the Custodian may disclose information which has been provided by the Client where required by any laws or regulations in Australia or any other country in connection with anti-money laundering, criminal or terrorist activities or economic and trade sanctions as they affect the provision of the Custodian Services. If the consent of an agent of the Client (including an Investment Manager) is required in respect of such disclosure, the Client undertakes to use all reasonable measures in order to obtain such consent as soon as reasonably practicable.
- d. The Client declares and undertakes to the Custodian that to the best of its knowledge the payment or receipt of monies or dealing with other Client's Assets by the Custodian in accordance with

any Proper Instructions given by the Client will not breach any laws or regulations in Australia or any other country in connection with anti-money laundering, criminal or terrorist activities or economic and trade sanctions.

- e. The Client agrees to provide at request of the Custodian with any further information and/or documentation requested for the purposes of obligations under the Anti-Money Laundering and Counter-Terrorism Financing Act and Regulation, and the Inter Governmental Agreement (IGA). The Client agrees to immediately notify the Custodian if a change in circumstances means that any of the information or documentation it has provided is no longer correct.

4. Client's Representatives

4.1 Client to appoint representatives

The Client:

- a. must authorise, and keep authorised, one or more persons in accordance with the procedure set out in clause 4.2 for the purpose of giving notices and Proper Instructions to the Custodian on its behalf; and
- b. may, from time to time, appoint an agent/ Investment Manager for the purpose of giving Proper Instructions in accordance with the procedure set out in clause 4.4.

4.2 Appointment of Authorised Persons

- a. The Client must, including if using an Electronic Transmission Service as a means of issuing Proper Instructions, on or before the Effective Date and any time thereafter as necessary, certify to the Custodian in writing, the full name, position and specimen signature of each person empowered to give Proper Instructions and notices in writing to the Custodian on behalf of the Client and the email address of each such person, each being an Authorised Person.
- b. The Custodian will be entitled to rely upon the identity and authority of such Authorised Persons where any email is received by the Custodian and recorded as having been sent from the email address of an Authorised Person (notwithstanding that the email might not have actually been sent by that Authorised Person).

4.3 Changes to Authorised Persons

- a. The Client may, from time to time, amend, vary, add to, delete from or substitute the particulars of any Authorised Person empowered to give Proper Instructions and notices on the Client's behalf (as the case may be) by giving a further Proper Instruction to the Custodian.
- b. Such Proper Instructions will be in a form agreed in writing between the parties, advising the full name and position of any person whose authority to give such Proper Instructions and notices has been revoked together with the date of such revocation

and/or the full name and position and specimen signature of any person who has been empowered to give such Proper Instructions and notices together with the date of such authorisation.

- c. The Custodian will be entitled to rely upon the identity and authority of any Authorised Person until it receives a Proper Instruction from the Client that such authority is revoked, regardless of the "Date of Revocation" specified on the form of revocation, or as otherwise agreed between the parties in writing.

4.4 Agents/Investment Manager(s) issuing Proper Instructions

- a. The Client may appoint an agent, including an Investment Manager for the purpose of giving Proper Instructions in accordance with this clause 4.4.
- b. The Client must immediately notify the Custodian, in writing:
 - i. of the appointment of an agent/ Investment Manager; and
 - ii. of the revocation of any appointment, in the form as may be agreed between the parties in writing.
- c. The Client will ensure that its appointment of any agent/Investment Manager includes any powers or authority necessary for such agent to:
 - i. deal with the Client's Assets or Portfolio, as the case may be;
 - ii. operate those accounts or sub-accounts that form part of the Client's Assets or Portfolio, as the case may be, of that particular Investment Manager; and
 - iii. give the Custodian Proper Instructions regarding the same.

4.5 Client responsible for all agents

The Client agrees that:

- a. it is fully responsible for the acts and omissions of all Authorised Persons including a breach of this Agreement by that person;
- b. the Custodian will be entitled to rely upon the identity and authority of any Authorised Person until it receives a Proper Instruction from the Client that such authority is revoked, regardless of the "Date of Revocation" specified on the form of revocation, or as otherwise agreed between the parties in writing;
- c. the Custodian must be afforded a reasonable time to act on any appointment or revocation given by the Client in accordance with the procedures set out in this clause 4; and
- d. the Custodian may treat the acts and omissions of, and breach by, any Authorised Person as the acts and omissions of, and a breach by, the Client under this Agreement.

4.6 Indemnity

The Client indemnifies the Custodian for any loss or damage suffered, directly or indirectly, as a consequence of acting on the instructions of any person who appears to be properly appointed as an Authorised Person, but is not in fact.

4.7 Evidence of authority

- a. The Custodian will be entitled to rely upon:
 - i. any instructions, notice, request, consent, certificate, instrument or paper reasonably believed by it:
 - a. to be genuine; and
 - b. to have been properly executed or otherwise given by or on behalf of the Client; and
 - ii. except where it has written notice to the contrary, a certificate signed by 2 directors or 1 director and the secretary or sole director and secretary of the Client as conclusive evidence of:
 - a. the authority of any person to act in accordance with such certificate; or
 - b. any determination or of any action by the Client as described in such certificate.
- b. Such certificate may be considered as in full force and effect until receipt by the Custodian of notice to the contrary.

4.8 Verification of Authorised Persons

In conjunction with clause 3.16, the Custodian is required to undertake certain regulatory checks, Know Your Customer Procedures, on the Authorised Persons as set out in the FIIG CAAF unless those persons are shown as company directors or the company secretary on acceptable information produced for this purpose.

5. Proper Instructions

5.1 Custodian's Authority

- a. The Client authorises and directs the Custodian to act on any Proper Instructions subject to any limitations set out in this Agreement.
- b. The Client agrees that the Custodian is not required to act on an instruction that is not a Proper Instruction.

5.2 Proper Instructions

A Proper Instruction will be given:

- a. by the Client or any Authorised Person; and
- b. to the Custodian if it wants the Custodian to deal with an Asset;

and in any of the following forms:

- c. in writing in accordance with the form and one of the methods set out in clause 19; or
- d. in an Authenticated Communication; or
- e. by oral communication, telephonic communication, email, facsimile or other electronic mode of communication purporting to be from the Client or any Authorised Person;

- f. in this Agreement; or
- g. in such other manner as may be agreed upon from time to time by the Custodian and the Client.

5.3 Proper Instructions binding on Client

- a. The Client agrees that any Proper Instructions received by the Custodian will be deemed to have been given by the Client and will be binding on the Client.
- b. The Custodian is entitled to assume that any Authorised Person continues to be authorised until the Custodian is notified in writing to the contrary.

5.4 No obligation to act

The Client agrees that the Custodian is not required to comply with any instructions (Proper Instructions or otherwise) that, in the Custodian's opinion:

- a. are incomplete, ambiguous or unclear; or
- b. are contrary to the terms of this Agreement, Applicable Law or local market practice; or
- c. may expose the Custodian to loss or liability.

5.5 Inability to comply with Proper Instructions

- a. The Custodian will as soon as reasonably practicable:
 - i. to the extent permitted by law, notify the person issuing the Proper Instructions, if the Custodian is unable to fully comply with those instructions for any reason, and the reason why it is unable to comply; and
 - ii. take such steps as it considers reasonable to notify the Client and seek clarification or confirmation from the Client before carrying out any Proper Instructions which appear to the Custodian to:
 - a. be ambiguous or unclear;
 - b. contain a manifest error; or
 - c. conflict with earlier Proper Instructions, unless clause 5.6a applies.
- b. If the Custodian reasonably requires clarification of any Proper Instructions, it will not be liable for any loss arising from a delay in obtaining such clarification, provided that it:
 - i. has requested that clarification promptly; and
 - ii. used reasonable endeavours to minimise any such delay.

5.6 Conflicting Instructions

- a. Any Proper Instructions cancelling or superseding earlier Proper Instructions must be received by the Custodian at a time and in a manner that accords the Custodian a reasonable opportunity to act upon such Proper Instructions.
- b. The Custodian may disregard any instruction (whether a Proper Instruction or not) that purports to cancel or supersede an earlier Proper Instruction that is expressed to be irrevocable.
- c. The Custodian may do anything which is, in the Custodian's reasonable opinion, necessary or incidental to carrying out any Proper Instructions given under this Agreement.

5.7 Custodian's limitation of liability

The Custodian will not be liable for any loss arising where:

- a. a Proper Instruction is not received within sufficient time, having regard to the nature of the Proper Instruction, for the Custodian to act on such Proper Instructions;
- b. the counterparty to the transaction contemplated by the Proper Instruction does not accept that Proper Instruction, for any reason other than the fault of the Custodian. It will not be a fault of the Custodian if the Custodian is not eligible to act on a Proper Instruction received from the Client.

5.8 Client's internal controls

The Client will implement internal procedures to ensure that the only Proper Instructions received by the Custodian are Proper Instructions appropriately authorised by the Client in accordance with this Agreement.

5.9 Authenticated Communications

- a. A communication between the Client and the Custodian will be an Authenticated Communication if it is authenticated by either:
 - i. a test mechanism included as part of its communication system; or
 - ii. a test key, smart card or other electronic security system, which the Custodian has issued to and received acknowledgment in writing from the Client from which the communication purports to emanate which ensures that:
 - a. both the sender and recipient are the persons to or from whom the information, the subject of the communication, should be sent or received; and
 - b. the content of the communication meets the Custodian's system standards requirements.
- b. The Custodian will be kept indemnified by and be without liability to the Client or any other person for any action taken or omitted by it in reliance upon receipt by the Custodian of transmissions of information with the proper security code, test keys or password, including instructions purporting to be Proper Instructions, which the Custodian reasonably believes to be from the Client.
- c. The Client must take, and must ensure that any agent of the Client (including any Investment Manager) takes, all reasonable steps to safeguard any security codes, passwords, test keys or other security devices which the Custodian will make available.

5.10 Receipt of Proper Instructions

Subject to this Agreement, upon the receipt by the Custodian of any Proper Instruction from the Client, the Custodian will use its reasonable endeavours to process such Proper Instruction, as soon as possible, after receipt.

6. Communications relating to Client's Assets

6.1 Communications relating to Client's Assets

- a. Unless otherwise agreed between the parties, where the Custodian has received written information affecting the Client's Assets held in its capacity as Custodian and considers, in its absolute discretion, that the information is of a material nature, the Custodian will, as soon as reasonably practicable:
 - i. notify the Client or the relevant Investment Manager that such information is available and how to access the information;
 - ii. deliver to the Client or the relevant Investment Manager the written information; or
 - iii. provide the Client or the relevant Investment Manager with access to the written information by way of a link or directions thereto, except where such transmission is restricted or prohibited by any relevant law or by the issuing party, or its agent. The Client agrees and acknowledges that the information provided to the Client or the relevant Investment Manager may have been translated by the Custodian.
- b. Despite the operation of clause 6.1a, the Custodian will not be liable for, and has no duty to verify, the accuracy or content of written information received by the Custodian and on-forwarded to the Client or the relevant Investment Manager and makes no representation as to the accuracy or completeness of any translated information provided to the Client or relevant Investment Manager.
- c. The Client agrees and acknowledges that, subject to Applicable Law, the Custodian will not be liable to the Client if it does not pass on any written information received by it in its capacity as Custodian where it considers in its absolute discretion that such information is not material to the Client.
- d. The Client acknowledges that the Custodian will not be liable to the Client or any third party for any loss that may result from relying on any notice, whether translated, or in its original form, on-forwarded from the Custodian to the Client.
- e. Due to the propensity for incorrectly misconstruing Proper Instructions given orally such as in person, by voice mail or by telephone, the Client acknowledges and agrees that neither the Custodian nor the Third Party will be liable in any circumstances, to the Client or any third party for loss, which arises from the Custodian innocently misconstruing or misunderstanding any Proper Instructions given orally to the Custodian.

6.2 Proxies

The Custodian:

- a. is not required to attend any meeting to act as the Client's proxy; and

- b. is not required to lodge proxy votes on behalf of the Client unless the Client gives the Custodian Proper Instructions detailing the Client's voting instructions.

6.3 Limitation of liability

The Custodian will not be liable for any late exercise of any right or power in connection with a Client's Asset unless it has received a Proper Instruction and the Custodian or its agents are in actual possession of those Client's Assets at least three (3) Business Days prior to the date on which such right or power is to be exercised.

7. Encumbrances over Client's Assets

7.1 No encumbrances

Subject to clause 7.2, and except as permitted by Applicable Law in respect of expenses and outlays made by the Custodian in accordance with this Agreement, the Custodian must not take a charge, mortgage, lien or other encumbrance over or in relation to the Client's Assets.

7.2 Lien and right of set off

The Custodian:

- a. has a continuing lien over the Client's Assets; and
- b. may at any time exercise a right of set off against the Client's Assets,

for payment of any:

- i. expenses and outlays incurred by the Custodian in accordance with this Agreement for which the Client does not promptly reimburse the Custodian or is otherwise due for payment by the Client to the Custodian under this Agreement (other than Fees remaining unpaid by a Post-October 2015 Client); or
- ii. other amounts in accordance with the Client's written instructions.

However, if the Client is an AFSL holder, this clause 7.2 does not apply (and is deemed to be limited accordingly) to the extent that it is inconsistent with any regulatory requirement that requires the Client's arrangement with the Custodian to prohibit the Custodian taking a lien over, or exercising a right of set off against, the Client's Assets.

7.3 Authority

In order to fully and effectively exercise the lien and right of set off in this clause 7 the Custodian may:

- a. accelerate the maturity of any fixed term deposit or effect such currency conversions as may be necessary for the sale and purchase of the relevant currencies; and
- b. do anything else in the name of the Client which the Custodian considers is reasonably necessary.

8. Agents

8.1 Appointment by Custodian

Except in respect of any Agent notified by the Custodian on or before the Effective Date, the Custodian may with the prior written consent of the Client (which consent will not be unreasonably withheld or delayed) appoint and use the services of any other person (including a Related Entity) as an Agent.

8.2 Delegation by Custodian

- a. Other than the holding of the Client's Assets in the name of the Agent, the Custodian may delegate to an Agent the performance of any of the duties and exercise of the powers of the Custodian under this Agreement as the Custodian considers it necessary or desirable to carry out its obligations under this Agreement.
- b. The Custodian may appoint a Sub-custodian to perform any of the Custodian's duties under this Agreement with all or any of the Custodian's powers under this Agreement, including the power of delegation in this clause 8.2.
- c. Where practical, before arranging for any Client's Assets to be held by a Sub-custodian, and in any event before the Client's Assets are held by the Sub-custodian, the Custodian will provide the Client with Notice of the Sub-custodian's identity and contact details.

8.3 Sub-custodian and Third Party

The Client:

- a. agrees and acknowledges that the Custodian, without the Client's express written consent or authority, may, at any time, appoint another party as Sub-custodian to hold the Client's Assets;
- b. acknowledges that the Custodian has appointed a Third Party; and
- c. agrees that the Custodian may utilise the services of any other Third Party, without the Client's express written consent or authority.

8.4 Responsibility for Agents (including Sub-custodians)

- a. If the Custodian appoints an Agent which is a Related Entity, the Custodian accepts the same level of responsibility for that Related Entity as for the Custodian's own acts.
- b. If the Custodian appoints an Agent which is not its Related Entity ("Non Related Entity"), provided that the Custodian has not failed to take reasonable care in engaging and monitoring the compliance by that Non Related Entity, the Custodian is not liable to the Client for the solvency of the Non Related Entity or other third party by whom or in whose control any Client's Assets (or documents evidencing Client's Assets) are held.
- c. If the Client suffers loss or damage as a result of the solvency, acts or omissions of a Non Related Entity the Custodian will, when and to the extent reasonably requested in writing by the Client, either:

- i. make available to the Client any rights that the Custodian may have against a Non Related Entity or any other third party; or
- ii. take all reasonable and necessary steps to recover such loss and damage suffered by the Client from a Non Related Entity or any other third party and will pay any moneys recovered to the Client, less any expenses and costs incurred by the Custodian in the recovery process, provided the Custodian is indemnified by the Client to the extent reasonably required by the Custodian in relation to the taking of such steps (including legal costs and expenses on a full indemnity basis).

8.5 Responsibility of Custodian

- a. The Custodian will be responsible for:
 - i. taking reasonable care in selecting and monitoring the performance of any Agent it appoints pursuant to this clause 8;
 - ii. all remuneration and other financial arrangements with those Agents unless otherwise agreed with the Client; and
 - iii. making reasonable enquiries to ensure those Agents continue to exercise reasonable care in the provision of the Custodian Services.
- b. The Custodian may terminate the appointment of any Agent when the Custodian deems appropriate.
- c. If the Custodian appoints a Sub-custodian there must be a written agreement with that Sub-custodian covering, to the extent practical and relevant:
 - i. the issues covered in this Agreement; and
 - ii. the liability of the Sub-custodian to the Custodian and Client.
- d. The Custodian will, at the earliest practical time, provide the Client with written notice of:
 - i. the termination of the appointment of any Sub-custodian which holds the Client's Assets; and
 - ii. any proposed subsequent appointment of a new or replacement Sub-custodian which it wants to use to hold the Client's Assets.
- e. The Custodian will not be responsible for losses arising from the insolvency of a Sub-custodian appointed by it, provided that the Custodian has not failed to take reasonable care in engaging and monitoring the compliance by that Sub-custodian.

8.6 Securities depositaries and clearing agencies

- a. The Client:
 - i. authorises the Custodian and its Sub-custodians and the Third Party to appoint and deposit all or any part of the Client's Assets with a Securities System;
 - ii. understands and agrees that any securities depository or clearing agency operating the Securities System is not an Agent of the Custodian or its Sub-custodians; and
 - iii. agrees that the Custodian and its Sub-custodians are not liable to the Client for the

solvency of any such securities depository or clearing agency provided that the Custodian has not failed to take reasonable care in engaging and monitoring the compliance by that securities depository or clearing agency.

- b. The Custodian will, and will request its Sub-custodians to, make available to the Client, when and to the extent reasonably so requested by the Client, any rights that the Custodian and its Sub-custodians may have against such securities depository or clearing agency or the Securities System.

9. Custodian's liability

9.1 Liability

- a. The Custodian accepts liability under this Agreement based on the standards of reasonable care applicable in relevant markets.
- b. The Custodian will reimburse the Client for all losses, liabilities, damages, amounts paid in settlement, reasonable costs and expenses (including reasonable legal fees) ("Losses") directly resulting from or arising out of:
 - i. any breach of this Agreement, including without limitation any failure to comply with the standard of care set out in clause 3.3, by the Custodian or any of its officers, employees, Related Entities; or
 - ii. any wilful misconduct, negligence or fraud of the Custodian or any of its officers, employees or Related Entities in connection with this Agreement.

9.2 Limitation on liability

Notwithstanding any other term of this Agreement:

- a. the Custodian will have no liability to the Client (other than a Post-October 2015 Client) or any other person, whether for negligence, breach of contract, breach of duty, breach of regulation, misrepresentation or otherwise in respect of the provision of the Custodian Services or otherwise for any:
 - i. loss of profit, loss of goodwill, loss of opportunity or any other economic loss; or
 - ii. indirect, special, punitive or consequential Losses (whether or not in the contemplation of the parties at the date of this Agreement); or
 - iii. any damage, loss, cost or expense resulting from or caused by:
 - a. events or circumstances beyond the Custodian's control including currency restrictions, disruption of the normal procedures and practices of any securities market, power or communications services failure, acts of war or terrorism, riots, revolution;
 - b. the occurrence of a Force Majeure Event;
 - c. the general risks of investing;
 - d. acting in good faith on Proper Instructions; or

- e. in acting upon any certificate, consent, instruction, instrument, notice or request reasonably believed by it to be genuine and to be signed or otherwise given by the proper party or parties.
- b. the Custodian shall have no liability to the Client (other than a Post-October 2015 Client) or any other person for any damage, loss, cost or expense to the extent that:
 - i. such damage, loss, cost or expense is caused by or contributed to by a breach of trust by the Client in connection with the Client's Assets;
 - ii. the Client could have reduced or avoided such damage, loss, cost or expense by exercising reasonable care and diligence in seeking to mitigate such damage, loss, cost or expense; and/or
 - iii. such damage, loss, cost or expense is caused by the misconduct, negligence or fraud of, or the breach of the terms of this Agreement by the Client or any of its officers, agents or employees.
- c. Where, in taking any action to compensate a Client under this Agreement, the Custodian receives a benefit as a consequence of such action, the Client agrees that the Custodian may retain such benefit on its own account.

10. Client's obligations and indemnity

10.1 Performance and discharge of obligations

The Client will:

- a. provide the Custodian, on request, with any documents, information or Proper Instructions reasonably required by the Custodian to enable it to perform the Custodian Services; and
- b. execute such documents and do such acts, at its expense, as may reasonably be required by the Custodian, to comply with any Applicable Law which directly impacts upon the discharge by the Custodian of its obligations under this Agreement.

10.2 Regulator's communications

The Client will provide the Custodian with a copy of any communication from a Regulator immediately upon receipt that affects or might affect:

- a. the Client's ability to exercise its rights and perform its obligations in relation to the Client's Assets and this Agreement; or
- b. the Custodian or any of its agents in relation to the performance of their obligations or exercise of their powers under this Agreement.

10.3 Fund

Where a Fund or Funds are described, or a Bank Account is nominated by the Client, in the FIIG CAAF or such other form completed by the Client from time to time, the Client will promptly inform the Custodian in writing if:

- a. the terms of any Fund are varied;
- b. there is a change to the terms or status of the Client's nominated Bank Account;

- c. there is a change of trustee of any Fund;
- d. there is any change of status for taxation purposes of any Fund; or
- e. any Fund is terminated.

10.4 Client's indemnity

- a. Subject to clause 10.4d, to the extent that a Claim or Loss does not arise from the Custodian's fraud, negligence or wilful misconduct, the Client:
 - i. indemnifies the Custodian and its Sub-custodians against any Claim or Loss which the Custodian or its Sub-custodians pays, suffers, incurs or is liable for in connection with:
 - A. the performance (or non performance as the case may be) by the Custodian or by any Sub-custodian of the Custodian Services;
 - B. a failure by the Client to perform its obligations under this Agreement;
 - C. receiving funds upon the redemption or sale of any Securities held by the Custodian or any of its Sub-custodians as custodian or agent for the Client or the payment or application of those proceeds to the Client;
 - D. receiving funds upon the payment of interest or coupons relating to any Securities held by the Custodian or any of its Sub-custodians as custodian or agent for the Client or the payment or application of those proceeds to the Client;
 - E. any entity appointed by the Custodian as a custodian in respect of the Securities claiming the recovery of any amount from the Custodian or its Sub-custodians under the arrangements with that entity in connection with:
 - a. the redemption of those Securities;
 - b. receiving interest or coupons relating to those Securities; and
 - c. payment of the proceeds, interest or coupons to the Clients,
- will pay the same on receipt of a written demand from the Custodian.

- b. The Custodian holds the indemnity in clause 10.4a in respect of its Sub-custodians on trust for the relevant Sub-custodian.
- c. For the purposes of clause 10.4a, no act or omission of the Custodian or its Sub-custodians will constitute fraud, negligence or wilful misconduct for the purposes of this clause to the extent to which the act or omission was caused by or contributed to by the Client or its employees, servants or agents.
- d. The indemnity in clause 10.4a does not apply to the extent that:
 - i. the Client is a Post-October 2015 Client; and
 - ii. the Claim or Loss is due to a failure by the Custodian (or a person it directly or indirectly engages to hold the Client's Assets) to comply with this Agreement or the standard of care in clause 3.3a.

11. Access to information

11.1 Maintenance of Records

- a. The Custodian will, and will cause its Sub-custodians to, maintain proper and accurate records of:
 - i. the Client's Assets held by the Custodian;
 - ii. all Distributions and income received in respect of the Client's Assets;
 - iii. any acquisition or disposal of the Client's Assets, including:
 - a. the amount paid or received for each acquisition or disposal; and
 - b. by whom and when those transactions were authorised; and
 - iv. all transactions in the Bank Account or Bank Accounts held by the Custodian for the Client.
- b. Records will be maintained by the Custodian in accordance with its internal records maintenance policy, as amended from time to time.
- c. The Custodian will apply verification procedures for the appropriately frequent reconciliation and checking of the Client's Assets.

11.2 Audit by the Client

The Custodian will, upon the written request of the Client and at the Client's expense:

- a. allow the Client and its auditors reasonable access during business hours to the Records and internal accounting procedures and controls of the Custodian for normal audit purposes;
- b. give reasonable assistance to the auditors of the Client to enable them to perform their functions; and
- c. procure that similar access is made available by its Sub-custodians.

11.3 Audit by the Regulator

The Custodian will, upon the written request of a Regulator (as applicable) and at the Client's expense:

- a. allow the relevant Regulator and an auditor approved by the Regulator reasonable access during business hours to the Sub-account Records and internal accounting procedures and controls of the Custodian for normal audit purposes;
- b. give reasonable assistance to the auditors of the relevant Regulator and the Regulator to enable them to perform their functions; and
- c. procure that similar access is made available by its Sub-custodians.

11.4 Inspection of Records

Upon the written request of the Client or the relevant Regulator and at the Client's expense, the Custodian agrees that:

- a. the Records will be made available for inspection and copying by the Client, its officers, agents, employees and by the Regulator (as applicable) or any person authorised by the Client or the Regulator (as applicable);

- b. the Custodian will make available its employees, officers and agents to answer questions and discuss the Records with the persons referred to in clause 11.4a;
- c. the Custodian will provide the Records to the Client to enable the Client to reconcile and audit the Records maintained in accordance with clause 11.1a, during Business Hours, but subject to the Custodian being given reasonable notice of the requirement to inspect the Records.

12. Fees and expenses

12.1 Fees

- a. Fees are payable by the Client in accordance with this clause 12:
 - i. with effect on and from 1 July 2015, if the Client is a New Client; and
 - ii. with effect on and from 1 January 2016, if the Client is a Pre-Existing Client.
- b. The Custodian reserves the right at any time to increase Fees or introduce new Fees in relation to the services provided under this Agreement. If the Custodian decides to increase or introduce Fees under this clause 12.1b the Custodian shall give a Notice to the Client specifying the level of Fees which are to apply at least 60 days prior before the time that the Fees will apply.
- c. The amounts of all Fees described in clauses 12.2 to 12.3 are inclusive of GST.

12.2 Calculation

- a. The Client will pay to the Custodian the Fees for the Custodian Services ("Custody Service Fee").
- b. Subject to clause 12.2c, the Fees will be:
 - i. payable by the Client to the Custodian monthly in arrears within 15 days after the end of each calendar month or as otherwise specified in the Monthly Statement; and
 - ii. calculated daily on the aggregate value of the Client's Assets which are held in accordance with this Agreement. For the purposes of this Agreement, the Custodian may in its reasonable discretion adopt any valuation policies and procedures for the purposes of determining the value of the Client's Assets.
- c. The Custodian may, by Notice to the Client, amend the frequency of time at which the Fees are calculated and become payable.
- d. The Custody Service Fee payable by the Client will be calculated on the basis of the following table:

Custody Service Fee	Aggregate value of the Client's Assets
0.20% pa	For the first \$500,000
0.14% pa	For the next \$1.5m
0.09% pa	For the next \$3m
0.06% pa	For amounts over \$5m

- e. The Custody Service Fee is subject to a minimum monthly amount equal to:
 - i. if the Client has a Funding Account, \$20; or
 - ii. otherwise, \$30.
- f. The Custodian may, at its absolute discretion, waive or reduce the Fees payable by the Client. Any such waiver or reduction of Fees will cease to apply, and those Fees revert to the standard level, on 60 days' notice if the Custodian provides Notice to the Client of the cessation of the waiver or reduction.

12.3 Supplementary Fees

Dishonour Fee

- a. A 'Dishonour Fee' of \$60 is payable by the Client if the Client has insufficient funds in their Bank Account at the time the Custodian seeks payment. The Dishonour Fee will only be payable once per month for a maximum of 3 successive months in which the Custodian has made an unsuccessful attempt to directly debit the Bank Account.
- b. The Client directs the Custodian, in circumstances where the Custodian has made the maximum number of attempts to directly debit the Bank Account, to recover the Fee from Distributions received in respect of the Client's Assets.

In-Specie Transfer Fee

- c. An 'In-Specie Fee' is payable by the Client for each Acquired Asset that is transferred to an external custodian. The amount of this In-Specie Transfer Fee will:
 - i. be determined by the Custodian and notified to the Client on a case by case basis, having regard to the parcel size and the settlement process required in each instance; and
 - ii. will not exceed \$300 per Acquired Asset.

12.4 Direct debit

- a. The Client acknowledges and agrees that the Fees, expenses, outlays, and any other amounts payable by the Client under or in connection with this Agreement may be paid by the Custodian debiting the Bank Account at the time the relevant payment is due.
- b. By completing the FIIG CAAF, the Client authorises and directs the Custodian to recover Fees, expenses, outlays, and any other amounts payable by the Client under or in connection with this Agreement by direct debiting their Bank Account.

12.5 Deductions from Distributions

- a. Subject to clauses 12.5b and 12.5c, the Client authorises and directs the Custodian to deduct part or all of the amount of any Fees, expenses, outlays, and any other amounts payable by the Client under this Agreement from any Distributions, before such Distributions are deposited into the Client's Bank Account.
- b. The direction given in clause 12.5a applies only if the Client:

- i. has selected Distribution deductions as its preferred payment method for Fees, expenses, outlays, and any other amounts payable by the Client under this Agreement; or
 - ii. has not selected Distribution deductions as its preferred payment method for Fees, expenses, outlays, and any other amounts payable by the Client under this Agreement, to the extent that the Custodian is not able, after three attempts, to recover all Fees, expenses, outlays, and any other amounts payable by the Client by debiting the Bank Account in accordance with clause 12.4.
- c. For the avoidance of doubt, this clause 12.5 does not:
 - i. require the Custodian to deduct any amounts from Distributions before they are deposited into the Client's Bank Account if the Custodian considers it impracticable to do so; or
 - ii. affect the right of the Custodian to debit the Client's Bank Account under clause 12.4.

12.6 Expenses and outlays

Expenses and outlays incurred by the Custodian in connection with the performance of the Custodian Services under this Agreement do not form part of the Fees and will be recovered from the Client at cost in respect of amounts:

- a. not exceeding \$1,000 in any one payment, by debiting the Bank Account without the express authority of the Client; and
- b. exceeding \$1,000 in any one payment:
 - i. the Custodian will (if required to do so) issue a valid tax invoice in relation to such expenses and outlays within 7 days after the end of the month to which the expenses and outlays relate; and
 - ii. the Client will pay amounts specified in such invoices within 30 days of the receipt of the invoice.

12.7 Information about expenses and outlays

The Custodian must, upon request, provide to the Client information concerning the then current Fees, expenses and outlays incurred by the Custodian in connection with the performance of the Custodian Services under this Agreement.

12.8 Foreign Exchange Process

- a. In respect of any cash paid, held or received by the Custodian for the Client under this Agreement, the Client authorises and directs the Custodian to convert the cash from one currency to another in accordance with the process set out in this clause 12.8.
- b. If any amount received by the Custodian and to be deposited in the Client's Bank Account is paid in a currency other than Australian dollars (AUD), the Custodian will convert the amount to AUD using the Foreign Exchange Rate.

- c. If the Client is required to settle a transaction in a currency other than AUD and, when the instruction to effect the transaction is received by the Custodian, the Custodian does not hold sufficient cash in the relevant currency for the Client, the Custodian will convert so much of the Client's holding of AUD into the relevant currency using the Foreign Exchange Rate.
- d. If, in order to exercise rights under clause 12.5, the Custodian considers it necessary to convert a Distribution (or any part of a Distribution) from a foreign currency into Australian dollars (AUD), then the relevant amount will be converted to AUD at the Foreign Exchange Rate.
- e. The Custodian will report any Foreign Exchange Rates applied to Client's Assets in Monthly Statements provided to the Client.

12.9 GST

- a. Terms defined in the GST Law have the same meaning in this clause 12.9.
- b. Except where otherwise stated in this Agreement, the consideration for any supply under or in connection with this Agreement does not include GST.
- c. To the extent that any supply made under or in connection with this Agreement is a taxable supply, and the consideration is not expressly stated to include GST, the consideration otherwise provided for that supply is increased by an amount determined by the amount of that GST and the recipient must make payment of the increase as and when the consideration otherwise provided for, or relevant part of it, must be paid or provided or, if the consideration has already been paid or provided, within 7 days of receiving a written demand from the supplier.
- d. If an adjustment event occurs in relation to a supply which results in the amount of GST on a supply being different from the amount in respect of GST already recovered by the supplier, as appropriate, the supplier within 14 days of becoming aware of the adjustment note:
 - i. may recover from the recipient the amount by which the amount of GST on the supply exceeds the amount already recovered by giving 7 days written notice; or
 - ii. must refund to the recipient the amount by which the amount already recovered exceeds the amount of GST on the supply to the extent that the supplier is entitled to a refund or credit from the Commissioner of Taxation; and
 - iii. must issue an adjustment note or tax invoice reflecting the adjustment event in relation to the supply to the recipient within 28 days of the adjustment event.
- e. The right of the supplier to recover any amount in respect of GST under this Agreement on a supply is subject to the issuing of a tax invoice or adjustment note to the recipient.
- f. Costs actually or estimated to be incurred or revenue actually or estimated to be lost by a party that is required to be reimbursed or indemnified by another party, or used as the basis for calculation of consideration for a supply, under this Agreement must exclude the amount of GST referable to the cost to the extent to which an entitlement arises or would arise to claim an input tax credit and any amount in respect of GST referable to the revenue.

13. Termination

13.1 Termination

- a. This Agreement will commence on the Effective Date and will continue to have effect until terminated in accordance with clauses 13.1b or c.
- b. Either party may terminate this Agreement by 60 days prior written notice to the other party.
- c. Notwithstanding clause 13.1a and b, this Agreement will terminate:
 - i. immediately upon notice from the Client to the Custodian,
 - a. if the Custodian or any of its officers, employees, Related Entities, contractors or agents is knowingly involved in any fraudulent conduct in respect of the Client's Assets or the performance of the Custodian Services; or
 - b. if the Custodian's Australian Financial Services Licence is suspended or cancelled at any time in accordance with Subdivision C, Division 4 of Part 7.6 of the Corporations Act;
 - ii. immediately upon notice from a party following an Event of Default; or
 - iii. immediately upon notice from the Client in accordance with clause 3.13b.

13.2 Survival of Obligations

- a. Any termination of this Agreement under clause 13.1 will be without prejudice to any rights that either party may have against the other under this Agreement or otherwise.
- b. Clauses 9, 10.4, 13.2, 17 and 20.4 remain in full force and effect and survive termination of this Agreement.

14. Action on termination

14.1 Client

On termination of this Agreement the Client will:

- a. use all reasonable endeavours to promptly arrange for alternative custody arrangements for the Client's Assets; and
- b. co-operate fully, and ensure its Successor co-operates fully, with the Custodian and its Sub-custodian in implementing the prompt transfer of the Client's Assets, within the Transfer Period.

14.2 Custodian

On termination of this Agreement the Custodian and its Sub-custodian will, subject to clause 7.2:

- a. within a reasonable time specified by the Client, deliver the Client's Assets in accordance with:
 - i. Proper Instructions; or
 - ii. if no such Proper Instructions are received within a reasonable time, in accordance with the Client's instructions; and
- b. co-operate fully with the Client and the Successor in implementing the prompt transfer of the Client's Assets within the Transfer Period.

14.3 Transfer of securities on termination

All Securities to be delivered in accordance with clause 14.2:

- a. will be duly endorsed and in the form for transfer; and
- b. if Securities are held in a Securities System, the securities will be transferred to the account of any successor custodian in that Securities System.

14.4 Transfer Period

During the Transfer Period the Custodian will, if requested by the Client and it is practicable to do so, provide all or part of the Custodian Services for the Client's Assets in accordance with this Agreement.

14.5 Fees and expenses and outlays

- a. Upon termination of this Agreement the Client will pay to the Custodian upon demand, all Fees and expenses and outlays as may be due as of the date of such termination.
- b. The Client will pay to the Custodian on demand:
 - i. an amount which is equivalent to the Fees and expenses and outlays which would have accrued if this Agreement had not been terminated to compensate the Custodian or Sub-custodian for the provision of the Custodian Services during the Transfer Period; and
 - ii. all costs, expenses and disbursements incurred by the Custodian or any Sub-Custodian in transferring the Client's Assets under clause 14.2.
- c. The Client agrees that clauses 12.4 and 12.5 survive termination of this Agreement until all outstanding Fees, costs, expenses, outlays, disbursements and other amounts payable have been paid in full.

14.6 Failure to transfer

- a. If the Client's Assets remain in the possession of the Custodian after the Transfer Period, the Custodian will be entitled to be paid on demand an amount which is equivalent to the Fees and expenses and outlays, for the provision of the Custodian Services for such period as the Custodian remains in the possession of such Client's Assets and continues to provide the Custodian Services.
- b. The provisions of this Agreement relating to the duties and obligations of the Custodian will remain in full force and effect during that time.

- c. Where Client's Assets remain in the possession of the Custodian after the Transfer Period the Custodian may, in its discretion, and subject to the relevant law, apply to any Court in respect of any matter concerning the Client's Assets, including without limitation directions or orders as to who should continue to hold (or may receive a transfer of) the Client's Assets after the Transfer Period, and the Custodian shall be entitled to be reimbursed out of the Client's Assets for the costs of any such application (subject to the terms of any order made by the Court).

15. Representation and warranties

15.1 Representations and warranties

Each party represents and warrants to the other that:

- a. it has the power to enter into and perform its obligations under this Agreement, and has duly executed this Agreement so as to constitute valid and binding obligations of it; and
- b. it has the power pursuant to its constitution and any applicable laws and regulations to enter into this Agreement and carry out its obligations.

15.2 Custodian Representations and warranties

The Custodian represents and warrants that:

- a. this Agreement is valid and binding on the Custodian;
- b. the entry into and performance of this Agreement by the Custodian does not constitute:
 - i. a breach of any obligations (including but not limited to any statutory, contractual or fiduciary obligations); or
 - ii. default under any agreement or undertaking by which the Custodian is bound;
- c. it:
 - i. is a public company holding an Australian Financial Services Licence authorising it to provide the Custodian Services;
 - ii. has the power to enter into and perform this Agreement and has obtained all necessary consents to enable it to do so;
 - iii. holds and will continue to hold such licences, consents, approvals and authorities as are necessary to lawfully perform its obligations under this Agreement;
 - iv. will at all times have full disaster recovery procedures and back-up facilities in place in respect of the Custodian Services it provides and records and information it maintains in relation to the Client and Client's Assets under this Agreement and will test these procedures regularly; and
 - v. has the necessary capacity to perform the core administrative activities in relation to the Custodian Services, including (without limitation):
 - a. computer systems which are secure and capable of handling the record keeping and transaction processing for the Client's

- Assets and the capacity to separately identify the Client's Assets;
 - b. procedures in place for accurately recording all the Client's Assets and all movements of the Client's Assets;
 - c. access to information sources which may be relevant to corporate actions and proxy voting, or for pricing information;
 - d. access to and if necessary membership of depositories relevant to the Client's Assets;
 - e. access to and if necessary membership of relevant settlement and clearance systems; and
 - f. access to relevant domestic or global sub-custodial networks.
- d. The Custodian will as soon as reasonably practicable inform the Client if any of the statements in clause 15.2c cease to be true and correct as of any date after the date of this Agreement.

15.3 Client's representations and warranties

- a. The Client represents and warrants to the Custodian that:
 - i. where the client is a corporation, it is properly incorporated under the Corporations Act;
 - ii. it:
 - a. has the power to enter into and perform its obligations under this Agreement; and
 - b. has duly executed this Agreement so as to constitute valid and binding obligations of the Client;
 - iii. the entry into and performance of this Agreement by the Client does not constitute:
 - a. a breach of any obligations (including but not limited to any statutory, contractual or fiduciary obligations); or
 - b. default under any agreement or undertaking,
- by which the Client is bound;
- iv. it holds such licences and authorities as are necessary to lawfully perform its obligations under this Agreement;
 - v. it has duly executed this Agreement in its capacity as Client and, where the Client is a trustee, trustee of each Fund and for the benefit of the beneficiaries of each Fund;
 - vi. where the Client is a trustee, it is the only trustee of each Fund and no action has been taken or is proposed to its knowledge to be taken, to prevent it becoming or remove it as the trustee of any Fund;
 - vii. where the Client is a trustee, it has the right to be fully indemnified out of the relevant Fund's assets in respect of all obligations and liabilities which it incurs under this Agreement in the proper performance of its duties in its capacity as the trustee of the relevant Fund; and

viii. it has:

- a. complied with all applicable legal obligations and regulatory requirements concerning money laundering, criminal or terrorist activities and its investments in the Fund and/or Client's Assets (as relevant);
 - b. implemented due diligence procedures to ensure that its investments in the Fund and/or the Client's Assets are not made for money laundering purposes, criminal or terrorist purposes and the due diligence procedures are consistent with those which a prudent trustee of a Fund and/or the owner of the Client's Assets of the same kind as the Fund and/or the Client's Assets would implement.
- b. The Client will immediately inform the Custodian if any of the statements in clause 15.3a cease to be true and correct as of any date after the date of this Agreement.

16. Settlement of disputes

16.1 Meeting to resolve

- a. If a dispute arises out of or in connection with this Agreement at any time then either party may give the other a written notice identifying the particulars of the dispute and representatives of the parties must, within 10 Business Days, meet to resolve the dispute.
- b. Each party will continue to perform their obligations under this Agreement while the dispute is resolved.

16.2 Mediation notice

After the expiration of 10 Business Days from the issue of the written notice identifying the particulars of the dispute, if the parties have been unable to resolve the dispute, any party may notify the other parties by written notice (Mediation Notice) that it requires the dispute to be referred to mediation.

16.3 Mediation

- a. If a party serves a Mediation Notice on another party, then the party may require the other party to attend mediation to attempt to settle the dispute, with a mediator chosen by both of them.
- b. If they cannot agree on the identity of the mediator or the location and date and time of the mediation, then the mediator and the location and date and time of the mediation will be as nominated by the President for the time being of the Australian Bar Association or equivalent organisation.
- c. The mediation will be conducted in accordance with the mediation principles determined by the mediator.
- d. The mediation will be conducted as a mediation, not an arbitration, such that any resolution to the dispute must be reached with the agreement of the parties to the dispute.

16.4 Cost

The cost of the mediator and the mediation (apart from each party's legal costs) will be borne equally between the parties. Each party is to bear their own legal costs.

16.5 Legal proceedings

A party may not institute legal proceedings (apart from injunctive relief where required) without attempting to resolve the dispute in accordance with this clause 16.

17. Confidentiality and privacy

17.1 Confidentiality of the Custodian

The Custodian agrees to take reasonable steps to keep all Confidential Information secure and to hold all Confidential Information in strict confidence and not disclose, or cause or permit the disclosure of the Confidential Information, except:

- a. to representatives of the Third Party, the Custodian or its Agents who need to have access to the Confidential Information for the purposes of providing the Custodian Services and the other services provided by the Custodian to the Client;
- b. to third parties appointed by the Custodian for the purpose of providing the Custodian Services and with whom the Custodian has entered into a confidentiality agreement which protects the confidentiality of the Confidential Information;
- c. as permitted under this Agreement;
- d. as required by any securities exchange on which any of the Securities are listed;
- e. in enforcing this Agreement, in a proceeding arising out of or in connection with this Agreement or to the extent that disclosure is regarded by the Custodian or its Sub-custodians as necessary to protect their interests;
- f. if required under an order of a Government Agency or any procedure for discovery in any proceedings;
- g. if required under any law or any administrative guidelines, directive, request or policy whether or not having force of law and, if not having the force of law, with which responsible Custodians similarly situated would normally comply; or
- h. with the prior written consent of the Client.

17.2 Personal information about someone else

- a. If the Client gives the Custodian personal information about someone else or directs someone else to give their personal information to the Custodian, the Client will tell that person that:
 - i. the Custodian is holding personal information about that person;
 - ii. personal information collected about that person will be used for the primary purpose of the Custodian providing the product or service contemplated by this Agreement;
 - iii. the person can access their information at any time by contacting the Custodian. The Custodian may charge a reasonable fee for access; and

- iv. if the person can show that information about the person is not accurate, complete and up to date, the Custodian will take reasonable steps to ensure it is accurate, complete and up to date.

- b. The Custodian may give that person's information to any contractor or service provider the Custodian engages to provide services connected with the Client's relationship with the Custodian.

17.3 Breach of confidentiality

The Custodian acknowledges that a breach of clause 17.1 or the National Privacy Principles may lead to the Custodian reimbursing the Client for any Claim in accordance with clause 9.

18. Tax matters

18.1 Tax laws

- a. Except where otherwise agreed in writing between the Custodian and the Client, the Custodian is not responsible for the payment of any obligations imposed on the Client by the tax law of Australia or any state or territory of Australia.
- b. The Client will notify the Custodian of any obligations imposed on the Client, any Fund or the Custodian as custodian of each Fund by the tax law jurisdictions other than those mentioned in clause 18.1a, including any obligations relating to Tax or other government charges, certifications and government reporting. The Custodian is not responsible for verifying the accuracy or currency of this information.

18.2 Obligations of the Custodian

The only obligation of the Custodian with regard to the tax law of any jurisdiction other than those mentioned in clause 18.1a is to use reasonable efforts to assist the Client with respect of any claims for exemption or refund under the tax law or the jurisdictions for which the Client has provided the information required by clause 18.1b.

18.3 Liability for Taxes

In no circumstances shall the Custodian be personally liable for any Tax imposed upon the Client or the Custodian as custodian of a Fund in respect of the Client's Assets or any income or gains on the Client's Assets and the Client agrees to reimburse and indemnify the Custodian for all such Tax imposed on the Custodian or its Sub-custodians (but excluding any income taxes assessable in respect of fees paid to the Custodian or its Sub-custodians pursuant to this Agreement or any other document), including, without limitation, additions for late payment, interest, penalties and other expenses (including legal fees on a full indemnity basis) that may be assessed against the Client or the Custodian as custodian of a Fund.

19. Notices

19.1 Delivery

Notices must be:

- a. left at the address shown in this Agreement for each party or sent by prepaid ordinary post (airmail if appropriate) to such address;
- b. sent by email to the email address of each party;
- c. sent by fax to the fax number known for either party; or
- d. given in any other way permitted by law and agreed to in writing between the Client and the Custodian.

However, if the intended recipient has notified a changed postal address, email address or changed fax number, then the communication must be to that address or number.

19.2 When effective

Notices take effect from the time they are received (as set out in clauses 19.3 to 19.7) unless a later time is specified.

19.3 Receipt – post

If sent by post, Notices are taken to be received 3 days after posting (or 7 days after posting if sent to or from a place outside Australia).

19.4 Receipt and indemnity – email

- a. If sent by email, Notices are taken to be received when the recipient's email system logs the email message as having been received.
- b. If the Client requests the Custodian to accept a notice, request or instruction transmitted by email (an "email instruction"):
 - i. the Client must comply with the security procedure or measure agreed between the Client and the Custodian (if any);
 - ii. the Custodian may accept or reject an email instruction at its discretion;
 - iii. if the Custodian accepts an email instruction that purports to have been transmitted or authorised by the Client and appears to be in compliance with the security procedure or measure as agreed between the Client and the Custodian (if any):
 - a. the Custodian may rely on that email instruction without making any enquiries;
 - b. the email instruction will be deemed effective as the Client's notice, request or instruction; and
 - c. the Client releases the Custodian and each of its Related Entities from, and indemnifies each of them against, all losses and liabilities arising from any payment or action the Custodian or any Related Entity of the Custodian makes based on any instruction (even if not genuine) that the Custodian or the Related Entity receives by email which appears to be from an Authorised Person of the Client.

- iv. Notwithstanding the above, in the event that an email instruction is provided, the Client sending the email instruction must have an Authorised Person available to discuss such instructions following the delivery of the email instruction. If the Authorised Person is not available to discuss and confirm the email instruction after reasonable attempts by the Custodian, the Custodian may, in its absolute and complete discretion, treat the email instruction as invalid.

19.5 Receipt and indemnity – fax

- a. If sent by fax, Notices are taken to be received at the time shown in the transmission report as the time that the whole fax was sent.
- b. If the Client requests the Custodian to accept a notice, request or instruction transmitted by facsimile (a "facsimile instruction"):
 - i. the Client must comply with the security procedure or measure agreed between the Client and the Custodian (if any);
 - ii. the Custodian may accept or reject a facsimile instruction at its discretion;
 - iii. if the Custodian accepts a facsimile instruction that purports to have been transmitted or authorised by the Client and appears to be in compliance with the security procedure or measure as agreed between the Client and the Custodian (if any):
 - a. the Custodian may rely on that facsimile instruction without making any enquiries;
 - b. the facsimile instruction will be deemed effective as the Client's notice, request or instruction; and
 - c. the Client releases the Custodian and each of its Related Entities from, and indemnifies each of them against, all losses and liabilities arising from any payment or action the Custodian or any Related Entity of the Custodian makes based on any instruction (even if not genuine) that the Custodian or the Related Entity receives by facsimile bearing a signature apparently that of an Authorised Person of the Client.
- iv. Notwithstanding the above, in the event that a facsimile instruction is provided, the Client sending the facsimile instruction must have an Authorised Person available to discuss such instructions following the delivery of the facsimile instruction. If the Authorised Person is not available to discuss and confirm the facsimile instruction after reasonable attempts by the Custodian, the Custodian may, in its absolute and complete discretion, treat the facsimile instruction as invalid.

19.6 Receipt by Electronic Transmission Service

If sent by Electronic Transmission Service, Notices are taken to be received when despatched, but only if, at the time of transmission, the correct answerback appears at the start and at the end of the sender's copy of the Notice.

19.7 Receipt – general

Unless expressly stated otherwise in this Agreement, despite clauses 19.3 (“Receipt – post”), 19.4 (“Receipt and indemnity – email”) 19.5 (“Receipt and indemnity – fax”) and 19.6 (“Receipt by Electronic Transmission Service”), if Notices are received after 4.00pm in the place of receipt or on a non-Business Day, they are to be taken to be received at 9.00am on the next Business Day.

20. General

20.1 Assignment and novation

- a. Subject to clause 20.1b, a party may not assign its rights or obligations under this Agreement without the prior consent of the other party, such consent not to be unreasonably withheld or delayed.
- b. The Custodian may, at any time and without the consent of the Client:
 - i. assign its rights under this Agreement to; and/or
 - ii. novate its obligations under this Agreement to; and/or
 - iii. retire as custodian and appoint as its replacement, a Related Entity of the Custodian.

20.2 Waivers

- a. Waiver of any right, power, authority, discretion or remedy arising upon a breach of or default under this Agreement must be in writing and signed by the party granting the waiver.
- b. A failure or delay in exercise, or partial exercise, of a right, power, authority, discretion or remedy arising from a breach of or default under this Agreement, does not result in a waiver of that right, power, authority, discretion or remedy.
- c. A party is not entitled to rely on a delay in the exercise or non-exercise of a right, power, authority, discretion or remedy arising from a breach of this Agreement or default under this Agreement as constituting a waiver of that right, power, authority, discretion or remedy.
- d. A party may not rely on any conduct of another party as a defence to exercise of a right, power, authority, discretion or remedy by that other party.
- e. This clause may not itself be waived except in writing.

20.3 Variation

Except to the extent provided in the FIIG CAAF, a variation to any term of this Agreement must be in writing and signed by the parties.

20.4 Continuing indemnities and survival of indemnities

Each indemnity contained in this Agreement:

- a. is a continuing obligation despite any settlement of account or the occurrence of any other thing, and remains in full force and effect until all money owing, contingently or otherwise, under any indemnity has been paid in full;

- b. is an additional, separate and independent obligation of the person giving it and no one indemnity limits the generality of any other indemnity;
- c. survives the termination of this Agreement; and
- d. is not subject to any reduction, termination or other impairment by any set-off, deduction, counter claim, agreement, defence, suspension, deferment or any other any circumstance, act or omission which, but for this sub-clause, might otherwise operate to relieve it from any of its obligations under the indemnities at law or in equity.

20.5 Entire Agreement

This Agreement:

- a. constitutes the complete and exclusive agreement of the parties with regard to its subject matter; and
- b. supersedes and terminates as of the date of this Agreement all prior agreements or understandings, oral or written, between the parties in relation to custodianship of the Client’s Assets.

20.6 Attorneys

Each person who executes this Agreement on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

20.7 Choice of Law and Jurisdiction

- a. This Agreement shall be construed and interpreted according to the laws of New South Wales and the Commonwealth of Australia.
- b. The parties submit to the non-exclusive jurisdiction of the courts of that State and the Commonwealth of Australia, including any appellate courts thereof.

Important Information

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