

GROVE PORTFOLIO ONLINE
CUSTODY TERMS AND CONDITIONS

May 2007

[For your information – to be executed by Grove on your behalf]

CUSTODY TERMS AND CONDITIONS

DATE:

PARTIES

AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED (ABN 11 005 357 522) having its registered office at Level 6, 100 Queen Street, Melbourne VIC 3000 (“**Custodian**”);

GROVE RESEARCH & ADVISORY PTY LIMITED (ABN 93 052 348 026) having its registered office at Citigroup Building, Level 45, 2 Park Street, SYDNEY, NSW, 2000 (“**Grove**”); and

[**CLIENT** – *insert name and address of client* (“**Client**”)].

RECITALS

- A. The Grove Portfolio Online service is operated by Grove.
- B. The Custodian has agreed with Grove to provide custodial services to each user of Grove Portfolio Online who has entered into a GPO Agreement (each, a “**GPO Client**”) and has authorised Grove to enter into this agreement on behalf of the Custodian.
- C. The Client has agreed to be bound by the terms of this agreement by signing the Grove Portfolio Online application form accompanying the GPO Agreement and has authorised Grove to enter into this agreement on behalf of the Client.

OPERATIVE PROVISIONS

1. DEFINITIONS & INTERPRETATION

1.1 Definitions

In this document the following words have these meanings unless the contrary intention appears:

“**Applicable Law**” means any applicable statute, whether national, state or local applicable under Australian law, any other applicable law, rule, regulation, policy, guidance note, ruling or interpretation of any Governmental Agency, any applicable common law, and any applicable decree, injunction, judgement, order, ruling, or writ of any Governmental Agency.

“**Assets**” means money, assets or other property from time to time:

- (a) transferred, delivered or paid for by or at the direction of the Client to the Custodian and accepted by the Custodian for holding in accordance with this agreement; or
- (b) identified in writing by notice from the Client or other Authorised Signatory to the Custodian as Assets for the purposes of this agreement,

and all investments for the time being representing, and all accretions to, such money, assets or other property.

“**Authorised Signatory**” means a person or persons authorised by the Client in writing to give Proper Instructions in writing to the Custodian from time to time and notified in writing

by the Client to the Custodian. The notice to the Custodian must contain a specimen signature of the Authorised Signatory.

"**Authorised User**" means users notified by Grove or the Client to the Custodian in writing at the time of entering into a GPO Agreement or subsequently who are authorised to issue Proper Instructions or view, initiate or authorise transactions and view reports for Grove Portfolio Online. The Client may only provide such notice in relation to its own employees or appointees and each notice must be signed by an Authorised Signatory.

"**Business Days**" means a day other than a Saturday or Sunday on which banks are open for business in Sydney.

"**Cash Account**" means an account established in the name of the Client and maintained by the Custodian pursuant to clause 3.3.

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

"**Custody Accounts**" means the Cash Account, Securities Account, and any other accounts established by the Custodian in the name of the Client for the purpose of holding Assets under this agreement.

"**Government Agency**" means any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity, or other instrumentality of any government having authority in Australia.

"**GPO Agreement**" means an agreement (as amended from time to time), between Grove and the Client under which Grove agrees to provide GPO Portfolio Online to the Client and in relation to which the Custodian agrees to provide custodial services.

"**Grove Fees**" means the fees payable by the Client to Grove in connection with Grove Portfolio Online (which includes any fees to which the Custodian is entitled for the services it provides), in the amount set out in the GPO Agreement or otherwise agreed between the Client and Grove from time to time.

"**Grove Portfolio Online**" means the online execution and investment administration service operated by Grove.

"**GST**" means the goods and services tax.

"**Loss**" includes any loss, damage, liability, cost or expense (including any legal cost and expense) however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

"**Privacy Laws**" means the *Privacy Act 1988* (Cth), data protection laws and all regulation of acts of obtaining, holding, using, disclosing or dealing in any way with information.

"**Proper Instructions**" means instructions given in accordance with clause 5.2.

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

"**Scheme**" means a managed investment scheme as defined in the Corporations Act.

"**Security**" means a financial product within the meaning of Chapter 7 of the Corporations Act.

"Securities Account" means an account established in the name of the Client and maintained by the Custodian pursuant to clause 3.2.

"Securities Depository" means a clearing agency or depository which acts as a Securities depository or another book entry system for the central handling of Securities.

"Service Provider" means Investment Administration Services Pty Limited (ABN 86 109 199 108).

"Sub-custodian" means any sub-custodian, nominee, or other similar person appointed by the Custodian under clause 6.1, until its appointment terminates. Sub-custodian does not include a Securities Depository.

"Taxes" means all taxes of whatever nature lawfully imposed, including income tax, recoupment tax, land tax, sales tax, payroll tax, fringe benefits tax, group tax, capital gains tax, profit tax, interest tax, tax on the provision of goods or services, property tax, undistributed profits tax, withholding tax, municipal rates, financial institutions duty, bank account debit tax, stamp duties and other taxes, charges and liens assessed or charged or assessable or chargeable by, or payable to, any national, Federal, State, Territory or municipal taxation or excise authority, including any interest or fee imposed in connection with any such tax, rates, duties, charges or liens.

1.2 **Rules for interpreting this document**

In this agreement unless the contrary intention appears:

- (a) a reference to this agreement or another instrument includes any variation or replacement of either of them;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and vice versa;
- (d) the word "person" includes a firm, a body corporate, a partnership, joint venture, an unincorporated body or association, or any Government Agency;
- (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and permitted assigns;
- (f) the verb "include" (in all its parts, tenses and variants) is not used as, nor is it to be interpreted as, a word of limitation;
- (g) a reference to time is a reference to Sydney time; and
- (h) headings are inserted for convenience and do not affect the interpretation of this agreement.

2. **APPOINTMENT OF CUSTODIAN**

2.1 **Appointment**

- (a) Subject to clause 2.1(b), the Client appoints the Custodian as custodian of the Assets on the terms of this agreement.
- (b) The appointment under clause 2.1(a) does not extend to any money, assets or other property of the Client held by the Custodian or a Related Body Corporate of the Custodian at the date of this agreement, unless the Client designates such money, assets or other property as Assets under paragraph (b) of the definition of Assets.

2.2 **Acceptance of appointment**

The Custodian accepts the appointment in accordance with clause 2.1(a) and, subject to the terms of this agreement, agrees to act as custodian of the Assets.

2.3 **Declaration of trust**

The Custodian further declares that it will hold all money, assets and other property comprised in the Assets on trust for the Client on and subject to the terms of this agreement.

2.4 **Standard of care**

In performing its duties under this agreement, the Custodian must comply with all Applicable Law, and exercise the degree of care, skill and diligence that a professional custodian engaged in the banking or trust company industry would exercise in discharging its duties and responsibilities under this agreement if they were in the Custodian's position.

3. **FUNCTION AND POWERS OF CUSTODIAN**

3.1 **Possession and title**

- (a) Subject to the provisions of this agreement, the Custodian agrees to hold the Assets, and documents arising from investments in or evidencing title to assets or other property included in Assets, for the benefit of the Client.
- (b) The Custodian must keep, or cause to be kept, proper records in respect of the Assets and will identify in its books that Assets credited to the Custody Accounts belong to the Client.
- (c) The Custodian may hold Assets of the Client on a pooled basis with the property of other GPO Clients, provided that the Custodian maintains a record of the money, assets and other property held for the Client. Assets must be held separately from the assets of the Custodian and any other clients of the Custodian.

3.2 **Registration of Assets**

The Custodian will ensure that all Securities forming part of the Assets (other than bearer Securities or Securities held in a Securities System) are registered:

- (a) in the name of the Client, the Custodian or its Sub-custodian; and

(b) under the address of the Client, Custodian or a Sub-custodian as the case may be, unless otherwise directed by the Regulator or a Proper Instruction.

3.3 **Establishment of Accounts**

The Custodian will maintain at least one Securities Account and one Cash Account in the name of the Client for the holding of Assets under this agreement.

3.4 **Receive and Dispose of Property**

The Custodian is authorised to:

- (a) purchase, acquire, subscribe for, sell, redeem or dispose of assets or other property upon receipt of Proper Instructions, as agent and nominee of the Client, and to execute all transfers and assurances and other documents necessary for any such purpose;
- (b) receive and hold or procure the receipt and holding of any property so purchased or acquired, and any interest, dividend or other income accruing in respect of it and any document of title to it in safe custody;
- (c) procure safe custody of property of Assets in bearer form by utilising the safe custody facilities of any Australian Bank (as defined in the Corporations Act) or reputable company the business of which includes the safe custody of documents; and
- (d) effect or settle the acquisition or disposal of assets upon receipt of Proper Instructions, in accordance with normal market practice through a securities clearing or settlement system (including without limitation ASX Settlement and Transfer Corporation Pty Limited, Austraclear Limited and the Reserve Bank Information Transfer System) and to act in accordance with the rules, regulations and practices of that securities system (including without limitation pledging or mortgaging assets for that purpose).

The Custodian will ensure that any assets or property received under this clause 3.4 and any money paid as a result of a disposal under this clause 3.4 will be credited to the relevant Custody Account.

3.5 **Release and deliver property**

Subject to the provisions of this agreement, the Custodian may release and deliver money, assets and other property included in Assets, and documents of title to it, only on receipt of Proper Instructions and only in the following cases:

- (a) on sale or disposal of the property and receipt of payment for it;
- (b) on receipt of payment in connection with any repurchase agreement related to the property;
- (c) to a depositary, broker, offeror or other person in connection with a takeover or other similar offers for Securities included in the Assets;

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- (d) to an issuer or its agent when Securities are called, redeemed, retired or otherwise become payable, provided that satisfactory arrangements are made for the cash or other consideration to be delivered to the Custodian;
 - (e) to an issuer or its agent, for transfer into the name of the Custodian or for exchange for a different number of bonds, certificates or other evidence representing the same aggregate face amount or number of units, provided that satisfactory arrangements are made for the new Securities to be delivered to the Custodian;
 - (f) to a selling broker or agent for examination;
 - (g) for exchange or conversion under any plan of consolidation, recapitalisation, reorganisation or readjustment of any Securities or the issuer of those Securities, or under any deposit contained in those Securities, or under any deposit agreement, provided that satisfactory arrangements are made for the new Securities and cash, if any, to be delivered to the Custodian;
 - (h) the surrender of options, rights or similar entitlements in the exercise of those options, rights or entitlements, or the surrender of interim receipts or temporary Securities for definitive Securities, provided that satisfactory arrangements are made for the new Securities and cash, if any, to be delivered to the Custodian;
 - (i) for delivery as security in connection with any borrowings or raisings by the Client requiring a deposit of, or charge to be granted over, property owned by the Client;
 - (j) on the sale or purchase of Securities, in accordance with what the Custodian reasonably believes to be local market practice where the sale or purchase takes place, including delivery of the Securities to the purchaser or a dealer or agent of the purchaser or dealer, in the expectation of receiving later payment for the Securities or paying money to the vendor or a dealer or agent of the vendor or dealer, in the expectation of later delivery of the Securities;
 - (k) on the sale of Securities through a depository or clearing agency, in accordance with its regulations or operating manuals;
 - (l) for the payment of any expense or liability incurred by or on behalf of the Client;
 - (m) for the purchase or sale of foreign exchange or foreign exchange contracts for the account of the Client; or
 - (n) in any other circumstances, but only on receipt of Proper Instructions specifying the money or property to be delivered, the purpose of delivery and the person or persons to whom the property is to be delivered.

3.6 Refusal to accept property

The Custodian may reasonably refuse to accept the deposit or transfer of a security, document or other property, and the Client must accept a return of the document or transfer of the security or other property at the request of the Custodian. In particular, the Custodian has no obligation to accept into Assets or acquire any partly-paid investment unless the Client has, or has made arrangements satisfactory to the Custodian to, set aside in the name of the Custodian money or other property sufficient to provide for paying up the investment in full.

3.7 **Appointment of Sub-custodians**

The Custodian may appoint Sub-custodians to hold Assets on behalf of the Custodian in accordance with clause 6.1, provided that the Custodian requires each Sub-custodian to identify in its books that Assets held by the Sub-custodian are held for the Custodian on behalf of the Client and belong to the Client, such that it is readily apparent that the Assets do not belong to the Custodian or the Sub-custodian.

The Sub-custodian may hold Assets of the Client on a pooled basis with the property of other GPO Clients, provided that the Sub-custodian maintains a record of the money, assets and other property held for the Client. Assets must be held separately from the assets of the Sub-custodian, the Custodian and any other clients of the Sub-custodian.

The Custodian shall be liable for the acts and omissions of the Sub-custodian to the extent that it would be liable under this agreement if they were the Custodian's own acts or omissions.

Persons appointed or engaged in accordance with this clause 3.7 or clause 6.1 may be related to or associated with the Custodian and may be paid and receive their normal fees or commissions.

3.8 **Provide certificates**

The Custodian may execute on behalf of the Client any certificates, declarations or affidavits which are required to receive into its custody any assets or other property of or for the Assets.

3.9 **Custodian may have interests in transactions**

Subject to clause 15, the Custodian may in the ordinary course of its business, without reference to the Client, effect transactions in which the Custodian has directly or indirectly a material interest, or a relationship of any kind with another person, which may involve a potential conflict with the Custodian's duty to the Client, and the Custodian is not liable to account to the Client for any profit, commission or remuneration made or received in relation to those transactions or any connected transactions.

3.10 **General**

- (a) A reference in clause 3.9 and clause 15.1(c) to the Custodian includes a Sub-custodian.
- (b) The Custodian is authorised to comply with any obligations imposed on it by Applicable Law.
- (c) The powers conferred on the Custodian by this agreement are in addition to any statutory powers conferred on the Custodian.
- (d) The Client acknowledges that the Custodian may discharge any obligation to transfer or deliver Securities held for the Client under this agreement by transferring or delivering those Securities or Securities which are equivalent to those Securities. Securities are equivalent to other Securities for the purpose of this agreement if they are of the same issuer, part of the same issue and of the same class, description and nominal value.

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- (e) The Custodian may do any other things which it considers reasonably necessary or desirable incidental to or in furtherance of the matters referred to in clause 3 and 4.

4. DUTIES OF CUSTODIAN

4.1 Receipt of dividends, etc

The Client is entitled to receive all dividends, distributions, bonuses or other share of profits, income, rebates or assets which are paid or otherwise distributed in respect of Assets.

Subject to any contrary Proper Instructions, where any such dividend, distributions, bonus or share of profits, income, rebates or assets is received by the Custodian, the Custodian must deposit or retain it in the relevant Custody Account. Notwithstanding this clause 4.1, where the Asset is an interest in a managed investment scheme in respect of which distributions or rebates may be re-invested, the Client is taken to have given a Proper Instruction to re-invest any distribution or rebate in respect of that Asset in the relevant scheme if such re-investment is possible.

4.2 Payment of calls and instalments

Subject to clause 4.3(b), where an instalment or call becomes payable on or in respect of Securities included in Assets and the Custodian receives a notice in relation to such instalment or call, the Custodian must promptly forward that notice to Grove (and Grove will receive such notices as agent for the Client). The Custodian must ensure that any timely Proper Instructions in relation to an instalment or call are complied with, but the Custodian is not required to make any payment unless the Client has first provided the Custodian with funds to make the payment.

4.3 Rights and other entitlements

- (a) The Custodian must promptly forward to Grove all notices relating to a rights issue, notices in relation to any rights in relation to an offer made under a takeover scheme or takeover announcement and notices in relation to any rights in relation to a scheme for the winding up or reconstruction or amalgamation of the issuer of the Securities included in the Assets (and Grove will receive such notices as agent for the Client). Subject to clause 4.3(b), the Custodian must ensure that any timely Proper Instructions as to the manner of dealing with these rights and entitlements are complied with, provided that the Custodian is not required to make any payment unless the Client has first placed it in funds to make the payment.
- (b) If the Custodian has the funds but does not have the Proper Instructions referred to in clause 4.2 or 4.3(a), it is not required to make any payment or take any other action in relation to the matter. However, it may make any payment or take any other action in relation to the matter that it considers in its professional opinion as Custodian and acting with due care is in the interests of the Client, and does not incur any liability in respect of any thing so done.

4.4 No duty to review or advise, etc

- (a) The Custodian is not responsible for reviewing or providing advice to the Client on the Assets or any part of the Assets.
- (b) The Custodian disclaims any knowledge of the terms on which Securities are issued or the constituent documents of the issuer and it is the responsibility of the Client to

investigate and satisfy itself as to those matters and to ensure that any instructions to the Custodian are in conformity or reasonable having regard to them.

- (c) The Custodian is not responsible for the accuracy or completeness of any information received from third parties and passed to or accessed by the Client except for information received from a Sub-custodian appointed under clause 3.7 or a delegate appointed under clause 6.1.
- (d) The Custodian is not obliged to institute or defend legal proceedings against or commenced by a third party unless requested by the Client and indemnified by the Client to the Custodian's satisfaction.
- (e) In the absence of fraud, negligence or wilful default on the part of the Custodian, the Custodian will not be liable to the Client for any damage, loss or expense resulting from or caused by complying, in accordance with this agreement with a Proper Instruction.
- (f) The services of the Custodian under this agreement are not exclusive. The Custodian is free to provide similar services to others, and is not obliged to disclose to any person anything which comes to its notice in the course of providing services to others otherwise than in the performance of this agreement.

5. PROPER INSTRUCTIONS

5.1 Authority to act

The Custodian is authorised to act, or to cause any other person to act, on all Proper Instructions given to it in accordance with clause 5.2 in connection with and consistent with the performance of its duties or the exercise of its powers under this agreement.

5.2 Form of Proper Instructions

Proper Instructions must:

- (a) be signed by an Authorised Signatory when given in writing (which may include by facsimile when permitted under the GPO Agreement);
- (b) be appropriately secured (through the use of encryption and access codes unique to each Authorised User) when given via an internet service run by or for the Custodian;
- (c) utilise access codes when given in a communication between electro mechanical or electronic devices; or
- (d) be given by such other means as may be agreed between the parties, including without limitation oral or telephonic instructions.

5.3 Security Arrangements

The Custodian will take reasonable steps to provide a level of security in respect of online instructions and transactions (through the use of encryption and access codes) which is at a level substantially equivalent to that which the Custodian, as an Australian bank, provides in respect of on-line banking transactions.

5.4 **Recording of instructions**

The Custodian may record electronically any telephonic instructions and any other telephonic discussions relating to this agreement or any transaction effected under it.

5.5 **Acting on Proper Instructions**

The Custodian is under no obligation to act on Proper Instructions which in its reasonable opinion contain any error, ambiguity, conflict with another Proper Instruction or if there are insufficient Assets to pay the Custodian's estimate of the expenses and outlays which will arise on the Custodian acting in accordance with Proper Instructions. However, the Custodian must notify Grove promptly if it intends not to act on Proper Instructions in accordance with this clause 5.5 or if purported instructions are not Proper Instructions because they contain an error or ambiguity. The Custodian will not be liable for any loss resulting from a delay while it obtains clarification of any Proper Instructions if it has sought clarification in accordance with this clause 5.5.

6. **DELEGATION**

6.1 **Authority to delegate**

The Custodian may, where it considers their appointment necessary or desirable for the purpose of exercising its powers or performing its duties under this agreement, appoint sub-custodians, nominees or other similar persons (including any person related to or associated with the Custodian) (each, a "**Delegate**") to perform any of its duties under this agreement with any or all of its powers under this agreement, including this power of delegation. The Custodian will exercise due care and diligence in selecting and appointing each Delegate and will be liable for the acts and omissions of each Delegate to the extent that it would be liable under this agreement as if they were the Custodian's own acts or omissions.

6.2 **Notice of appointment of Delegate**

The Custodian will notify Grove prior to the appointment of any Delegate.

6.3 **Acknowledgement by Client**

The Client acknowledges that the Custodian has appointed the Service Provider as its Delegate to perform certain duties of the Custodian, including reporting services and tasks relating to applications and redemptions of Securities. This acknowledgement constitutes the necessary notification under clause 6.2 in respect of the Service Provider.

6.4 **Security Depository**

The Custodian and each Sub-custodian may deposit any part of the Assets in any Securities Depository on such terms as such systems customarily operate.

6.5 **Listing of assets held by delegates**

The Custodian must supply to Grove upon request a description of property included in Assets which is held by or registered in the name of a Sub-custodian or other Delegate, together with the name and address of the Sub-custodian or other Delegate.

7. FEES, COSTS AND EXPENSES

7.1 Fees

- (a) The Client must pay the Grove Fees to Grove, which includes fees payable in respect of services under this agreement.
- (b) The parties acknowledge that under the GPO Agreement, the Client authorises Grove to deduct the Grove Fees from the Assets and, to the extent the Grove Fees cannot be deducted from the Assets for any reason, Grove will notify the Client and the Client must promptly make other arrangements to pay the Grove Fees to Grove under clause 7.1(a).

7.2 No Encumbrances

Subject to clause 7.3, the Custodian will not create or permit to subsist any charge, mortgage, lien, encumbrance or other security interest over or in relation to the Assets.

7.3 Lien

Nothing in this agreement excludes or limits the lien to which the Custodian, in its capacity as custodian trustee, is entitled by operation of law over the Assets, nor confers on the Custodian any lien, charge or other encumbrance over the Assets except for the lien to which the Custodian is entitled by operation of law. Without derogating from any rights of the Custodian, any negligence, default or breach of duty by the Custodian in relation to any particular matter or transaction does not affect any rights of the Custodian under this clause 7.3 in relation to any matter or transaction not related to such negligence, default or breach of duty by the Custodian.

7.4 GST

- (a) If GST is imposed upon any supply made by the Custodian under this agreement, the Custodian may recover from the Client an amount on account of GST, such amount to be calculated by multiplying the amount or consideration payable by the Client for the relevant supply by the prevailing GST rate provided that the Custodian issues the Client with a valid tax invoice and the Custodian is registered for Australian Business Number purposes.
- (b) If for any reason the amount recovered by the Custodian from the Client, under this clause 7.4 differs from the amount of GST payable at law by the Custodian in respect of supply, the amount payable by the Client to the Custodian will be adjusted accordingly, provided always that the Client first provides written approval to make such adjustment and the Custodian issues to the Client a valid adjustment note within 7 days of such approval.
- (c) The Custodian will use its best endeavours to determine reasonably the extent (if any) to which any amount payable by the Client for any supply under this agreement may be reduced as a consequence of the abolition or of reduction in any taxes, duties or statutory charges (as part of the imposition of GST) and the amount payable by the Client to the Custodian shall be reduced accordingly.
- (d) All amounts payable under this agreement are exclusive of GST.

7.5 Expenses and Outlays

- (a) The Client will pay the Custodian's reasonable out of pocket and incidental expenses which are directly incurred by the Custodian in connection with the services provided to the Client under this agreement (other than any tax liability or legal costs of the Custodian).
- (b) The Custodian may deduct from any part of the Assets any amounts owing by the Client to the Custodian, provided that the Custodian may only deduct the fees payable to the Custodian from the Assets to the extent that Grove or its agent has not deducted such fees (whether or not the fees were actually paid to the Custodian). The Custodian agrees to record any such deduction in the records maintained under this agreement.
- (c) To the extent that the Grove Fees for any month have not been deducted from the Assets, the Custodian may deduct such Grove Fees from any part of the Assets for remittance to Grove.
- (d) If the Custodian makes a deduction from the Assets under clauses 7.5(b) or 7.5(c) in an amount exceeding \$100, it will provide the Client with an invoice in respect of such deduction.
- (e) The Client acknowledges that neither the Custodian nor Grove nor any of their respective officers, Delegates, agents or employees will be liable for any stamp duty or other taxes or third party expenses relating to the transfer of Assets.

8. LIMITATIONS OF LIABILITY

8.1 Liability of Custodian

To the extent permitted by Applicable Law and subject to clauses 3.7 and 6.1, the Custodian (including its officers, Delegates, agents and employees) is under no liability to the Client or Grove for:

- (a) any Loss under or in connection with this agreement unless caused by its own negligence, fraud, default, breach of this agreement, insolvency or failure to comply with Applicable Laws or its Australian financial services licence;
- (b) any failure to do any thing which it is prevented or forbidden from doing because of any Applicable Law or of any order or judgement of any court;
- (c) the failure of any person to carry out any agreement or obligation on that person's part where the failure was beyond the Custodian's reasonable control;
- (d) indirect, special, punitive or consequential Loss (whether or not in the contemplation of the parties at the date of this agreement);
- (e) any Loss resulting from or caused by:
 - (i) events or circumstances beyond the Custodian's control including currency restrictions, disruption of the normal procedures and practices of any financial market, power or communications services failure, acts of war or terrorism, riots, revolution, acts of God;

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- (ii) the general risks of investing; or
 - (iii) acting in good faith and without negligence on Proper Instructions; or
- (f) any Loss to the extent that:
- (i) such Loss is caused by or contributed to by a breach of trust by the Client; and/or
 - (ii) such Loss is caused by or contributed to by a material breach of this document or the GPO Agreement by Grove; and/or
 - (iii) such Loss is caused by the wilful misconduct, negligence or fraud of, or the breach of the terms of this document by the Client or any of its officers, agents or employees.

8.2 **Loss of Securities**

In a case of loss of Securities by the Custodian for which the Custodian is liable under this agreement, the Custodian must either:

- (a) where possible to do so, replace the lost Securities with an equal number of the same or equivalent Securities; or
- (b) where it is not possible to replace the Securities, credit the Assets with an amount equal to the cash value (calculated in a commercially reasonable manner as at the date of payment) of an equal number of those Securities together with interest on such loss calculated at the prime commercial lending rate charged by the Custodian from the date of the discovery of the loss to the date of crediting the Assets.

and in either case, the Custodian must credit the Assets with an amount equal to any accretions to the Securities (including but not limited to distributions and entitlements under rights or bonus issues) which would have been received on such Securities from the issuer thereof, but were not so received while the Securities were lost and prior to the Custodian taking the action required by this clause 8.2.

8.3 **Insurance**

The Custodian is not responsible for insuring the Assets or any part of the Assets, except that the Custodian will maintain insurance protection which covers the Custodian's duties and responsibilities generally as a custodian of Securities and other assets at least to the extent required by the Custodian's regulators. Upon request by Grove, the Custodian will provide Grove with a certificate of currency of insurance from time to time.

8.4 **Liability of Grove**

To the extent permitted by Applicable Law, Grove is under no liability to the Custodian or the Client for any Loss arising out of or in connection with this agreement, unless caused by the negligence, fraud or wilful default of Grove.

8.5 **Limitation of Liability**

In no circumstances will the Client or Grove be liable for:

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- (a) the failure of any person to carry out any agreement or obligation on that person's part where the failure was beyond its reasonable control;
 - (b) indirect, special, punitive or consequential Loss (whether or not in the contemplation of the parties at the date of this agreement);
 - (c) any Loss resulting from or caused by:
 - (i) events or circumstances beyond its control including currency restrictions, disruption of the normal procedures and practices of any financial market, power or communications services failure, acts of war or terrorism, riots, revolution, acts of God; or
 - (ii) the general risks of investing (in the case of Grove);
 - (d) any Loss to the extent that such Loss is caused by or contributed to by the wilful misconduct, negligence, fraud or breach of trust of, or the breach of the terms of this agreement by, the Custodian or any of its officers, agents or employees;
 - (e) in the case of the Client, any Loss to the extent that such Loss is caused by or contributed to by the wilful misconduct, negligence or fraud of Grove or any of its officers, agents or employees; or
 - (f) in the case of Grove, any Loss to the extent that such Loss is caused by or contributed to by the wilful misconduct, negligence or fraud of the Client, or any of its officers, agents or employees (if applicable).

8.6 Recovery of Loss

The parties agree that if the Client suffers Loss for which the Custodian is liable under this agreement and Grove compensates the Client for such Loss (in an amount agreed between Grove and the Client), subject to Applicable Law and consent of the Client, Grove shall be subrogated to the rights and interests of the Client against the Custodian in respect of that Loss or the Client will agree to assign its rights against the Custodian in respect of the Loss to Grove.

8.7 Indemnity by Client

- (a) The Client agrees to indemnify the Custodian and its officers, Delegates, agents or employees for any Loss arising from any act or omission taken by the Custodian in accordance with Proper Instructions on which the Custodian is entitled to rely under the terms of this agreement.
- (b) The Client agrees to indemnify and keep indemnified Grove and the Custodian and their respective officers, Delegates, agents or employees for an Loss incurred by them arising from any negligent or fraudulent act or omission by the Client or a breach by the Client of the terms of this agreement.

9. TERMINATION OF APPOINTMENT

9.1 Termination by notice

Subject to clauses 9.2 and 9.3, the Client or Grove can terminate this agreement at any time by giving to the other parties not less than 3 months' written notice of termination (or such shorter period as the parties may agree).

9.2 Termination of GPO Agreement

Grove may terminate this agreement immediately if Grove or the Client terminates the GPO Agreement or the Client's access to Grove Portfolio Online.

9.3 Internalisation

If Grove intends to internalise the administration of Grove Portfolio Online or the provision of custody services relating to Grove Portfolio Online (either within Grove or a related entity) Grove may terminate this agreement by giving six months' written notice to the other parties.

9.4 Immediate termination in some circumstances

The Custodian, Grove or the Client may terminate this agreement:

- (a) immediately on written notice if a receiver or receiver and manager is appointed in respect of any part of the property of the other of them or an administrator or liquidator of is appointed, or the other of them stops payment or makes any composition or arrangement with its creditors;
- (b) immediately on written notice if the other of them commits a material breach of this agreement where such breach remains unremedied to the reasonable satisfaction of the terminating party for a period of 21 Business Days following notice of such breach by the terminating party to the other party;
- (c) on 7 days written notice if the Custodian is not holding any Assets for the Client under this agreement and there are no outstanding liabilities between the parties under this agreement.

9.5 Dealing with Assets after termination

Upon termination, the Custodian must, acting on Proper Instructions, deliver the Assets within a reasonable period specified in the Proper Instructions to a successor custodian, or as otherwise notified by Grove. All Securities must be duly endorsed and be in the form for transfer. Any Securities held in a clearing agency or depository must be transferred to the account of the successor custodian in that Securities System.

9.6 Obligations of Custodian

If no such successor custodian is appointed the Custodian must deal with the Assets in accordance with Proper Instructions.

10. REPRESENTATIONS AND WARRANTIES

10.1 Custodian Representations and Warranties

The Custodian represents and warrants to the Client and Grove as at the date of this Agreement and during the term of this Agreement that:

- (a) it is a company limited by shares under the Corporations Act;
- (b) it has the power to enter into and perform its obligations under this Agreement and has duly executed this Agreement so as to constitute the valid and binding obligations of the Custodian;
- (c) it has taken all corporate action that is necessary or desirable to authorise its entry into and perform its obligations this agreement;
- (d) neither its execution of, or the performance of its obligations under, this agreement does or will:
 - (i) contravene any Applicable Law or licence held by it;
 - (ii) contravene any agreement binding on it or any of its property; or
 - (iii) contravene its constitution or the powers or duties of its directors;
- (e) it has in place and will maintain at all times during the term of this agreement, such level of professional indemnity insurance as appropriate for a prudent company engaged in a business similar to the Custodian having regard to the size of the business of the Custodian;
- (f) it holds all necessary licences and authorities to perform its obligations under this Agreement; and
- (g) there are no reasonable grounds to suspect that it will not be able to pay its debts as and when they become due and payable.

The Custodian will immediately inform Grove and the Client if any statement in this clause 10.1 ceases to be true and correct as of any date after the date of this document.

10.2 Client Representations and Warranties

The Client represents and warrants to the Custodian that:

- (a) if the Client is a body corporate, it is properly incorporated under the Corporations Act and:
 - (i) has the power to enter into and perform its obligations under this document; and
 - (ii) has duly executed this document so as to constitute valid and binding obligations of the Client;
- (b) the entry into and performance of this document by the Client does not constitute:

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- (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 Client is bound;
 - (c) it holds such licences and authorities as are necessary to lawfully perform its obligations under this document;
 - (d) if the Client is a responsible entity of a Scheme which is a registered managed investment scheme under the Corporations Act:
 - (i) it has duly executed this agreement in its capacity as Client and responsible entity of the Scheme and for the benefit of the beneficiaries of the Scheme;
 - (ii) it is the only responsible entity of each Scheme and no action has been taken or is proposed to its knowledge to be taken, to prevent it becoming or remove it as the responsible entity of any Scheme;
 - (iii) it has the right to be fully indemnified out of the relevant Scheme'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 responsible entity of the relevant Scheme; and
 - (e) if the Client is entering into this agreement in the capacity of trustee:
 - (i) it has full power and authority to do so and a full right to be indemnified out of the property of the trust;
 - (ii) it has duly executed this document in its capacity as Trustee and for the benefit of the beneficiaries of the Trust;
 - (iii) it is the only Trustee of each Trust 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 Trust;
 - (iv) it has the right to be fully indemnified out of the relevant Trust's assets in respect of all obligations and liabilities which it incurs under this document in the proper performance of its duties in its capacity as the trustee of the relevant Trust; and
 - (v) it has the right to be fully indemnified out of the relevant Scheme's assets in respect of all obligations and liabilities which it incurs under this document in the proper performance of its duties in its capacity as the responsible entity of the relevant Scheme;
 - (f) it has:
 - (i) complied with all applicable legal obligations and regulatory requirements concerning money laundering, criminal or terrorist activities and its investment in the Assets; and

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- (ii) implemented due diligence procedures to ensure that its investments in the Assets are not made for money laundering, criminal or terrorist purposes and the due diligence procedures are consistent with those which a prudent owner of assets of the same kind as its Assets would implement.
 - (iii) all the information it has provided in connection with this agreement is complete and accurate and that the Custodian is entitled to rely on it until such time as the Custodian receives notice of amendment in writing from the Client;
 - (iv) all Securities offered by the Client for inclusion under this agreement or acquired as a result of entering into this agreement are free of any charge, lien or encumbrance and that it will not permit any lien, charge or encumbrance to be created without the specific prior agreement of the Custodian in writing; and
 - (v) the Custodian shall be entitled to ignore any notice of a lien, charge, or encumbrance referred to in paragraph (iv) unless it has specifically agreed in writing to such a charge being registered over the Securities; and
- (g) it is a Wholesale Client within the meaning of the Corporations Act.

The Client will immediately inform the Custodian if any statement in this clause 10.2 ceases to be true and correct as of any date after the date of this document.

11. NOTICES

11.1 Form and method of notice

A notice referred to in this agreement:

- (a) must be in writing; and
- (b) must be left at the address of the addressee, or sent by prepaid ordinary post (airmail if posted to or from a place outside Australia) to the address of the addressee or sent by facsimile to the facsimile number of the addressee which is specified in this clause 11.1 or if the addressee notifies another address or facsimile number then to that address or facsimile number.

The address and facsimile number of each party is:

CUSTODIAN: Australia and New Zealand Banking Group Limited
Attention: Head of Account Management
Address: GPO Box 2842AA, Melbourne VIC 3001
Facsimile No: (03) 9273 2650
Telephone: (03) 9273 1896

CLIENT: As advised by the Client or Grove

GROVE: Grove Research & Advisory Pty Limited
Attention: Client Executive Officer
Address: Level 45, 2 Park Street Sydney NSW 2000
Facsimile: (02) 9264 0654
Telephone: (02) 9264 0001

11.2 Time notice becomes effective

- (a) A notice takes effect from the time it is received unless a later time is specified in it.
- (b) A letter, or facsimile is taken to be received:
 - (i) in the case of a posted letter, on the third (seventh, if posted to or from a place outside Australia) day after posting; and
 - (ii) in the case of a facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates the facsimile was sent in its entirety to the facsimile number of the recipient.

12. ASSIGNMENT

A party may not assign its rights and obligations under this agreement without the consent of the other parties, provided that Grove may assign its rights and obligations under this agreement to any of its Related Bodies Corporate.

13. MISCELLANEOUS

13.1 Exercise of rights

A party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by a party does not prevent a further exercise of that or of any other right, power or remedy. Failure by a party to exercise or delay in exercising a right, power or remedy does not prevent its exercise.

13.2 Waiver and Variation

A provision of or a right, power, authority, discretion or remedy created under this agreement may not be:

- (a) waived except in writing signed by the party granting the waiver;
- (b) varied except in writing signed by the parties.

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 document or default under this document as constituting a waiver of that right, power, authority, discretion or remedy.

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.

13.3 **Approvals and consent**

A party may give conditionally or unconditionally or withhold its approval or consent in its absolute discretion unless this agreement expressly provides otherwise.

13.4 **Remedies cumulative**

The rights, powers and remedies provided in this agreement are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this agreement.

13.5 **Survival of indemnities**

Each indemnity in this agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination of this agreement.

13.6 **Enforcement of indemnities**

It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this agreement.

13.7 **Indemnities continuing**

Each indemnity 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.

13.8 **Indemnities separate and independent**

Each indemnity is an additional, separate and independent obligation of the person giving it and no one indemnity limits the generality of any other indemnity.

13.9 **Indemnities not subject to reduction**

Each indemnity 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.

13.10 **Further assurances**

Each party agrees, at its own expense, on the request of the other party, to do everything reasonably necessary to give effect to this agreement and the transactions contemplated by it (including the execution of documents) and to use all reasonable endeavours to cause relevant third parties to do likewise.

14. **AMENDMENTS TO THIS AGREEMENT**

14.1 **Amendment by Custodian**

The Custodian shall be entitled to amend this agreement on 30 days written notice to Grove, and the variation will take effect on the expiry of that period, provided that if a variation is required in order to comply with Applicable Law, the amendment shall take effect at the time set out in the notice.

14.2 **Client to be notified of amendments**

Grove agrees to notify the Client of any variation under clause 14.1 and provide the Client with the amended Custody Terms and Conditions as soon as reasonably practicable after the Custodian provides the amended Custody Terms and Conditions to Grove.

14.3 **Amendments are binding**

The parties will be bound by any amendment made in accordance with this clause 14.

15. **CONFIDENTIALITY/PRIVACY**

15.1 **Confidentiality**

- (a) The Custodian agrees not to disclose information relating to this agreement or otherwise provided by the Client that is not publicly available except:
 - (i) as required by Applicable Law;
 - (ii) to any officer or employee of Grove or any third party engaged to provide services in accordance with this agreement; or
 - (iii) with the consent of the party who provided the information (such consent not to be unreasonably withheld).
- (b) If the Custodian is required to disclose information under clause 15.1(a)(i), it will if practicable and permitted by Applicable Law notify Grove of that requirement and will do so before the information is disclosed.
- (c) The Custodian will maintain the confidentiality of Client information and will only use or disclose such information for the purposes of providing services under this agreement.

15.2 **Privacy**

The Custodian will deal with personal information of the Client in accordance with its published privacy policy and comply with its obligations under Privacy Laws. The Client consents to the Custodian using such personal information in connection with the custodial services provided under this agreement in accordance with its published privacy policy and Privacy Laws.

16. **ENTIRE AGREEMENT**

This agreement and the other agreements between any of the parties in connection with this agreement signed on or around the date of this agreement constitute the complete and exclusive agreement of the parties with regard to its subject matter, and such documents supersede and terminate as of the date of this agreement all prior agreements or understandings, oral or written, between the Client, Grove, the Service Provider and the Custodian in relation to custodianship of the Assets.

17. **GOVERNING LAW**

This agreement and the relationship contemplated between the Custodian, Grove and the Client are governed by the laws in force in New South Wales and each party irrevocably and

unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and courts of appeal from them for determining any dispute concerning this agreement or the transactions contemplated by this agreement.

18. **COUNTERPARTS**

This Agreement may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.

[You do not need to sign this document. Grove will execute this document for you pursuant to the authority given under the Application From.]