

Custody Agreement

BrisConnections Management Company Limited

and

Trust Company Limited

BrisConnections Investment Trust

BrisConnections Holding Trust

BrisConnections Investment Trust 2

Custody Agreement

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Custody Agreement

Date	13 December 2007
Parties	<p>BRISCONNECTIONS MANAGEMENT COMPANY LIMITED (ACN 128 614 291) of Level 26, 60 Margaret Street, Sydney, NSW 2000 (BCMCL); and</p> <p>TRUST COMPANY LIMITED (ACN 004 027 749) of Level 4, 35 Clarence Street, Sydney (TCL).</p>
Recitals	<p>A BCMCL is the responsible entity of the BrisConnections Investment Trust and the BrisConnections Holding Trust and is the trustee of the BrisConnections Investment Trust 2.</p> <p>B BCMCL has the power and authority to appoint an agent to hold assets in relation to the Scheme.</p> <p>C TCL has indicated to BCMCL that it is willing to act as custodian of the Scheme on the terms and conditions set out in this Agreement.</p> <p>D In its capacity as trustee and (where relevant) responsible entity of the Scheme and in that capacity only, BCMCL wishes to appoint TCL as custodian of the Scheme. TCL has agreed to accept that appointment on the terms and conditions set out in this Agreement.</p>

IT IS AGREED as follows.

1. Definitions and interpretation

1.1 Definitions

In this Agreement (including the recitals) unless the context otherwise requires:

Account means a custody account or accounts established and maintained by TCL in the name of BCMCL or in such other name as BCMCL may direct by Proper Instructions for any property of the Scheme from time to time received and accepted by TCL or any Subcustodian for the account of BCMCL.

ASIC means the Australian Securities and Investment Commission and any successor organisation.

ASIC Policy means:

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- (a) ASIC Policy Statement 131: *Financial Requirements*, ASIC Policy Statement 133: *Managed Investments: Scheme property arrangements* and any other ASIC Policy Statement which relates to the holding of Scheme property; and
- (b) any supplementary or replacement policy issued by ASIC; and
- (c) includes any instruments issued by ASIC in connection with those policies.

Assets means the assets of the Scheme as may be transferred or delivered to TCL under this Agreement.

Associate means a body corporate that is an associate of TCL by application of Part 1.2, Division 2 of the Corporations Act.

Business Day means a week day on which banks are open for business in Sydney.

Cash means cash from any source.

Certificate of Title means a document evidencing title to any asset of the Scheme, including all scrip, certificates, deeds, documents or instruments creating or evidencing title to any Securities held by TCL under this Agreement.

Claim includes any claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding, right of action and claim for compensation.

Commencement Date means the date on which TCL first accepts Assets of the Scheme from BCMCL.

Communications means any notice, report, letter or other document which relates to any Asset held in the Account.

Compliance Committee means a compliance committee in relation to the Scheme, established by BCMCL under Part 5C.5 of the Corporations Act.

Contracts means any agreements or obligations relating to the Assets (or potential Assets) and includes Leases.

Governmental Agency means any:

- (a) government or governmental, semi-governmental or judicial entity or governmental agency; or
- (b) minister, department, office, commission, delegate, instrumentality, agency, board, governmental agency or organisation of any government.

It also includes any regulatory organisation established under statute or any stock exchange.

GST means the goods and services tax as imposed by the GST Law together with any related interest, penalties, fines or other charge but only to the extent they arise from the party's failure to pay when due.

GST Amount means any Payment (or the relevant part of the Payment) multiplied by the appropriate rate of GST (currently 10%).

GST Group has the meaning given to that term by the GST Law.

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GST Law has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999*, or, if that Act does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.

Initial Term means 1 year from the Commencement Date.

Input Tax Credit has the meaning given to that term by the GST Law.

Investment Manager means a person specified in a notice of appointment given to TCL in accordance with clause 7 of this Agreement in relation to whom TCL has not received Proper Instructions from BCMCL informing it of the revocation of that appointment.

Land includes any interest in land whether vested or contingent, freehold or leasehold, and whether at law or equity.

Lease means a lease, licence, or other right to occupy land.

BCMCL Appointed Subcustodian means a Subcustodian appointed pursuant to clause 5.2.

Payment means any amount payable under or in connection with this Agreement including any amount payable by way of fee, indemnity, reimbursement or otherwise and includes the provision of any non-monetary consideration.

Proper Instructions means instructions, including Standing Instructions, received by TCL from either BCMCL or any Investment Manager in relation to Assets in the Account in any of the following forms:

- (a) in writing signed by two persons either authorised, or purportedly authorised (an **authorised person**), on behalf of the sender;
- (b) by facsimile transmission signed by two authorised persons on behalf of the sender;
- (c) in Tested Communication; or
- (d) other means as may be agreed in writing upon from time to time by TCL and the party giving instructions.

Records means all books and records maintained by TCL in relation to the Assets held in the Account.

Representative Member has the meaning given to that term by the GST Law.

Scheme means any managed investment scheme as directed by BCMCL to TCL pursuant to a letter of direction.

Securities means units or other interests in managed investment schemes, mutual funds or other collective investment schemes, shares, stocks, and other equity interests of every type, evidences of indebtedness, other instruments representing any of those interests or rights or obligations to receive, purchase, deliver or sell any of those interests.

Securities System means a clearing agency which acts as a Securities depository or another book entry system for the central handling of Securities notified to BCMCL by TCL.

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Security Interest includes any mortgage, pledge, lien, charge or other security or any arrangement which gives a creditor a preferential right to an asset or its proceeds.

Standards means the Australian Accounting Standards issued by the Australian Accounting Standards Board and the Australian Auditing Standards issued by the Australian Accounting Research Foundation, as amended from time to time.

Standing Instruction means a Proper Instruction which is expressed to be a standing instruction and which applies in respect of like circumstances or like transactions.

Subcustodian means any person appointed by TCL (with BCMCL 's written agreement) to undertake subcustodial duties, including BCMCL Appointed Subcustodians, and may include:

- (a) a subsidiary of TCL;
- (b) any corporation which is a bank within the meaning of the **Banking Act** 1959 or a person who carries on State banking business within the meaning of paragraph 51(xiii) of the Constitution of the Commonwealth of Australia;
- (c) any person who carries on banking business in a country other than Australia; or
- (d) any person, wherever located, qualified to act as a custodian in the relevant jurisdiction,

but does not include a Securities System.

Tax Invoice has the meaning given to that term by the GST Law.

Taxable Supply has the meaning given to that term by the GST Law.

Taxes means all taxes of whatever nature lawfully imposed, including income tax, capital tax, recoupment tax, land tax, sales tax, payroll tax, fringe benefits tax, group tax, capital gains tax, profit tax, interest tax, GST, 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.

Term means the Initial Term and any extension of the Term in accordance with this Agreement.

Tested Communication means any form of electronic communication between BCMCL and TCL or between the Investment Manager and TCL which is authenticated by a mechanism agreed between TCL and BCMCL or the Investment Manager (as the case may be).

1.2 Interpretation

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

- (a) The **singular** includes the plural and conversely.
- (b) A **gender** includes all genders.

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- (c) Where a **word or phrase** is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a **person** includes a body corporate, an unincorporated body or other entity and conversely.
- (e) A reference to a **clause or Schedule** is to a clause of or schedule to this Agreement.
- (f) A reference to any **party** to this Agreement or any other agreement or document includes the party's successors and permitted assigns.
- (g) Mentioning anything after **include, includes** or **including** does not limit what else might be included.
- (h) A reference to any **agreement** or **document** is to that agreement or document as amended, novated, supplemented, varied or replaced from time to time, except to the extent prohibited by this Agreement.
- (i) A reference to any **legislation** or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it.
- (j) A reference to TCL or BCMCL includes, where the context permits a reference to their respective officers, employees and agents or any of them.
- (k) A reference to the **knowledge, belief or awareness** of any person in relation to a matter means the knowledge, belief or awareness that the person would have if it had made all reasonable enquiries of others who could reasonably be expected to have information relevant to the matter and, where those enquiries would have prompted a reasonable person to make further enquiries, made those further enquiries.
- (l) A reference to an accounting term is to be interpreted in accordance with approved accounting standards under the **Corporations Act**, Schedule 5 to the **Corporations Regulations** and, where not inconsistent with those accounting standards and that schedule, generally accepted principles and practices in Australia consistently applied by a body corporate or as between bodies corporate and over time.

2. Appointment of TCL

BCMCL appoints TCL and TCL accepts the appointment as the custodian of the Assets on the terms and conditions of this Agreement. TCL acknowledges that the Scheme may not be a registered managed investment scheme (as defined in the Corporations Act) at the time this Agreement is executed. However, TCL agrees to comply with the law and ASIC Policy as if the Scheme was a registered managed investment scheme at all times while this Agreement is in force.

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3. Term

This Agreement commences on the Commencement Date and continues for the Initial Term. If at the end of the Initial Term neither party has given notice to terminate, this Agreement shall continue until terminated under clause 18.

4. Responsibilities of TCL as custodian

4.1 Holding property

- (a) TCL holds all the Assets as custodian for BCMCL, and BCMCL is absolutely entitled to the Assets subject to the rights and interests of members of the Scheme.
- (b) TCL must hold the Assets as follows:
 - (i) In the case of Cash, in one or more bank accounts.
 - (ii) In the case of Securities, in an Account or, with the prior written approval of BCMCL, in its own name. If TCL is to hold Securities in its own name it must:
 - (A) perform regular reconciliation procedures appropriate to the nature of the Securities; and
 - (B) ensure the Securities are held separately from its own assets.
 - (iii) In the case of any other Assets, in such manner approved by BCMCL by Proper Instructions.

4.2 Actions of TCL

- (a) Subject to clause 4.3, TCL must not effect any transactions involving the Assets unless it has received Proper Instructions and must only give effect to those transactions in accordance with those Proper Instructions.
- (b) TCL has no obligation to act in accordance with Proper Instructions to the extent that they conflict with applicable law or regulations. TCL must advise BCMCL promptly if it considers that it is prevented by applicable law or regulations or local market practice from acting in accordance with any Proper Instruction. Nothing in this clause 4.2 imposes an active duty on TCL to ensure that Proper Instructions do not conflict with applicable law or regulations.
- (c) BCMCL will only provide Proper Instruction for proper purposes. TCL is not under any obligation to verify the purposes or propriety of any purpose for which any transaction is being effected.
- (d) TCL shall be under no obligation to act in accordance with a Proper Instruction if it reasonably considers that there are insufficient assets to cover the liabilities which may arise as a result of the Proper Instruction. TCL must notify BCMCL immediately if it proposes to not act on a Proper Instruction in accordance with this clause 4.2(d).

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4.3 Collection of income without Proper Instructions

Unless TCL receives Proper instructions to the contrary, TCL shall receive all income and payments relating to the Assets and credit the same to the Account. TCL shall notify BCMCL promptly if, to TCL's actual knowledge, any income due to the Account is not received as and when due.

4.4 Communications relating to Assets

Unless it receives Proper Instructions to the contrary, TCL must promptly provide to BCMCL all Communications received by TCL (or copies of them) so that there is adequate time for BCMCL to give Proper Instructions.

4.5 Payment of Cash

When given Proper Instructions TCL shall pay out, or direct any Subcustodian to pay out, Cash in the Account in the following cases:

- (a) upon the purchase of Securities for the Account;
- (b) upon exercise of subscription, purchase or other similar rights represented by Securities;
- (c) for the payment of interest, Taxes or distributions;
- (d) in connection with any loans, but only against receipt of collateral as specified in Proper Instructions; or
- (e) for any other purpose upon receipt of, and in accordance with, Proper Instructions which shall specify the amount of the payment, the purpose of the payment and to whom the payment must be made.

4.6 Voting

TCL shall promptly:

- (a) notify BCMCL of any voting rights which to TCL's actual knowledge may be exercised in connection with any Asset in the Account; and
- (b) provide to BCMCL all written information received by it in relation to those voting rights.

TCL shall exercise (or shall procure that any Subcustodian exercises) in its name or in BCMCL's name, in accordance with and only upon Proper Instructions, any voting rights attached to Assets in the Account.

4.7 Compliance with standards

- (a) TCL shall comply with the Standards applicable to it in the performance of its obligations under this Agreement.
- (b) TCL must use reasonable endeavours to comply with and ensure that its actions do not, to the best of its actual knowledge, put BCMCL in breach of the requirements of the Corporations Act, Corporations Regulations and ASIC Policy so far as they relate to managed investment scheme property arrangements. Nothing in this clause imposes an active duty on TCL to ensure that Proper

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Instructions do not conflict with the Corporations Act, Corporations Regulations or ASIC policy.

- (c) The costs of TCL complying with the Standards applicable to it and issuing the statements and certificates referred to in Schedule 1 in respect of TCL's compliance with its obligations under paragraphs (a) and (b) shall be borne by TCL except as specified in Schedule 1.

4.8 TCL's compliance obligations

TCL agrees to:

- (a) at all times:
 - (i) open and maintain safe custody records concerning the Scheme in the name of the Scheme;
 - (ii) provide and maintain proper records of all transactions for which it is responsible in relation to the Scheme;
 - (iii) maintain proper internal control structures and compliance systems that are designed to prevent any material breach of this Agreement by TCL;
 - (iv) ensure the internal controls comply with normal professional standards and requirements of any applicable regulator (including ASIC Policy) or industry body; and
 - (v) ensure that its staff are properly trained in relation to the applicable control structures and compliance systems;
- (b) keep BCMCL informed as to the way Scheme property is held;
- (c) fully document its internal control structures and compliance systems and ensure that these are reasonably acceptable to the auditor of the Scheme's compliance plan;
- (d) at the reasonable expense of BCMCL, take such action as BCMCL reasonably requires to enable BCMCL to comply with its obligations under the Corporations Act, and any other legislation regulating the conduct of managed investment schemes or under any compliance plan and to enable it to comply with any obligation or requirement imposed on BCMCL by the ASIC or the auditors of the compliance plan; and
- (e) provide to BCMCL such reports, information and certifications as specified in Schedule 1 at TCL's expense except as specified in Schedule 1.

4.9 Physical access

TCL shall provide BCMCL, its agents and professional advisers access at reasonable times to TCL's premises so that BCMCL may satisfy itself as to the quality, efficiency, integrity and security of TCL's systems and TCL's compliance with this Agreement. The proposed time, purpose of attendance and names of BCMCL's representatives attending TCL's premises must be notified to TCL prior to such attendance. The proposed time must

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be agreed by TCL prior to the attendance and this agreement must not be unreasonably withheld.

4.10 Acts TCL will do upon Proper Instructions

- (a) Subject to paragraph (c), TCL will act in accordance with all Proper Instructions.
- (b) In particular, subject to paragraph (c), upon receipt of Proper Instructions, TCL will:
 - (i) enter into contracts to purchase any Land which is to become an Asset;
 - (ii) enter into Leases of Land;
 - (iii) enter into mortgages, charges or other securities over Assets; and
 - (iv) enter into any other contracts or transaction documents,
 - (v) collectively the **Documentation**.
- (c) TCL need not enter into any of the Documentation unless and until:
 - (i) if necessary in TCL's reasonable opinion, BCMCL has provided TCL with independent advice on TCL's obligations under the Documentation;
 - (ii) the Documentation includes TCL's standard limitation of liability clause as set out in Schedule 7, or such other limitation of liability clause agreed by TCL and BCMCL, and TCL is reasonably satisfied that its personal liability under the Documentation is appropriately limited;
 - (iii) TCL is reasonably satisfied that sufficient funds are available in the Account to meet and continue to meet any financial obligations under or in respect of the Documentation;
 - (iv) where the Documentation involves the purchase of an interest in Land, TCL 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 TCL as an insured party; and
 - (v) it is reasonably satisfied and has received such assurances as it reasonably requires that its personal liability is appropriately limited and that any liabilities it incurs as custodian will be met.

5. Subcustodians and securities systems

5.1 Appointment of Subcustodians

TCL may, with BCMCL 's prior approval:

- (a) appoint or remove any Subcustodian; or
- (b) participate in (or allow Subcustodians to participate in) any Securities System.

TCL remains liable for the acts or omissions of any Subcustodian (excluding any BCMCL Appointed Subcustodian) it appoints. Each such appointment must be in writing and must be in accordance with ASIC Policy and the conditions of BCMCL's responsible entity

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dealers licence or Australian financial services licence (as the case may be) authorising BCMCL to operate a managed investment scheme.

5.2 BCMCL Appointed Subcustodians

BCMCL may direct TCL to appoint a particular Subcustodian. TCL must follow the direction subject to its right to be reasonably satisfied with the terms of the appointment. Subject to TCL exercising all due care and diligence in monitoring BCMCL Appointed Subcustodians, TCL will not be liable for the acts or omissions of any BCMCL Appointed Subcustodian.

6. Reporting and records

6.1 Records of TCL as Custodian

- (a) The ownership of the Assets (whether held by TCL or a Subcustodian or in a Securities System as authorised by this Agreement) must be clearly recorded by TCL.
- (b) TCL must keep accurate and detailed records of all receipts, disbursements and other transactions for each Asset. All Records must be open to inspection during normal business hours by BCMCL or any Compliance Committee (or any representative of either BCMCL or any Compliance Committee).
- (c) Without limiting paragraph (a) or (b), all Records must be kept as reasonably requested by BCMCL.

7. Investment manager

7.1 Appointment of Investment Manager

BCMCL may appoint an Investment Manager or Investment Managers. BCMCL will promptly give notice to TCL, in the form of Schedule 5, of the appointment of any Investment Manager, and of the scope of that Investment Manager's authority.

7.2 Terms of appointment

BCMCL must ensure that its appointment of an Investment Manager includes an authorisation for the Investment Manager to provide Proper Instructions.

7.3 Reliance upon Proper Instructions

- (a) TCL is entitled to rely upon Proper Instructions from the Investment Manager, subject to any limitations as BCMCL and TCL may agree in writing.
- (b) BCMCL will use its best endeavours to procure that the Investment Manager issues Proper Instructions in the form, and using the methods, set out in this Agreement.
- (c) For the avoidance of doubt, TCL is entitled to rely on the names and specimen signatures of persons notified to it by BCMCL under this Agreement as being

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authorised by BCMCL to give Proper Instructions and TCL shall not be liable for acting in accordance with such Proper Instructions.

7.4 Termination of appointment

BCMCL will promptly notify TCL by Proper Instruction of the termination of the appointment of the Investment Manager. The duties, rights and powers of TCL shall be unaltered until that Proper Instruction is received by TCL. Following receipt of that Proper Instruction, TCL must cease accepting Proper Instructions from, and providing information to, the Investment Manager.

8. Claims and proceedings

- (a) TCL must immediately notify BCMCL of any Claim or potential Claim relating to the Assets of which it is notified in writing and give full details of all relevant circumstances.
- (b) BCMCL, at its own expense, will be responsible for managing any Claim of the kind referred to in paragraph (a) (including bringing, defending or settling any proceeding relating to the Claim). However, TCL must, at BCMCL's reasonable expense, provide all information and assistance that BCMCL may reasonably require in relation to managing the Claim. BCMCL agrees to indemnify TCL for providing any information and assistance it reasonably requires in accordance with this clause.

9. Representations and warranties

9.1 BCMCL's representation and warranties

BCMCL represents and warrants to TCL that as at the date of this Agreement and during the term of this Agreement:

- (a) It has the power to enter into and perform its obligations under this Agreement and this Agreement is binding on it.
- (b) This Agreement does not violate any obligation by which BCMCL is bound, whether arising by contract, operation of law or otherwise.
- (c) It is entitled to be indemnified from the assets in the Scheme and to the best of its knowledge there will be sufficient assets in the Scheme to meet any liability which TCL has properly incurred in accordance with this Agreement.
- (d) This clause 9.1 is not subject to clause 11.

9.2 TCL's representations and warranties

TCL represents and warrants to BCMCL that as at the date of this Agreement and during the term of this Agreement:

- (a) It is a corporation properly formed and of good standing in the jurisdiction of its incorporation.

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- (b) It has the power to enter into and perform its obligations under this Agreement and this Agreement is binding on it.
- (c) It holds such licences and authorities as are necessary to lawfully perform its obligations under this Agreement.
- (d) It has net tangible assets of not less than \$5,000,000 or such greater amount prescribed by ASIC Policy or BCMCL 's dealers licence or Australian financial services licence (as the case may be).
- (e) No Asset in the Account is or will, during the term of this Agreement, be subject to any right, charge, security interest, mortgage, lien or other encumbrance in its favour or in favour of any Subcustodian or its creditors, except as permitted under ASIC Policy and approved by BCMCL by Proper Instruction.
- (f) It will comply with ASIC Policy and any applicable laws as they relate to its duties as custodian in relation to the Scheme.
- (g) This Agreement does not violate any obligation by which TCL is bound, whether arising by contract, operation of law or otherwise.
- (h) It will at all times have full disaster recovery procedures and back up facilities in place in respect of the records and information it maintains in relation to BCMCL and the Scheme under this Agreement.
- (i) It will not hold assets of the Scheme in an account holding assets of any other scheme or any other customers of TCL unless it is permitted to do so under this Agreement or by BCMCL.
- (j) It has an organisational structure that supports the segregation of Scheme property from its own assets as required by ASIC Policy.
- (k) Its staff have the experience, qualifications, knowledge and skill necessary to perform the functions of a custodian under this Agreement as required by ASIC Policy.
- (l) It will not sub-contract any of its responsibilities under this Agreement without the consent of BCMCL (which may be conditional) except as provided for under this Agreement.
- (m) It will accept full responsibility for loss or damages arising from fraud, negligence or unauthorised actions of its staff and of any of its sub-contractors as set out under this Agreement.
- (n) It has the systems and procedures necessary for it to perform its obligations under this Agreement.

10. Liability and indemnity

10.1 Standard of care

TCL agrees to exercise and to procure that its agents and Subcustodians exercise all due care and diligence in carrying out the provisions of this Agreement. TCL will not be liable

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to BCMCL for any action taken or omitted to be taken by it or any Subcustodian or other agent where TCL or the Subcustodian or agent acted in good faith and without negligence, but will be liable for any action taken or omitted to be taken by it or any Subcustodian (excluding any BCMCL Appointed Subcustodian) or other agent in breach of the standard of care specified in this clause.

10.2 Specific limitations

Subject to TCL meeting the requisite standard of care specified in clause 10.1, TCL will not be liable to BCMCL for any damage, loss or expense resulting from or caused by:

- (a) events or circumstances beyond TCL's reasonable control including, nationalisation, expropriation, currency restrictions, disruption of the normal procedures and practices of any Securities market, strikes or other labour disputes, acts of war or terrorism, riots, revolution or acts of God;
- (b) errors by BCMCL or the Investment Manager in their Proper Instructions to TCL;
- (c) acts, omissions or insolvency of a Securities System or BCMCL Appointed Subcustodian; or
- (d) complying with a Proper Instruction.

10.3 Responsibility for loss

- (a) If BCMCL, its officers, employees and agents (the **BCMCL Group**) suffer any claim, loss, liability, damage, amount paid in settlement, cost or expense (including reasonable legal fees):
 - (i) arising from TCL's, its Subcustodian's or other agent's performance of, or failure to perform, its obligations under this Agreement; and
 - (ii) for which TCL is liable under this Agreement,TCL shall indemnify the BCMCL Group for that claim, loss, liability, damage, amount paid in settlement, cost or expense (including reasonable legal fees).
- (b) The indemnity in clause 10.3(a) is a continuing and separate obligation and survives termination of this Agreement. The BCMCL Group need not incur expenses or make payment before enforcing a right of indemnity under this Agreement. BCMCL may enforce this indemnity on behalf of other persons in the BCMCL Group.
- (c) The liability of TCL under clauses 10.3(a) and (b) shall not exceed the amount which BCMCL must contribute to the Scheme or pay to any Scheme member in order to compensate the Scheme or any Scheme member for the diminution of the value of any Assets to which the damage or loss relates and reasonable expenses incurred by BCMCL in connection with remedying the loss or damage.
- (d) TCL shall not be liable to indemnify BCMCL to the extent that the amount contributed to the Scheme or paid to a Scheme member by BCMCL is greater than it otherwise would have been as a result of any failure by BCMCL to act promptly after the occurrence of the events resulting in such damage or loss or otherwise to mitigate the damage or loss.

Custody Agreement

- (e) Except as provided in clauses 10.3(c) and (d), TCL is not liable to BCMCL or any person for indirect, special or consequential loss for an amount in excess of the fees it has been paid under this Agreement.

10.4 Disputes or conflicting claims

If any dispute or conflicting claim is made by any person or persons with respect to any asset in the Account, TCL shall be entitled to refuse to act in respect of that asset until either:

- (a) such dispute or conflicting claim has been finally determined by a court of competent jurisdiction or settled by agreement between conflicting parties, and TCL has received written evidence satisfactory to it of such determination or agreement; or
- (b) TCL has received an indemnity, reasonably satisfactory to it, to hold it harmless from and against any and all loss, liability and expense which TCL may incur as a result of its actions.

10.5 TCL not responsible for title

As long as TCL has exercised the requisite standard of care specified in clause 10.1, TCL shall not be responsible for the title, validity or genuineness, including good deliverable form, of any Asset or evidence of title to an Asset.

10.6 Indemnity

- (a) BCMCL agrees to indemnify TCL for any action taken or omitted to be taken by it and from all claims, expenses, demands, damages, losses and liabilities relating to Assets and the holding of Assets where TCL acts in good faith and without negligence, but BCMCL will not indemnify TCL for any action taken or omitted to be taken by TCL in breach of the standard of care specified in this clause where loss or damage has occurred.
- (b) The indemnity in clause 10.6(a) is a continuing and separate obligation and survives termination of this Agreement.

11. BCMCL 's capacity

11.1 BCMCL 's capacity

TCL acknowledges that:

- (a) BCMCL enters into this Agreement solely in its capacity as trustee and responsible entity for the time being of the Scheme;
- (b) subject to clauses 9.1 and 11.4, BCMCL shall not in any circumstances be liable under this Agreement in its personal or private capacity but solely as trustee and responsible entity for the time being of the Scheme; and
- (c) despite any other provision of this Agreement except clauses 9.1 and 11.4, the liability of BCMCL under this Agreement shall at all times and for all purposes be

Custody Agreement

construed solely as a liability or obligation to be satisfied out of and only to the extent of the assets of the Scheme.

11.2 Limited recourse

Without limiting clause 11.3, where TCL makes a Claim or pursues a remedy against BCMCL in respect of any cause of action, claim or loss arising:

- (a) under or in connection with this Agreement;
- (b) in connection with any transaction, conduct or other agreement contemplated by this Agreement;
- (c) in connection with any secured obligations under this Agreement; or
- (d) under or in connection with (to the extent permitted by law) any representation or undertaking given in connection with this Agreement,

(together, an **Agreement Claim**) TCL, subject to clause 11.4:

- (e) shall only be entitled to recover an amount of damages which does not exceed the amount which BCMCL actually recovers from the assets of the Scheme by exercising its rights of indemnity; and
- (f) shall not be entitled to pursue a remedy which would require BCMCL to expend monies in excess of the amount which BCMCL (taking into account all other liabilities of the Scheme) is able and entitled to recover from the assets of the Scheme.

11.3 Acknowledgment of limitations

TCL agrees and acknowledges that it must not, in respect of any Agreement Claim:

- (a) subject to clause 11.4, bring proceedings against BCMCL in its personal capacity;
- (b) seek to appoint an administrator or liquidator to BCMCL;
- (c) commence the winding-up, dissolution, official management or administration of BCMCL; or
- (d) appoint a receiver, receiver and manager, administrative receiver or similar official to all or any of the assets of BCMCL except to the extent that the steps taken affect any assets of the Scheme or the right of recourse of BCMCL against, and indemnity from, the assets of the Scheme and nothing else.

11.4 Exceptions

- (a) If BCMCL acts negligently, with wilful misconduct or in breach of trust with a result that:
 - (i) its right of indemnity, exoneration or recoupment out of the assets of the Scheme; or
 - (ii) the actual amount recoverable by it in exercise of those rights,is reduced in whole or in part or does not exist, then to the extent that such right or the amount so recoverable is reduced or does not exist, BCMCL will be personally

Custody Agreement

liable to TCL and will indemnify TCL in respect of any cause of action, claim or loss arising in relation to an Agreement Claim.

- (b) If the liability arises as a result of a statute imposing strict or absolute liability, then to the extent that such liability is not caused by any fault of TCL, its Subcustodians or agents, BCMCL will be personally liable to TCL and will indemnify TCL in respect of any cause of action, claim or loss arising in relation to an Agreement Claim.

12. Security codes

If TCL has issued to BCMCL security codes, passwords or test keys so that TCL may verify that certain transmissions of information, including Proper Instructions, have been originated by BCMCL, TCL will be kept indemnified by and shall not be liable to BCMCL for any action taken or omitted by it in reliance upon receipt by TCL of transmissions of information with the proper security code, password or test key, including instructions purporting to be Proper Instructions, which TCL reasonably believes to be from BCMCL.

13. Tax law

13.1 Domestic Tax law

TCL will not be responsible or have any liability for any obligations imposed on BCMCL, the Scheme or TCL as custodian of the Assets by the tax law of Australia or any State or Territory of Australia.

13.2 Tax reclamation services

TCL shall use all reasonable efforts to assist BCMCL to prepare and submit claims for Tax exemptions or refunds, in respect of Assets in the Account under the Tax laws of any jurisdiction for which BCMCL has provided relevant information.

14. Fees and expenses

BCMCL must pay TCL the fees described in Schedule 2 as compensation for TCL's services and expenses as custodian until different compensation arrangements are agreed between BCMCL and TCL in writing.

15. Confidentiality

- (a) Subject to paragraph (c), each party agrees that it will treat as confidential the terms and conditions of this Agreement and all information provided to it by the other party regarding the other's business and operations.
- (b) Subject to paragraph (c), all such information provided by a party will only be used by any other party for the purpose of giving effect to this Agreement and, except as may be required in carrying out this Agreement, must not be disclosed to any third party without the prior written consent of the party providing the information.

Custody Agreement

- (c) The obligations in paragraphs (a) and (b) do not apply to any information:
 - (i) that is publicly available when provided or which becomes publicly available later (other than through a breach of this Agreement); or
 - (ii) that is required or reasonably requested or required to be disclosed by any bank or other regulatory examiner (including ASIC and the Australian Stock Exchange Limited) of TCL, BCMCL, or any Subcustodian, any auditor of the parties, by judicial or administrative process or otherwise by applicable law or regulation; or
 - (iii) (without limiting (i) and (ii)) which in BCMCL's reasonable opinion is necessary or desirable that BCMCL disclose in a prospectus or like document provided that BCMCL must seek TCL's consent to the disclosure.

16. Instructions

- (a) BCMCL will give a notice to TCL in the form of Schedule 3 specifying the names and specimen signatures of BCMCL persons authorised to give Proper Instructions. TCL is entitled to rely upon the identity of those persons, or persons that reasonably appear to be those persons, until it receives written notice from BCMCL to the contrary. BCMCL may remove and appoint persons authorised to give Proper Instructions by giving a notice to TCL signed by two persons authorised to give Proper Instructions or by issuing another notice in the form of Schedule 3.
- (b) TCL has no obligation to act in accordance with Proper Instructions to the extent that they conflict with applicable law or regulations. TCL will not be liable for any loss resulting from a delay while it obtains clarification of any Proper Instructions if it has sought clarification from the giver of the relevant Proper Instruction immediately upon becoming aware that clarification is required. TCL must notify BCMCL immediately of any difficulty it is experiencing in relation to Proper Instructions.
- (c) BCMCL must provide Proper Instructions for proper purposes. TCL has no obligation to verify the purposes or the propriety of any purpose for which any transaction is being effected.

17. Notices

17.1 Giving notice

Other than Proper Instructions, any demand, consent, notice or other communication authorised or required to be given or made under this Agreement must be in writing or by Tested Communication and, if in writing, may be given by facsimile post or hand on the facsimile number or at the address specified in Schedule 4 or on another facsimile number or at another address as may be notified by the addressee.

Custody Agreement

17.2 When notice taken to be given

Subject to sub-clause 17.3 a notice:

- (a) given by facsimile shall be deemed to be given on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages, the correct destination facsimile machine number and the result of the transmission as "OK". If a notice would be deemed to be given or made after normal business hours of the recipient, the notice is taken to be given on the next following Business Day;
- (b) sent by prepaid post (airmail, if appropriate) to have been given where posted to an address in the same country as the sender's on the second Business Day following the day on which it was posted or where posted to an address in another country on the seventh Business Day following the day on which it was posted; and
- (c) delivered by hand during normal business hours of the recipient on a Business Day is taken to have been given on that day, or in any other case a hand delivery shall be deemed to have been given on the Business Day following the day of delivery.

17.3 Communications after prescribed time

Despite clause 17.2 any communications received by the recipient after 4:00 pm (or such other time as agreed by the parties from time to time) will be taken to have been received on the next Business Day but TCL will use reasonable endeavours to process any communication received by it as soon as possible after receipt.

18. Termination

18.1 Termination upon notice

After expiration of the Initial Term, this Agreement may be terminated by either BCMCL or TCL by notice to the other party, such termination, subject to clause 18.2, to take effect 60 days after the date of delivery unless a different period is agreed to in writing by BCMCL and TCL.

18.2 Immediate termination

Either party may terminate this Agreement immediately upon the happening of one or more of the following events:

- (a) the making of any agreement for the sale of shares in the other party entitling the incoming shareholder to cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of that other party;
- (b) the other party ceases or threatens to cease to carry on business and does not assign or novate its rights and obligations under this Agreement to an Associate;
- (c) the other party goes into liquidation, receivership or voluntary administration or an official manager or administrator is appointed with respect to its undertaking, property or assets, or any part of them;

Custody Agreement

- (d) the other party commits a significant and material breach of this Agreement which is not remedied by that other party within 10 Business Days (or such longer period agreed between the parties) of it being required to do so;
- (e) the other party enters into an arrangement or composition with any of its creditors or proposes to do so;
- (f) the making of an order or the passing of a resolution for the winding up of the other party, or if a petition for such order is presented or a meeting is convened for the purposes of considering such a resolution unless the winding up is for the purpose of a reconstruction or an amalgamation; or
- (g) BCMCL is replaced as the trustee and responsible entity of the Scheme.

18.3 Provisions survive termination

The provisions of clauses 9, 10, 11, 13, 15, 18.5, 18.6, 18.7 and 18.8 of this Agreement are continuing obligations and will survive termination of this Agreement for any reason.

18.4 Acts following termination

Upon termination of this Agreement:

- (a) TCL must report to BCMCL on all matters then outstanding;
- (b) upon receiving TCL's report:
 - (i) BCMCL must pay to TCL upon demand such compensation as may be due as of the date of such termination; and
 - (ii) TCL must pay to BCMCL upon demand such amounts as may be due under the Agreement as of the date of such termination;
- (c) the provisions of clauses 18.5 to 18.8 (inclusive) will apply to regulate the delivery up by TCL of Assets (including Assets held by any Subcustodian or in a Securities System).

18.5 Delivery to new custodian

If a successor custodian is appointed by BCMCL, TCL must as soon as practicable and, in any case, within a reasonable time after termination, deliver to the successor custodian, its agents or subcustodians or as otherwise agreed, duly endorsed and in a form suitable for transfer (together with, where relevant, signed instruments of transfer), all Assets then held by it under this Agreement and must transfer to any account of the successor custodian nominated by the successor custodian all of BCMCL's Securities held in a Securities System.

18.6 Delivery on Proper Instructions

Subject to clause 18.7, if no such successor custodian is appointed TCL must, in like manner, upon receipt of Proper Instructions from BCMCL, deliver and transfer such assets as directed.

Custody Agreement

18.7 Other delivery

If no successor custodian is appointed and no Proper Instructions are received from BCMCL after TCL has taken reasonable steps to obtain such Proper Instructions, TCL may:

- (a) at its discretion deliver the assets, books and records of the Scheme to a bank or other trust company doing business in Australia (and BCMCL appoints TCL as its attorney to give effect to such delivery), to be held and disposed of in accordance with the terms of this Agreement so long as:
 - (i) TCL gives notice of the identity of the bank or trust company to BCMCL before any such delivery occurs; and
 - (ii) TCL is reasonably satisfied that any such bank or trust company fulfils the requirements of the Corporations Act and ASIC Policy relating to those who hold property of a registered scheme;
- (b) continue to hold the assets until Proper Instructions are received on the basis that TCL's obligations during that period will be limited to safekeeping of the assets; or
- (c) at its discretion but subject to ASIC Policy deliver the assets, books and records of the Scheme to either BCMCL or a liquidator, receiver, administrator or official manager or administrator appointed with respect to BCMCL (and BCMCL appoints TCL as its attorney to give effect to such delivery).

18.8 TCL's remuneration

If Assets remain in the possession of TCL, its agents or its Subcustodians after the date of termination of this Agreement, TCL will be entitled to fair compensation for its services during this period unless the Assets have remained in the possession of TCL, its agents or its Subcustodians due to some fault by TCL, its agents or Subcustodians.

19. Insurance

TCL must, throughout the term of this Agreement, effect and maintain at its own expense:

- (a) professional indemnity cover to the reasonable satisfaction of BCMCL for an amount no less than \$50,000,000; and
- (b) fraud insurance cover to the reasonable satisfaction of BCMCL for an amount no less than \$20,000,000.

20. Goods and Services Tax

- (a) TCL and BCMCL agree that:
 - (i) all Payments have been calculated without regard to GST;
 - (ii) each party will comply with its obligations under the *Trade Practices Act 1974* when calculating the amount of any Payment and the amount of any relevant Payments will be adjusted accordingly;

Custody Agreement

- (iii) if the whole or any part of any Payment is the consideration for a Taxable Supply, the payer must pay to the payee an additional amount equal to the GST Amount, either concurrently with that Payment or as otherwise agreed in writing;
 - (iv) any reference to a cost or expense in this Agreement excludes any amount in respect of GST forming part of the relevant cost or expense when incurred by the relevant party for which that party can claim an Input Tax Credit. That relevant party will be assumed to be entitled to full Input Tax Credits unless it can claim otherwise prior to the date of any Payment;
 - (v) if a party is a member of a GST Group, references to GST for which the party is liable and to Input Tax Credits to which the party is entitled include GST for which the Representative Member of the GST Group is liable and Input Tax Credits to which the Representative Member is entitled; and
 - (vi) the payee will provide to the payer a Tax Invoice at the same time as any GST Amount is payable.
- (b) TCL will provide to BCMCL any information reasonably requested by BCMCL relating to TCL's Input Tax Credits and the amount of any costs incurred by TCL directly in connection with supplies made by TCL under this Agreement.

21. Non-exclusive Services

The services of TCL under this Agreement are not exclusive. TCL is free to provide similar services to others.

22. Amendment

This Agreement may be amended only by another agreement executed by the parties.

23. Governing law

This Agreement is governed by the laws of New South Wales. The parties submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

24. Assignment

- (a) The rights and obligations of each party under this Agreement are personal. They cannot be assigned, charged or otherwise dealt with, and neither party shall attempt or purport to do so, without the prior written consent of the other.
- (b) if BCMCL ceases to be the trustee and responsible entity of the Scheme then, subject to clause 18.2, its rights and obligations under this Agreement are deemed to be novated to any replacement trustee and responsible entity.

Custody Agreement

25. Stamp duty and costs

Each party shall bear its own costs arising out of the preparation of this Agreement but BCMCL shall bear any stamp duty (including any fines and penalties) chargeable on this Agreement and any instrument entered into under this Agreement.

26. Counterparts

This Agreement may be executed in any number of counterparts. All counterparts taken together will be taken to constitute one agreement.

27. Entire agreement

This Agreement contains all the contractual arrangements of the parties with respect to the transactions to which it relates. It supersedes all earlier conduct by the parties with respect to those transactions.

Custody Agreement

EXECUTED in Sydney

Executed by **BRISCONNECTIONS**)
MANAGEMENT COMPANY LIMITED:)

by the party's attorney pursuant to)
power of attorney dated 7 Dec 07 who)
states that no notice of revocation of the)
power of attorney has been received in)
the presence of:)

Witness

CHRISTOPHER MARK TAYLOR
Corrs Chambers Westgarth
600 Bourke Street, Melbourne Vic 3000
An Australian Legal Practitioner within the
Name of Witness (Print) Meaning of the Legal Profession Act 2004

Attorney

Tamira D Herbst

Name of Attorney (print)

THE COMMON SEAL of **TRUST**)
COMPANY LIMITED was affixed by)
authority of its Board of)
Directors in the presence of:)



Signature of Authorised Person

Signature of Authorised Person

Office held

**MICHAEL JOHN
BRITTON**

Office held

VICKI LEE ALLEN

Name of Authorised Person (Print Name)

Name of Authorised Person (Print Name)

Seal Register Ref No:

TCA 534-07-583

Custody Agreement

SCHEDULE 1

Reports and Information (Clause 4.8)

TCL must provide the following reports and information to BCMCL:

Subject	Description	Frequency	Deadline
Compliance	<p>1. Written report confirming that the obligations under this Agreement in respect of maintaining proper internal control structures and compliance systems have been complied with throughout the relevant quarter.</p> <p>(To be signed by two persons authorised by TCL to give instructions under this Agreement).</p>	quarterly	within 14 business days of end of each calendar quarter
	<p>2. Written report from TCL's auditors in the form of Australian Auditing Standard AUS810 "Special Purpose Reports on the Effectiveness of Control Procedures" and in accordance with the Standards confirming their opinion as to whether TCL's internal control structures and compliance systems have been properly designed and operated during the relevant year.</p> <p>(Auditor's report is to cover the following:</p> <ul style="list-style-type: none"> · Accounting system · internal accounting control; and · procedures for safeguarding Cash and Securities including Cash and Securities deposited and/or maintained in a Securities System or with a Sub-Custodian.) 	annually	by 31 May in each year
	<p>3. Notice disclosing any breach or likelihood of a breach occurring (other than trivial breaches) by TCL of any provision of this Agreement</p> <p>(To be signed by two persons authorised by TCL to give instructions under this Agreement)</p>	as required	as soon as practicable after TCL becomes aware of the breach or likelihood of breach

Custody Agreement

Subject	Description	Frequency	Deadline
	<p>4. Such information or certifications as BCMCL reasonably requires to enable BCMCL to comply with its obligations under the Corporations Act and any other legislation regulating the conduct of managed investment schemes or under any compliance plan and to enable it to comply with any obligation or requirement imposed on BCMCL by the ASIC or the auditors of the compliance plan. In particular the following shall be provided to BCMCL:</p> <p>(a) certification that Scheme Assets are clearly identified as Scheme Assets in TCL's records.</p> <p>(b) certification that Scheme Assets are held in TCL's name.</p> <p>(c) certification that Scheme Assets are held separately from BCMCL's property and property of any other schemes or that ASIC relief is complied with.</p> <p>(d) certification that TCL's staff:</p> <p>(i) have adequate qualifications, skills and resources;</p> <p>(ii) are adequately separated from operational staff; and</p> <p>(iii) can report directly to the compliance committee or the board of directors of BCMCL.</p> <p>(e) certification in relation to income from Scheme Assets received.</p>	<p>quarterly</p> <p>quarterly</p> <p>quarterly</p> <p>annually</p> <p>monthly</p>	<p>14 Business Days after calendar quarter end</p> <p>14 Business Days after calendar quarter end</p> <p>14 Business Days after calendar quarter end</p> <p>Within 30 days of each financial year end</p> <p>14 Business Days after month end</p>

Custody Agreement

Subject	Description	Frequency	Deadline
	(f) other information and certifications requested (at BCMCL's expense). (To be signed by two persons authorised by TCL to give instructions under this Agreement)	on request	Within 10 Business Days of receipt of a request
Scheme Assets	5. Documents held in 'security packet report	monthly	5 Business Days after calendar month end
	6. Documents outstanding report of any documents TCL should be holding that are missing	quarterly	14 Business Days after calendar quarter end
	7. Asset listing report of Scheme Assets held by TCL	monthly	5 Business Days after calendar month end
	8. Transactions Report	monthly	14 Business Days after month end
Other	9. TCL's performance measured against key performance indicators (see Schedule 6)	half yearly	14 Business Days after calendar half year end
	10. TCL's compliance with ASIC Policy	quarterly	14 Business Days after calendar quarter end
	11. Notice of any change to way Assets are held	on change	Prior to change, or if not possible, as soon as practicable after change
	12. List of cheques sent out detailing date sent, payee, amount and cheque number	on cheque request	14 Business Day after cheque request
	13. Notice of its net tangible assets being less than \$5 million	on change	Prior to change or if not possible, as soon as practicable after change

Custody Agreement

Subject	Description	Frequency	Deadline
	14. For payments (other than cheques) in excess of \$500,000, on receiving the Proper Instruction, TCL is to call the B signatory to confirm details of the payment prior to actioning. This also applies to any other movement of money – eg loan drawdown. If TCL cannot contact the B signatory within 30 minutes of the deadline then TCL will call the A signatory and/or send emails. The transaction will not go through without confirmation from either the B or A signatory via phone or email	As required	On receipt of the Proper Instruction

Custody Agreement

SCHEDULE 2

Schedule of Fees (Clause 14)

Fees

- (a) Subject to paragraph (b), the custodian shall be entitled to receive out of the Scheme's Assets and to retain for its own use and benefit by way of remuneration for acting as custodian an annual fee of up to 0.01% of the gross assets of the Scheme for the period while it continues to act as Custodian. This fee is payable to the Custodian quarterly in arrears plus GST, Indexed Annually for CPI.
- (b) The annual fee payable under paragraph (a) shall not exceed the Fee Cap.

Consolidated invoices

The Custodian shall provide one quarterly invoice that includes fees and sundries/out-of-pockets.

Definitions

Fee Cap means, at the date of this Agreement, \$200,000, which amount shall be indexed annually for CPI.

Indexed Annually for CPI means the fee is to be adjusted on each Review Date in accordance with the following formula:

$$A = \frac{B \times C}{D}$$

Where:

- A = the fee payable from and including the relevant Review Date;
- B = the fee payable immediately before the relevant Review Date;
- C = the quarterly Consumer Price Index (All Groups) (Weighted Average of Eight Capital Cities) number last published by the Australian Bureau of Statistics before the relevant Review Date;
- D = the Consumer Price Index (All Groups) (Weighted Average of Eight Capital Cities) number last published by the Australian Bureau of Statistics before the Review Date preceding the relevant Review Date except that in the case of the first Review Date, D = the Consumer Price Index (All Groups) (Weighted Average of Eight Capital Cities) at the date of this agreement.

If the quarterly Consumer Price Index (All Groups) (Weighted Average of Eight Capital Cities) number published by the Australian Bureau of Statistics is suspended or discontinued, it is to be replaced by the New South Wales Male Basic Wage applicable in New South Wales.

Custody Agreement

If the system or practice of the determination of the New South Wales Male Basic Wage ceases, it is to be replaced by the index published at the time of variation of the Annual Fee by the Australian Bureau of Statistics which reflects fluctuations of the cost of living in New South Wales, which shall be:

- (a) as agreed by the parties; or
- (b) if the parties are unable to agree within 14 days after one of the parties proposes an index, as may be determined, at the request of any party, by a suitably qualified person nominated by the President of the Australian Institute of Valuers, whose determination shall be final and binding on the parties (and whose cost shall be shared by the parties equally). In making the determination, the person shall act as an expert and not as an arbitrator.

Review Date means the date which the anniversary of this Agreement in each year for the duration of the Agreement.

Custody Agreement

SCHEDULE 3

Incumbency Certificate (Clause 16)

BRISCONNECTIONS MANAGEMENT COMPANY LIMITED (ACN 128 614 291) (**BCMCL**), certifies that the persons whose names appear below are authorised to give Proper Instructions, and sign on behalf of BCMCL all notices, certificates and other documents required by or contemplated under the Custody Agreement between BCMCL and **TRUST COMPANY LIMITED** (ACN 004 027 749) (**TCL**), dated 20 .

BCMCL further certifies that the true signature of each person is shown below opposite his name, and that TCL may rely upon this certificate until such time as it receives another certificate bearing a later date.

NAME

SIGNATURE

FOR AND ON BEHALF OF

(Director)

(Director)

Date:

Custody Agreement

SCHEDULE 4

Address for service (Clause 17.1)

TCL:

Attention: John Newby, Senior Manager – Property & Infrastructure
Custody, Institutional Services

Address: Level 4, 35 Clarence Street, Sydney

Facsimile No: (02) 8295 8927

Telephone: (02) 8295 8656

BCMCL:

Attention: Tamira Herbst, Company Secretary

Address: Level 26, Margaret Street, Sydney, New South Wales 2000

Facsimile No: (02) 9080 8144

Telephone: (02) 9080 8382

Custody Agreement

SCHEDULE 5

Notice of Appointment of Investment Managers (Clause 7.1)

BRISCONNECTIONS MANAGEMENT COMPANY LIMITED (ACN 128 614 291) (**BCMCL**), certifies to **TRUST COMPANY LIMITED** (ACN 004 027 749) (**TCL**), that the firm(s) whose names are set forth below have been appointed as Investment Manager(s) for the Scheme with respect to the custodian agreement between BCMCL and TCL, dated, , 20 with authority over the portfolio indicated opposite their names. BCMCL further certifies that TCL may rely upon this certificate until such time as it receives another certificate bearing a later date.

INVESTMENT MANAGER	PORTFOLIO
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FOR AND ON BEHALF OF

BRISCONNECTIONS MANAGEMENT COMPANY LIMITED

Custody Agreement

SCHEDULE 6

Methods and standards for assessing custodian performance (Schedule 1)

Function	Transaction	Timeframe
Scheme Assets – documentation	1. Execution of commercial agreements, contracts of sale, mortgage, property construction contracts including documentation in connection with facility agreements, swap agreements, documentation in connection with ISDA agreements the issue of units in <Trust>	Once documentation agreed between the parties: TCL non-board execution – 1 Business Day (provided TCL receives Proper Instructions by 11.00 am, otherwise 2 Business Days) TCL board execution - 3 Business Days
	2. Following execution, the above documents to be forwarded to BCMCL (or as instructed) for stamping and registration (if required)	1 Business Day after execution
	3. Provide copies of documents on request to BCMCL (or as instructed)	1 Business Day after request
Liquidity Management	4. Request bank cheques / telegraphic transfers for settlements of acquisition, sale or borrowing transactions	Same Business Day where Proper Instruction received before 2.00pm, otherwise next Business Day
	5. Request placement and calling of cash to/from 11am accounts	Same Business Day where Proper Instruction received before 10.00am, otherwise next Business Day
	6. Reimbursement of BCMCL for costs, expenses and other	1 Business Day after receipt of Proper

Custody Agreement

Function	Transaction	Timeframe
	liabilities	Instruction
	7. Request provision of funds to BCMCL for distribution	Same Business Day where Proper Instruction received before 12.00pm, otherwise next Business Day
Other	8. The timeliness of notification to BCMCL of corporate actions including subpoenas and writs	Within 2 Business Days of receipt by TCL
	9. Response to enquiries from BCMCL	Within 1 Business Day

SCHEDULE 7

TCL's Standard Limitation of Liability Clause (Clause 4.10(c)(ii))

- 1.1. The Custodian enters into this Agreement as custodian and agent of BrisConnections Management Company Limited the Responsible Entity of the Trust and in no other capacity.
- 1.2. The parties other than the Custodian acknowledge that the Obligations are incurred by the Custodian solely in its capacity as custodian of the assets of the Trust and as agent of the Responsible Entity and that the Custodian will cease to have any obligation under this Agreement if the Custodian ceases for any reason to be Custodian of the assets of the Trust.
- 1.3. The Custodian will not be liable to pay or satisfy any Obligations except to the extent to which it is indemnified by the Responsible Entity or except out of the Assets against which it is entitled to be indemnified in respect of any liability incurred by it.
- 1.4. The parties other than the Custodian may enforce their rights against the Custodian arising from non-performance of the Obligations only to the extent of the Custodian's indemnity as provided above in [para. 1.3].
- 1.5. If any party other than the Custodian does not recover all money owing to it arising from non-performance of the Obligations it may not seek to recover the shortfall by:
 - (a) bringing proceedings against the Custodian in its personal capacity; or
 - (b) applying to have the Custodian wound up or proving in the winding up of the Custodian.
- 1.6. Except in the case of and to the extent of fraud, gross negligence or material breach of duty on the part of the Custodian under its custody agreement with the Responsible Entity, the parties other than the Custodian waive their rights and release the Custodian from any personal liability whatsoever, in respect of any loss or damage:
 - (a) which they may suffer as a result of any:
 - (i) breach of the Custodian of any of its Obligations; or
 - (ii) non-performance by the Custodian of the Obligations; and
 - (b) which cannot be paid or satisfied from the indemnity set out above [paragraph 1.3] in respect of any liability incurred by it.
- 1.7. The parties other than the Custodian acknowledge that the whole of this Agreement is subject to this clause and the Custodian shall in no circumstances be required to satisfy any liability arising under, or for non-performance or breach of any Obligations under or in respect of, this Agreement or under or in respect of any other document to which it is expressed to be a party out of any funds, property or assets other than to the extent that this Agreement requires satisfaction out of the assets of the Trust under the Custodian's

control and in its possession as and when they are available to the Custodian to be applied in exoneration for such liability.

- 1.8. The parties acknowledge that the Responsible Entity of the Trust is responsible under the Constitution for performing a variety of obligations relating to the Trust, including under this Agreement. The parties agree that no act or omission of the Custodian (including any related failure to satisfy any Obligations) will constitute fraud, negligence or breach of duty of the Custodian for the purposes of clause [1.6] to the extent to which the act or omission was caused or contributed to by any failure of the Responsible Entity or any other person to fulfil its obligations relating to the Trust or by any other act or omission of the Responsible Entity or any other person.
- 1.9. No attorney, agent or other person appointed in accordance with this Agreement has authority to act on behalf of the Custodian in a way which exposes the Custodian to any personal liability and no act or omission of such a person will be considered fraud, negligence or breach of duty of the Custodian for the purposes of clause [1.6].

In this clause the "Obligations" means all obligations and liabilities of whatever kind undertaken or incurred by, or devolving upon, the Custodian under or in respect of this Agreement, "Assets" includes all assets, property and rights real and personal of any value whatsoever, and "Responsible Entity" means BrisConnections Management Company Limited or any replacement trustee and responsible entity of the Trust from time to time.