

Funding and Administrative Services Agreement

MBF Australia Limited
Trust Company Fiduciary Services Limited

Allens Arthur Robinson
Deutsche Bank Place
Corner Hunter and Phillip Streets
Sydney NSW 2000
Tel 61 2 9230 4000
Fax 61 2 9230 5333
www.aar.com.au



Table of Contents

1.	Definitions and Interpretation	1
1.1	Definitions	1
1.2	Interpretation	4
2.	The Trust Deed	5
3.	Commencement	5
4.	Administrative Services	5
4.1	Trustee Services	5
4.2	MBF Services	5
5.	Obligations of the Parties	5
5.1	Trustee to hold appropriate licences	5
5.2	Trustee to comply with Relevant Law	5
5.3	Compliance with Governmental Agencies	6
5.4	Using Third Party agents and service providers	6
6.	Trustee's Expenses, Fees and Charges	7
6.1	Trustee's Service Fee	7
7.	General Representations and Warranties	7
7.1	Representations and Warranties of the Trustee	7
7.2	Representations and Warranties of MBF	8
7.3	Acknowledgment in regard to Representations and Warranties	8
8.	Insurance	8
8.1	Relevant Insurance Cover	8
8.2	MBF Obligations	8
9.	No Agency or Partnership	9
10.	Liability and Indemnity	9
10.1	Standard of Care	9
10.2	Specific Limitations on Trustee's Liability	9
10.3	Trustee's Liability	9
10.4	Indemnity by MBF	10
10.5	No Indemnification available out of Trust Property	10
10.6	Notification	10
11.	GST	10
11.1	Taxable Supplies	10
12.	Confidentiality	10
12.1	Confidentiality	10
12.2	Permitted disclosure	11
13.	Privacy	11
13.1	Privacy	11
14.	Termination	11
14.1	Termination	11



14.2	Transfer of Trust Property on appointment of new Trustee	12
15.	Dispute Resolution	12
15.1	Negotiation	12
15.2	Mediation	13
15.3	Court proceedings and other relief	13
15.4	Continuation of rights and obligations	13
16.	General Provisions	13
16.1	Notices	13
16.2	Amendment	13
16.3	Assignment	14
16.4	No Waiver	14
16.5	Further Assurances	14
16.6	No Merger	14
16.7	Costs and Stamp Duty	14
16.8	Governing Law and Jurisdiction	14
16.9	Counterparts	14
17.	Limitation of Liability	15
17.1	Scope of limitation	15
17.2	Capacity	15
17.3	Incurring obligation	15
17.4	Liability limited to indemnity by MBF	15
17.5	Enforcement of rights limited to indemnity by MBF	15
17.6	No personal liability	15
17.7	Waiver and release	15
17.8	Extent of Trustee's liability	16
17.9	Acts or omissions of Trustee	16
17.10	Authority	16
17.11	Obligations	16
Schedule 1		18
	Trustee Services (clause 4.1(a))	18
Schedule 2		20
	MBF Services (Clause 4.2(a))	20
Schedule 3		21
	Service Fees	21

Date	2008
Parties	<ol style="list-style-type: none">1. MBF Australia Limited (ABN 81 000 057 590) registered in the state of New South Wales of Level 18, 50 Bridge Street, Sydney, NSW 2000 (<i>MBF</i>).2. Trust Company Fiduciary Services Limited (ACN 000 000 993) registered in the State of New South Wales of Level 4, 35 Clarence Street, Sydney, NSW 2000 (the <i>Trustee</i>).
Recitals	<p>A MBF wishes to establish each of the trusts to be established under the Trust Deed which are together referred to as the MBF Contributors' Master Trust (the <i>Trust</i>).</p> <p>B In consideration of MBF appointing the Trustee to act as trustee of the Trust under the terms of the Trust Deed, the Trustee will enter into this agreement with MBF for the funding of and provision of administrative services in relation to the Trust.</p>

It is agreed as follows.

1. Definitions and Interpretation

1.1 Definitions

The following definitions apply unless the context requires otherwise.

Additional Service Fee has the meaning given to that term in clause 6.1(b).

AFS Licence means an Australian financial services licence, as the term is defined in the Corporations Act.

Agreement means this Funding and Administrative Services Agreement.

Allocation Rules has the meaning given to that term in the Information Memorandum.

APRA means the Australian Prudential Regulation Authority.

ASIC means the Australian Securities and Investments Commission.

ATO means the Australian Taxation Office.

ASX means the financial market operated by ASX Limited (ACN 008 624 691).

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

Company Member means a person who was on the register of company members of MBF at the Cut-off Date.

Contributor means a person who is defined as a contributor for the purposes of the Trust Deed.

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

Cut-off Date means 8 November 2007.

Eligible Contributor means a person who was a Contributor who held a Qualifying Policy and who was not a Company Member on the Cut-off Date and in respect of whom the Trustee is registered as a company member of MBF on its register of members under the Trust Deed.

Entitlement has the same meaning as that term has in the Trust Deed.

Expenses means fees, costs, expenses and other liabilities properly incurred by the Trustee on behalf of the Trust, including but not limited to costs, expenses and other liabilities:

- (a) incurred in terminating the Trust;
- (b) incurred in retiring as trustee of the Trust;
- (c) payable to Governmental Agencies or statutory bodies; and
- (d) payable to Third Parties for services provided in relation to the Trust including for advice sought by the Trustee in relation to the Trust.

Governmental Agency means any government or any governmental, semi-governmental, administrative or judicial entity or authority in Australia. It also includes any self regulatory organisation in Australia established under statute or any stock exchange.

GST means any goods and services or similar Tax together with any related interest, penalties, fines or other charge.

Implementation Date has the same meaning as that term has in the Information Memorandum.

Information Memorandum means any document (including any attachments or variations to that document) by that name or some other similar name issued by MBF setting out the Scheme and the Scheme Resolution.

Loss means any claim, demand, loss, injury, liability, damage, amount paid in settlement and expenses (including reasonable legal fees and costs) of any kind whatsoever.

Personal Information means all information about a person that is *personal information* as defined in the Privacy Law or other applicable law, which is collected by or provided to the Trustee in connection with this Agreement or the Trust Deed.

PHIAC means the Private Health Insurance Administration Council.

Privacy Law means:

- (a) the Privacy Act 1988 (Cth);
- (b) the National Privacy Principles contained in Schedule 3 to the *Privacy Act 1988* (Cth) or any approved Privacy Code (as defined in the *Privacy Act 1988* (Cth)) that applies to the Trustee, MBF or both; and

- (c) any other statute, regulation or law in Australia or elsewhere which relates to the protection of Personal Information and which the Trustee or MBF must observe.

Qualifying Policy means a private health insurance policy issued by MBF which:

- (a) was current and was not in arrears on the Cut-off Date; or
- (b) if it was in arrears on the Cut-off Date, any amount in arrears on the Cut-off Date had been received in cleared funds by MBF on or before 8 February 2008; or
- (c) was validly suspended under the Fund Rules on the Cut-off Date or was approved for suspension by MBF after the Cut-off Date but before 8 February 2008; or
- (d) is a policy determined by the Review Committee to be a Qualifying Policy.

When a policy is not in arrears is described in sub-rules 2.1 and 2.2 of the Allocation Rules.

Registrar means the company which maintains the register of members of MBF.

Related Body Corporate has the meaning given in the Corporations Act.

Relevant Law means the *Income Tax Assessment Act 1936* (Cth), the *Income Tax Assessment Act 1997* (Cth), the Corporations Act, the Privacy Law and the regulations made under those Acts together with any other legislation which applies to the Trustee in its capacity as Trustee of the Trust at any time. It also includes any direction, rule (including policy statement or class order) issued by a Governmental Agency which must be complied with to avoid a detriment to the Trust or Contributors.

Review Committee has the same meaning as that term has in the Information Memorandum.

Scheme has the same meaning as that term has in the Information Memorandum.

Scheme Meeting has the same meaning as that term has in the Information Memorandum.

Scheme Resolution has the same meaning as that term has in the Trust Deed.

Secretary includes an acting secretary or deputy secretary.

Service Fee means the fees payable to the Trustee pursuant to clause 6 and as set out in Schedule 3.

Services means either:

- (a) the services to be provided by the Trustee under the terms of this Agreement and/or the Trust Deed as listed in Schedule 1;
- (b) the services to be provided by MBF under the terms of this Agreement and/or Trust Deed as listed in Schedule 2.

Tax includes any tax, levy, impost, deduction, charge, rate, duty, compulsory loan or withholding which is levied or imposed by a Governmental Agency, and any related interest, penalty, charge, fee or other amount.

Termination Date means the date on which the Trustee advises MBF that it ceases to hold Trust Property.

Third Party means a third party other than the Trustee or MBF or a related body corporate of MBF.

Trust means each trust established under the Trust Deed and collectively referred to as the MBF Contributors' Master Trust.

Trust Data means the data or information in respect of the Trust and Eligible Contributors provided to the Trustee under this Agreement, which the Trustee reasonably requires to discharge its obligations under this Agreement and the Trust Deed.

Trust Deed means the trust deed establishing each trust that is referred to collectively as the MBF Contributors' Master Trust as executed by MBF and the Trustee.

Trust Property means the trust property as defined under the Trust Deed.

1.2 Interpretation

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

- (a) The singular includes the plural, and the converse also applies.
- (b) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (c) A reference to a *person* includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
- (d) A reference to a clause, schedule or annexure is a reference to a clause of, or schedule or annexure to, this Agreement.
- (e) A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form.
- (f) A reference to a party to this Agreement or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (g) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (h) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.
- (i) A reference to an *agreement* includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a *document* includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.
- (j) All references to time are to Melbourne time.
- (k) Mentioning anything after *includes, including, for example*, or similar expressions, does not limit what else might be included.
- (l) Nothing in this Agreement is to be interpreted against a party solely on the ground that the party put forward this Agreement or a relevant part of it.

2. The Trust Deed

This Agreement comes into effect upon the Trust Deed being executed by the parties and is to be read in conjunction with the Trust Deed. To the extent that there is any direct inconsistency between the Trust Deed and this Agreement, the terms of the Trust Deed will prevail.

3. Commencement

This Agreement will commence in accordance with clause 2 and will continue until terminated under clause 14.

4. Administrative Services

4.1 Trustee Services

The Trustee must:

- (a) perform the Services specified in Schedule 1 for the benefit of the Trust;
- (b) provide such additional services as MBF may reasonably require as a result of changes in the Relevant Law, the Scheme or the Trust; and
- (c) otherwise comply with this Agreement, including without limitation all of the representations, covenants and warranties made by it under clause 7.1.

4.2 MBF Services

MBF must:

- (a) provide to the Trustee those Services specified in Schedule 2; and
- (b) provide such additional services as the Trustee may reasonably require as a result of changes in the Relevant Law, the Scheme or the Trust; and
- (c) otherwise comply with this Agreement, including without limitation all of the representations, covenants and warranties made by it under clause 7.2.

5. Obligations of the Parties

5.1 Trustee to hold appropriate licences

The Trustee must, for the duration of this Agreement, hold all appropriate authorisations and licences as required under Relevant Law including without limitation, a current AFS Licence which authorises the Trustee to provide all the Services as relevant under this Agreement and the Trust Deed.

5.2 Trustee to comply with Relevant Law

- (a) The Trustee must comply with:
 - (i) the Relevant Law to the extent it relates to the Trust; and

(ii) the Trust Deed,
and shall at all times exercise due care, skill and diligence in carrying out its functions under this Agreement.

(b) Without limiting the scope of the obligations of the Trustee in clause 5.2(a), the Trustee is expected to provide assistance to MBF and such nominated Third Parties where it is necessary for the purposes of the Scheme, the Trust and/or this Agreement to apply for or request the approval of Governmental Agencies under Relevant Law.

5.3 Compliance with Governmental Agencies

(a) The Trustee must, at MBF's expense including the hourly rate fees to which the Trustee is entitled:

- (i) comply with any direction from a Governmental Agency, whether issued to the Trustee directly or communicated by way of MBF; and
- (ii) assist a Governmental Agency with any audit or enquiry concerning the Trust.

(b) Without limiting the extent of the obligations of the Trustee in clause 5.3(a), the Trustee is expected to:

- (i) promptly provide a Governmental Agency and MBF with any documents and information which are in the possession of or within the control of the Trustee and which relate to the Trust, this Agreement or the Trustee's performance under the Trust or this Agreement; and
- (ii) promptly on request allow a Governmental Agency and MBF reasonable access (having regard to information provided under clause 5.3(b)(i) and information held by MBF and the Registrar) to Trustee premises and/or Trustee personnel in order to gain access to documents and information relating to the Trust and or this Agreement held at those premises or by personnel based at those premises.

5.4 Using Third Party agents and service providers

(a) The Trustee must not delegate, sub-contract or engage a Third Party to provide any of the Services except:

- (i) with the prior written consent of MBF (including MBF's consent to meet the cost of such a delegate, sub-contractor or Third Party providing such Services) in which case MBF will assist in arranging any such appointment;
- (ii) where any such appointment is by MBF in writing and complies with Relevant Law; and
- (iii) on such terms and/or conditions as MBF thinks fit.

(b) Subject to clause 10.3, the appointment of a Third Party or other person under clause 5.4(a) shall not relieve the Trustee of its responsibilities or liabilities under this Agreement where the Third Party or other person is a Related Body Corporate

of the Trustee and the Trustee shall be liable to MBF for the acts and omissions of such Third Parties or other persons as if they were the Trustee's own acts and omissions. The Trustee will not be responsible for independent contractors and advisers appointed by the Trustee except to the extent that the Trustee is negligent in appointing such persons.

6. Trustee's Expenses, Fees and Charges

6.1 Trustee's Service Fee

MBF will pay to the Trustee the following fees:

- (a) Service Fees as set out in Schedule 3;
- (b) if MBF requests the Trustee to provide additional services that are not covered by the Service Fee, a separate fee will be agreed between the parties being not less than the hourly rates in Schedule 3 (*Additional Service Fee*); and
- (c) such amount or amounts equal to the Expenses payable by the Trustee to other parties in respect of the Trust (except that such amount shall not include the payment of any benefits out of the Trust Property to the Contributors),

on receipt of appropriate invoice(s) from the Trustee. The Trustee will provide MBF with an invoice for its fees monthly in arrears.

7. General Representations and Warranties

7.1 Representations and Warranties of the Trustee

The Trustee represents and warrants that:

- (a) the Trustee is a company incorporated, authorised and has the power to carry on its business and all activities contemplated under this Agreement in Australia;
- (b) the Trustee has all necessary corporate power, authority and capacity to enter into and perform its governance, agreements and obligations under this Agreement. The Trustee has taken all corporate action necessary to authorise the execution, delivery and performance of this Agreement;
- (c) the activities of the Trustee contemplated under this Agreement are, and will be, in compliance with Relevant Law;
- (d) it has obtained and will maintain for the duration of this Agreement an AFS Licence which permits the Trustee to perform its responsibilities and duties under this Agreement;
- (e) it holds all licences and other authorisations required to legally conduct its business and provide the Services as contemplated under this Agreement;
- (f) all authorisations required in connection with the execution, delivery and performance by the Trustee of its obligations under this Agreement, and the validity and enforceability against it have been obtained and are in full force and

effect and there has been no material default by it in the observation of those authorisations;

- (g) it will at all times have full disaster recovery facilities and back-up facilities in place in respect of the records and information it maintains in relation to the Trust and the assets of the Trust having regard to the information required to be maintained by the Registrar; and
- (h) the Trustee has systems which are secure and capable of handling the record keeping and transaction processing for the Trust Property and the capacity to separately identify the Trust Property.

7.2 Representations and Warranties of MBF

MBF represents and warrants that:

- (a) MBF is a company incorporated, authorised and has the power to carry on its business and all activities contemplated under this Agreement in Australia;
- (b) MBF has all necessary corporate power, authority and capacity to enter into and perform its governance, agreements and obligations under this Agreement. MBF has taken all corporate action necessary to authorise the execution, delivery and performance of this Agreement; and
- (c) the activities of MBF contemplated under this Agreement are and will be in compliance with Relevant Law. MBF holds all licences and other authorisations required to legally conduct its business.

7.3 Acknowledgment in regard to Representations and Warranties

Each of the parties acknowledges and agrees that its respective representations and warranties made under this Agreement will remain true and accurate throughout the duration of this Agreement.

8. Insurance

8.1 Relevant Insurance Cover

MBF will maintain, for the duration of this Agreement, insurance cover it considers reasonable, appropriate and necessary having regard to the nature and extent of its and the Trustee's obligations under this Agreement and ensure that such insurance names the Trustee as a party covered by that insurance. The cost of the insurance cover will be met by MBF.

8.2 MBF Obligations

Where permitted by law and except as precluded or restricted by confidentiality or legal obligations MBF will, in respect of each insurance policy referred to in clause 8.1:

- (a) arrange for each broker to send to the Trustee a broker's certificate of currency for each such policy at the commencement of this Agreement and at annual other intervals agreed by the Trustee;

- (b) supply to the Trustee, on its written request, such details regarding the insured amount;
- (c) promptly notify the Trustee of any variation, amendment or endorsement to any such policy which may materially affect the amount, scope or terms of each such policy; and
- (d) promptly notify the Trustee of any material change in the business or circumstances of MBF which is determined to have an effect in a materially adverse way on the currency of any policy, or the adequacy of the policy amount or the effectiveness of the scope, nature, level of cover or terms of any such policy.

9. No Agency or Partnership

This Agreement does not constitute any party the agent of another or imply that the parties intend constituting a partnership or other form of association in which any party may be liable for the acts or omissions of the other.

10. Liability and Indemnity

10.1 Standard of Care

The Trustee must act honestly and exercise the degree of care, diligence and skill in performing the Services as a professional trustee experienced in providing those Services would properly exercise in dealing with the Trust Property.

10.2 Specific Limitations on Trustee's Liability

The Trustee is not liable to MBF for any Loss resulting from or caused by:

- (a) any act of the Trustee in accordance with this Agreement (including any action taken or omitted by the Trustee in reliance upon receipt of instructions from MBF) or under the Trust Deed which was carried out with reasonable care and in good faith;
- (b) any acts or omissions of any Third Party or other person appointed by MBF in accordance with clause 5.4(a) other than as provided for in this Agreement; and
- (c) the Trustee's reliance upon the Trust Data or records provided to the Trustee pursuant to this Agreement or the Trust Deed that have been or are maintained by MBF or the Registrar.

10.3 Trustee's Liability

The Trustee will be liable to MBF for any Loss that MBF suffers to the extent such Loss results from the dishonesty, fraud, negligence or wilful default of:

- (a) the Trustee; or
- (b) a Third Party or other person appointed by MBF in accordance with clause 5.4(a) if that Third Party or other person is a Related Body Corporate of the Trustee, in performing its or their obligations under this Agreement.

10.4 Indemnity by MBF

Subject to clause 10.3, MBF indemnifies the Trustee against any Loss that may be imposed on, incurred by or asserted against the Trustee in connection with or arising out of the proper performance or exercise by the Trustee of its duties under this Agreement and the Trust Deed.

10.5 No Indemnification available out of Trust Property

For the avoidance of doubt, the Trustee has no right to be indemnified against any Loss that may be incurred or sustained by the Trustee in the performance of its obligations under this Agreement or the Trust Deed out of the Trust Property except as specifically provided in the Trust Deed.

10.6 Notification

The Trustee agrees that it will notify MBF as soon as practicable in writing whether it has reasonable grounds to believe that it may have a right to be indemnified under clause 10.4.

11. GST

11.1 Taxable Supplies

- (a) If GST is payable on a supply made under or in connection with this Agreement, the recipient of the supply must pay to the supplier as additional consideration an amount equal to the amount of GST payable in respect of that supply, provided however that the liability of the recipient is limited to the amount of any input tax credit entitlement in relation to the acquisition of that supply. No payment of any additional amount is required until the supplier has provided a tax invoice to the recipient. This clause does not apply to the extent that the consideration for a taxable supply is expressly agreed to be GST inclusive.
- (b) Any reference in the calculation of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any input tax credit entitlement in relation to the relevant cost, expense or other liability.
- (c) Terms which have a defined meaning in the *A New Tax System (Goods and Services Tax) Act 1999* shall have that meaning in this clause.

12. Confidentiality

12.1 Confidentiality

Subject to clause 12.2, a party must not disclose, or use for a purpose other than contemplated by this Agreement, the existence of and terms of this Agreement or any unpublished information or documents supplied by the other party in connection with this Agreement that are specifically indicated by MBF to be confidential and that are not in the public domain.

12.2 Permitted disclosure

A party may disclose any confidential information or documents:

- (a) to the other party to this Agreement;
- (b) under corresponding obligations of confidence as imposed by this clause, to persons which control or are controlled by or are under common control with the party within the meaning of the Corporations Act, and the employees, legal advisors or consultants of such persons; or
- (c) if required under a binding order of a Governmental Agency or under a procedure for discovery in any proceedings;
- (d) as required or permitted by this Agreement;
- (e) to its legal advisers, its insurers and its consultants; or
- (f) with the prior written consent of the other party.

13. Privacy

13.1 Privacy

- (a) The Trustee must in respect of any Personal Information which the Trustee receives or has access to under this Agreement:
 - (i) comply with the Privacy Law;
 - (ii) implement procedures and systems acceptable to MBF, including a Privacy Policy to ensure that the Trustee complies with the standard and obligations of the Privacy Law; and
 - (iii) on request, provide MBF with copies of the privacy procedures, systems and policies implemented by the Trustee from time to time and subject to clause 13.1(a)(i), only use or disclose Personal Information for the purpose for which the Personal Information was originally provided to the Trustee.
- (b) MBF warrants that any disclosure of Personal Information to the Trustee will not give rise to a cause of action against the Trustee and that it is permitted to disclose that Personal Information to the Trustee.

14. Termination

14.1 Termination

- (a) Either party may terminate this Agreement by three months' prior written notice to the other party.
- (b) Notwithstanding clause 14.1(a), this Agreement will terminate:
 - (i) on the termination of the Trust Deed;

- (ii) if the Trustee is in material breach of any of its obligations under this Agreement which breach:
 - (A) if capable of remedy has not been remedied within 20 Business Days of being requested to be remedied by MBF; or
 - (B) in MBF's reasonable opinion, monetary damages alone would not be adequate compensation to it for the relevant breach;
 - (iii) if the Trustee ceases to carry on its operations in Victoria;
 - (iv) if the Trustee ceases to hold an appropriate AFS Licence having regard to the Services;
 - (v) immediately upon notice from MBF to the Trustee, if the Trustee or any of its officers, employees or Third Parties is knowingly involved in any fraudulent conduct in respect of the Trust Property or in the performance of the Services; or
 - (vi) if an administrator, provisional liquidator, liquidator, receiver, manager or receiver and manager is appointed in respect of the Trustee or any of the Trustee's assets.
- (c) Any termination of this Agreement under this clause 14.1 shall be without prejudice to any rights that either party may have against the other under this Agreement or otherwise and will not affect the rights of the Trustee to be remunerated and indemnified for any acts, matters or things occurring prior to termination of this Agreement.

14.2 Transfer of Trust Property on appointment of new Trustee

- (a) If a new trustee is appointed by MBF to provide the Services, the Trustee will, within a period notified to the Trustee by MBF deliver to such successor trustee (and or its agents or as otherwise agreed) the Trust Property and other property then held by it under this Agreement and/or the Trust Deed.
- (b) The provisions of this Agreement relating to the duties and obligations of the Trustee shall remain in full force and effect during the period of transfer.

15. Dispute Resolution

15.1 Negotiation

If there is a dispute or difference (*Dispute*) between the parties arising out of or in connection with this Agreement, then within five Business Days of a party notifying the other party in writing of the Dispute, a senior representative from each party must meet and use all reasonable endeavours acting in good faith to resolve the Dispute by joint discussions.

15.2 Mediation

- (a) If the Dispute is not settled within five Business Days of notification under clause 15.1, the parties will, if mutually agreed, submit the Dispute to mediation administered by the Australian Commercial Disputes Centre Limited (*ACDC*).
- (b) The mediator will be an independent person agreed between the parties or, failing agreement, a mediator will be appointed by the President of NSW Law Society.

15.3 Court proceedings and other relief

A party may not start court proceedings in relation to a Dispute until it has exhausted the procedures in this clause, unless the party seeks injunctive or other interlocutory relief.

15.4 Continuation of rights and obligations

Despite the existence of a dispute or difference each party must continue to perform this Agreement.

16. General Provisions

16.1 Notices

Any notice, demand, consent or other communication (a *Notice*) given or made under this Agreement:

- (a) must be in writing and signed by the sender or a person duly authorised by the sender;
- (b) must be addressed and delivered to the intended recipient at the address or fax number below or the address or fax number last notified by the intended recipient to the sender after the date of this Agreement:
 - (i) to the Trustee: Trust Company Fiduciary Services Limited
Attention: Manager Responsible Entity
Services
Fax No: 02 8295 8659;
 - (ii) to MBF: MBF Australia Limited
Attention: Allison Smart, General Counsel
and Company Secretary
Fax No: 02 9323 9168; and
- (c) will be taken to be duly given or made when delivered, received or left at the above fax number or address. If delivery or receipt occurs on a day that is not a business day in the place to which the Notice is sent or is later than 4pm (local time) at that place, it will be taken to have been duly given or made at the commencement of business on the next business day in that place.

16.2 Amendment

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

16.3 Assignment

Neither party may assign, charge, encumber or otherwise deal with any of its rights or obligations under this Agreement, or attempt or purport to do so, without the prior written consent of the other party. The consent may be withheld in its absolute discretion without giving any reason for doing so.

16.4 No Waiver

A failure to exercise or a delay in exercising any right, power or remedy under this Agreement does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

16.5 Further Assurances

At the reasonable request of another party, each party must do anything necessary (including executing agreements and documents) to give full effect to this Agreement and the transactions contemplated by it.

16.6 No Merger

The rights and obligations of the parties will not merge on the completion of any transaction contemplated by this Agreement. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

16.7 Costs and Stamp Duty

MBF must bear all of its own costs arising out of the negotiation, preparation and execution of this Agreement and all reasonable external legal costs incurred by the Trustee arising out of the negotiation, preparation and execution of this Agreement. All stamp duty (including fines, penalties and interest) payable on or in connection with this Agreement and any instrument executed under or any transaction evidenced by this Agreement must be borne by MBF. MBF must indemnify the Trustee on demand against any liability for that stamp duty.

16.8 Governing Law and Jurisdiction

This Agreement is governed by the laws of the State of Victoria. Each party submits to the exclusive jurisdiction of courts exercising jurisdiction there, and waives any right to claim that those courts are an inconvenient forum.

16.9 Counterparts

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

17. Limitation of Liability

17.1 Scope of limitation

This limitation of the Trustee's liability applies despite any other provisions of this Agreement and extends to all Obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Deed.

17.2 Capacity

The Trustee agrees to act under the Trust Deed and to perform its obligations under this Agreement as trustee of the Trust and in no other capacity.

17.3 Incurring obligation

The parties other than the Trustee acknowledge that the Trustee incurs the Obligations solely in its capacity as trustee of the Trust and that the Trustee will cease to have any obligation under this Agreement if the Trustee ceases for any reason to be trustee of the Trust.

17.4 Liability limited to indemnity by MBF

Subject to subclause 17.8, the Trustee will not be liable to pay or satisfy any Obligations except to the extent it is indemnified by MBF under the terms of this Agreement.

17.5 Enforcement of rights limited to indemnity by MBF

Subject to subclause 17.8, the parties other than the Trustee may enforce their rights against the Trustee arising from non-performance of the Obligations only to the extent the Trustee is indemnified by MBF under the terms of this Agreement.

17.6 No personal liability

Subject to subclause 17.8, if any party other than the Trustee 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 Trustee in its personal capacity; or
- (b) applying to have the Trustee put into administration or wound up or applying to have a receiver or similar person appointed to the Trustee or proving in the administration or winding up of the Trustee.

17.7 Waiver and release

Subject to subclause 17.8, the parties other than the Trustee waive their rights and release the Trustee from any personal liability whatsoever, in respect of any loss or damage:

- (a) which they may suffer as a result of any:
 - (i) breach by the Trustee of any of its Obligations; or
 - (ii) non-performance by the Trustee of the Obligations; and

- (b) which cannot be paid or satisfied under the indemnity provided by MBF to the Trustee under the terms of this Agreement.

17.8 Extent of Trustee's liability

The parties other than the Trustee acknowledge that the whole of this Agreement is subject to this clause 17 and the Trustee shall in no circumstances be required to satisfy any liability of the Trustee 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 other than to the extent they may be paid or satisfied under the indemnity provided by MBF to the Trustee under the terms of this Agreement PROVIDED THAT if the liability of the Trustee is not fully satisfied by the indemnity provided by MBF to the Trustee under the terms of this Agreement, the Trustee will be liable to pay out of its own funds, property and assets the unsatisfied amount of that liability but only to the extent of the total amount, if any, by which the indemnity amount has been reduced by reasons of fraud, negligence or breach of trust (including any fraud or negligence of the Trustee in giving or complying with the warranties under clause 7.1) by the Trustee in the performance of the Trustee's duties as trustee of the Trust.

17.9 Acts or omissions of Trustee

The parties agree that no act or omission of the Trustee (including any related failure to satisfy any Obligations) will constitute fraud, negligence or wilful default of the Trustee for the purposes of this clause 17 to the extent to which the act or omission was caused or contributed to by any failure of MBF or any other person to fulfil its obligations relating to the Trust by the Trustee relying on any certificate, information or advice upon which it is entitled to rely under the Trust Deed or relying on any direction by MBF or any Contributor or by any other act or omission of MBF or any other person.

17.10 Authority

No attorney, agent or other person appointed in accordance with this document has authority to act on behalf of the Trustee in a way which exposes the Trustee to any personal liability (except in accordance with the provisions of clause 17), and no act or omission of such a person will be considered fraud, negligence or wilful default of the Trustee for the purposes of this clause 17.

17.11 Obligations

In this clause the "*Obligations*" means all obligations and liabilities of whatever kind undertaken or incurred by, or devolving upon, the Trustee under or in respect of this Agreement or the Trust Deed, and "*assets*" includes all assets, property and rights real and personal of any value whatsoever.

Executed in Queensland

Each attorney executing this Agreement states that he or she has no notice of revocation or suspension of his or her power of attorney.

Signed for MBF Australia Limited by its attorney under power of attorney dated 2008 in the presence of:

Witness Signature

Attorney Signature

Print Name

Print Name

Signed for Trust Company Fiduciary Services Limited by its attorneys under power of attorney dated 2008 in the presence of:

Witness Signature

Attorney Signature

Print Name

Print Name

Witness Signature

Attorney Signature

Print Name

Print Name

Schedule 1

Trustee Services (clause 4.1(a))

1. Trustee Services

The Trustee will provide the following services in accordance with the terms and conditions of this Agreement:

1.1 Member Records, Meetings and Enquiries

- (a) ensure that all Trust Property is held in the name of the Trustee or nominee for and on behalf of the Trust;
- (b) admit new Eligible Contributors and establish and maintain or procure the establishment and maintenance of Eligible Contributor membership records;
- (c) maintain all necessary Trustee records (including corporate records) and minutes for all decisions and meetings of the Trust;
- (d) liaise with MBF and Third Parties or other person appointed under clause 5.4(a) as relevant and where directed to do so by MBF in relation to Eligible Contributor records, meetings and enquiries;
- (e) maintain or procure the maintenance of, and comply with, an agreed process for addressing Eligible Contributor enquiries, correspondence and complaints;
- (f) provide necessary assistance to MBF in relation to the preparation for and inclusion of any relevant materials in the Information Memorandum relating to the Trustee and Trust;
- (g) procure and monitor the maintenance of administration systems capable of performing all necessary administration functions in relation to the Trust including accounting, calculation or distribution of any Entitlement and/or monies payable in respect of each individual Eligible Contributor;
- (h) attend at or conduct meetings (as appropriate) on significant matters in relation to the Trust and/or Trust Property; and
- (i) attend as required the Scheme meeting and other relevant MBF company meetings in accordance with the provisions of the Trust Deed.

1.2 Accounting Records, tax and audit

- (a) procure and monitor the maintenance of appropriate accounting systems to correctly record and explain the Trust transactions and financial position in respect of the Trust Property in respect of each Eligible Contributor;
- (b) open and maintain non interest and interest bearing bank accounts in the name of the Trustee;

- (c) procure the preparation of annual accounts and statements in respect of the Trust and Trust Property;
- (d) procure an annual audit if so requested by MBF, including balance sheets, statement of income and expenditure and list of assets;
- (e) procure the completion and lodgment of the Trust's income tax return each year;
- (f) procure the preparation and lodgment of appropriate business activity statements (to the extent relevant); and
- (g) procure the calculation, collection and payment of all relevant tax and duty liabilities of the Trust.

1.3 Compliance with Relevant Law and Governmental Agencies

- (a) ensure Privacy Law is complied with by the Trustee and Third Parties or other persons appointed by MBF in accordance with clause 5.4(a) (to the extent relevant); and
- (b) liaise with Governmental Agencies including as appropriate:
 - (i) handling site visits and investigations;
 - (ii) reporting; and
 - (iii) return queries.

1.4 Liaising with and supervising Third Parties and other persons

- (a) work and liaise with, and supervise, Third Parties or other persons appointed by MBF in accordance with clause 5.4(a);
- (b) assist MBF in preparing and completing agreements between MBF and Third Parties or other persons appointed by MBF in accordance with clause 5.4(a);
- (c) regularly assess the performance of Third Parties or other persons appointed by MBF in accordance with clause 5.4(a) against agreed benchmarks; and
- (d) apply, maintain and assist MBF in enforcing all compliance requirements on Third Parties or other persons appointed by MBF in accordance with clause 5.4(a).

1.5 Other Services

- (a) defend any legal action taken against the Trust or commence legal action on behalf of the Trust where it is considered to be in the best interests of its beneficiaries; and
- (b) provide such services to MBF and/or the Eligible Contributors in accordance with the provisions of the Trust Deed.

Schedule 2

MBF Services (Clause 4.2(a))

MBF will provide the following services to the Trustee in accordance with the terms and conditions of this Agreement:

1. Services to be provided by MBF

- (a) Provide to the Trustee, or procure the provision to the Trustee of, necessary information and Trust Data to enable the Trustee to establish and maintain Eligible Contributor records;
- (b) Liaise with the Trustee and Third Parties or other person appointed under clause 5.4(a) as relevant in relation to Eligible Contributor records, meetings and enquiries;
- (c) Develop, and liaise with the Trustee in relation to the maintenance of an agreed process for addressing Eligible Contributor enquiries, correspondence and complaints;
- (d) Liaise with the Trustee in relation to the preparation of and inclusion of any relevant materials for the Information Memorandum relating to the Trustee and the Trust;
- (e) Establish and maintain administration systems capable of performing all necessary administration functions in relation to the Trust including accounting, calculation or distribution of any Entitlement and/or monies payable in respect of each individual Eligible Contributor;
- (f) Establish and maintain appropriate accounting systems to correctly record and explain the Trust transactions and financial position in respect of the Trust Property in respect of each Eligible Contributor;
- (g) Develop, or be involved in the development of, agreements between MBF and Third Parties of other persons appointed by MBF in accordance with clause 5.4(a);
- (h) Enforce or procure the enforcement of all compliance requirements on Third Parties or other persons appointed by MBF in accordance with clause 5.4(a);
- (i) Provide, and cause the Registrar to provide, all assistance reasonably requested by the Trustee to assist the Trustee in relation to the provision of services by the Trustee to MBF and/or the Eligible Contributors in accordance with the provisions of the Trust Deed; and
- (j) Provide other services to the Trustee as may be agreed from time to time with the Trustee.

Schedule 3

Service Fees

The Service Fee comprises:

- (a) Establishment Fee - \$30,000;
- (b) Bare Trustee Fee - \$140,000 per annum (subject to a minimum fee of \$70,000 for the duration of this Agreement);
- (c) Internal Legal - \$250 per hour (not to exceed \$5,000 without prior MBF consent); and
- (d) Internal Executive - \$150 per hour, limited to initial due diligence (not to exceed \$5,000 without prior MBF consent).

The fees set out above are exclusive of GST.