

THE BANK OF NEW YORK MELLON SA/NV

AND

ING PARAPLUFONDS 5 N.V.

AND

ING FUND MANAGEMENT B.V.

AND

ING BEWAAR MAATSCHAPPIJ I, ING BEWAAR MAATSCHAPPIJ II, ING BEWAAR  
MAATSCHAPPIJ III, ING BEWAAR MAATSCHAPPIJ IV, ING BEWAAR  
MAATSCHAPPIJ V, ING BEWAAR MAATSCHAPPIJ VI

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DEPOSITARY SERVICES AGREEMENT

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AIF'S

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## 1. INTERPRETATION. DEFINITIONS

1.1 This Agreement supplements the provisions set out in the respective Custody Agreement as referred to in Schedule 1. If a provision of this Agreement (including defined terms) deviates from or contradicts a provision of the respective Custody Agreement in whole or in part, then this Agreement shall prevail.

1.2 In this Agreement the following terms shall have the meaning ascribed to them:

<b>"Act"</b>	means the Dutch Act on Financial Supervision ( <i>Wet op het financieel toezicht</i> ), as amended from time to time.
<b>"AFM"</b>	means the Netherlands Authority for the Financial Markets ( <i>Stichting Autoriteit Financiële Markten</i> ).
<b>"Agreement"</b>	means this Agreement.
<b>"AIF"</b>	means an investment institution ( <i>beleggingsinstelling</i> ) as defined in Article 1:1 of the Act.
<b>"AIFM"</b>	means a manager of an AIF ( <i>beheerder van een beleggingsinstelling</i> ) that is managing an AIF ( <i>beheren van een beleggingsinstelling</i> ) as defined in Article 1:1 of the Act.
<b>"Article"</b>	means an article of this Agreement.
<b>"Asset Owner"</b>	means the legal entity holding the legal title to an FGR's Assets.
<b>"Assets"</b>	means the assets of the Fund, composed of Financial Instruments or Other Assets.
<b>"BMVK"</b>	means investment company with variable capital ( <i>beleggingsmaatschappij met veranderlijk kapitaal</i> ) as defined in Article 2:76a, paragraph 1 of the Dutch Civil Code ( <i>Burgerlijk Wetboek</i> ).
<b>"BNYM"</b>	means The Bank of New York Mellon SA/NV, acting through its Amsterdam branch.
<b>"Constitutive Documents"</b>	means the articles of association ( <i>statuten</i> ), the offering documents (prospectus) and, if applicable, the terms and condition, of the Fund.
<b>"Custody Agreement"</b>	means each of the custody agreements as referred to in Schedule 1, as supplemented by this Agreement.

<b>"Decree"</b>	means the Dutch Decree on the Supervision of Conduct of Business Rules pursuant to the Act on Financial Supervision ( <i>Besluit Gedragstoezicht financiële ondernemingen Wft</i> ), as amended from time to time.
<b>"Delegate"</b>	has the meaning ascribed to it in Article 7.1.5 sub (b).
<b>"Delegation"</b>	has the meaning ascribed to it in Article 7.1.1.
<b>"Depository"</b>	means a depository ( <i>bewaarder</i> ) as defined in Article 1:1 of the Act that is providing depository services to an AIF.
<b>"Depository Services"</b>	means the services to be provided by BNYM pursuant to this Agreement.
<b>"DNB"</b>	the Dutch Central Bank ( <i>De Nederlandsche Bank N.V.</i> ).
<b>"Directive"</b>	means Directive 2011/61/EU on Alternative Investment Fund Managers, as implemented under Dutch law.
<b>"Effective Date"</b>	means the date as separately agreed between BNYM and the Manager.
<b>"Escalation Procedure"</b>	means the procedure set out in Article 14.
<b>"Financial Instruments Look Through Obligation"</b>	has the meaning ascribed to it in Article 3.1.1.
<b>"Financial Instruments"</b>	means the financial instruments that can be held in custody within the meaning of the Act.
<b>"FGR"</b>	means a fund for joint account ( <i>fonds voor gemene rekening</i> ) as defined in the Article 2 under 2 of the Act on Company Tax 1969 ( <i>Wet op de Venootschapsbelasting 1969</i> ).
<b>"Fund"</b>	means any of the AIFs managed by the Manager (i) as of the date of this Agreement, and (ii) any additional Fund acceded to this Agreement in accordance with Article 2.1.2.
<b>"Inventory"</b>	the comprehensive and up to date inventory of the Other Assets held by the Fund;
<b>"Investor"</b>	an investor in the Fund.

<b>"Loss"</b>	has the meaning ascribed to it in Article 11.1.1.
<b>"Operating Level Agreement"</b>	means the non-legally binding document setting out detailed operational arrangements in relation to the Depositary Services to be provided by BNYM.
<b>"Other Assets Look Through Obligation"</b>	has meaning ascribed to it in Article 3.2.1.
<b>"Other Assets"</b>	means all assets which are not Financial Instruments.
<b>"Other Dutch Laws"</b>	means applicable Dutch laws regulations, excluding the Directive, as implemented in Dutch laws and regulations, the Act and the Decree.
<b>"Party"</b>	means the Manager, the Fund, the Asset Owner or BNYM.
<b>"Regulation"</b>	Regulation 231/2013 supplementing Directive 2011/61/EU.
<b>"Service Level Document"</b>	means the legally binding document setting out in general terms operational arrangements in relation to the Depositary Services to be provided by BNYM.
<b>"Subsidiary"</b>	means a financial or legal structure either wholly or partially owned, directly or indirectly, by the Fund or the Manager on behalf of the Fund incorporated in the Netherlands or in any other jurisdictions.
<b>"Third Party"</b>	means any (legal or natural) person other than a Party.

1.3 Terms not defined in this Agreement shall have the meaning ascribed to them in the body of the Custody Agreement.

1.4 If a Fund is an FGR, references to such Fund shall be deemed to be references to the Manager and the Asset Owner, as the case may be.

## 2. PROVISIONS REGARDING BNYM

### 2.1 Appointment

2.1.1 The Manager appoints BNYM with effect from the date of this Agreement as Depositary of one or more Funds to provide the Depositary Services set out in this Agreement. BNYM hereby accepts such appointment and is authorised and instructed

to perform the Depositary Services pursuant to this Agreement, to the extent relevant in accordance with the Service Level Document.

BNYM, acting as Depositary, shall at all times provide its services in accordance with the Directive, the Act, the Decree, the Regulation, further EU implementing regulations, the Other Dutch Laws and the policy rules issued by the European Securities and Markets Authority, the AFM and DNB. BNYM will assume all obligations arising for depositaries under the Directive, the Act, the Decree, the Regulation, further EU implementing regulations, the Other Dutch Laws and the policy rules issued by the European Securities and Markets Authority the AFM and DNB, and nothing in this Agreement is intended to diminish or otherwise take anything away from compliance therewith. Consequently, nothing in this Agreement should be interpreted as an intention of the Depositary to agree otherwise. The Directive, the Act, the Decree, the Directive, the Regulation, further EU implementing regulations, the Other Dutch Laws and the policy rules issued by the European Securities and Markets Authority, the AFM and DNB shall at all times prevail over any matter in this Agreement and the Custody Agreement (including its Schedules) which may be contradictory thereto (in whole or in part). In addition, BNYM shall carry out its duties under this Agreement and the Custody Agreement with the skill and care reasonably expected of a professional custodian and banker.

- 2.1.2 If the Manager wishes to appoint BNYM as the depositary of an additional Fund, the Manager shall provide BNYM with a written request to that effect. BNYM shall provide the Depositary Service in relation to such Fund after accepting such appointment at its sole discretion, in writing. BNYM may require the Manager to provide BNYM with such additional information or documents as required prior to the acceptance of such additional Fund.

## **2.2 Services of BNYM**

- 2.2.1 In providing the Depositary Services, BNYM shall act honestly, fairly, independently and professionally, and always in the interest of a Fund and its Investors, in the execution of the services set out in this Agreement.
- 2.2.2 The Parties agree and acknowledge that the Assets may be owned or acquired on behalf of the Fund through Subsidiaries. The Fund represents and warrants that it shall make the necessary arrangements to organise appropriate contractual arrangements with the Subsidiaries to enable BNYM to perform its Depositary Services in respect of such Subsidiaries in compliance with the Directive, the Other Dutch Laws and the Constitutive Documents.
- 2.2.3 BNYM shall provide the Manager as of the Effective Date and on an ongoing basis with the information required for the Manager to discharge its duties, including the exercise of any rights attached to Assets, and in order to allow the Manager and the Fund to have a timely and accurate overview of the Fund's accounts (including, but not limited to, the Cash Accounts and Securities Accounts) as set out in the Service Level Document. The Service Level Document also contains the means and procedures by which BNYM transmits such information.

### 3. **SAFEKEEPING**

#### 3.1 **Financial Instruments**

3.1.1 Financial Instruments shall be held in Custody by BNYM in accordance with the terms of the Custody Agreement and the Custodian shall perform the services as set out in the Custody Agreement in relation to such Financial Instruments held in custody by BNYM. If all or part of such Financial Instruments are held through one or several Subsidiaries controlled directly or indirectly by the Fund, the aforementioned custody obligations shall apply to such underlying Financial Instruments on a look-through basis (the "**Financial Instruments Look Through Obligation**"). The Fund acknowledges that the Financial Instruments Look Through Obligation does not apply in case of AIFs being fund of funds or master-feeder funds where the underlying AIFs have a depository which keeps in custody such AIFs' assets.

3.1.2 BNYM will ensure that:

- (a) the Financial Instruments that can be registered in a Securities Account are registered in segregated Securities Accounts so that such Financial Instruments can be clearly identified at all times as belonging to the Fund;
- (b) records and segregated Securities Accounts are maintained in a way that ensures their accuracy, and in particular record the correspondence with the Financial Instruments and cash held for the Fund;
- (c) reconciliations are conducted on a regular basis between BNYM's internal accounts and records and those of any Third Party to whom custody functions have been delegated;
- (d) due care is exercised in relation to the Financial Instruments held in custody in order to ensure a high standard of protection of Investors;
- (e) all relevant custody risks throughout the custody chain are assessed and monitored and the Manager is informed of any material risk identified;
- (f) adequate organisational arrangements are introduced to minimise the risk of loss or diminution of the Financial Instruments, or of rights in connection with those Financial Instruments as a result of fraud, poor administration, inadequate registering or negligence; and
- (g) the legal ownership right over the Financial Instruments is verified.

3.1.3 When BNYM has delegated custody functions to a Third Party, it shall remain subject to the obligations set out in Article 3.1.2 under (b) up to and including (e). BNYM has to ensure that such Third Party is subject to the obligations set out in Article 3.1.2 under (b) up to and including (g).

#### 3.2 **Other Assets**

3.2.1 With respect to Other Assets, BNYM shall verify the legal ownership of the Fund and BNYM shall maintain and keep up-to-date a record for such Other Assets (including their notional amounts) for which BNYM is satisfied that the Fund holds legal

ownership so as to be able to provide an Inventory on such basis at any time. If all or part of such Other Assets are held through one or several Subsidiaries controlled directly or indirectly by the Fund, the aforementioned obligations shall apply to such underlying Other Assets on a look-through basis (the "**Other Assets Look Through Obligation**"). The Fund acknowledges that the Other Assets Look Through Obligation does not apply in case of fund of funds or master-feeder funds where the underlying AIFs have a depositary which provides ownership verification and record keeping functions for such AIFs' assets.

- 3.2.2 The Manager and the Fund shall upon the commencement of this Agreement and on an ongoing basis provide BNYM with all relevant information on a timely basis BNYM needs to verify the legal ownership of the Fund with respect to the Other Assets and/or in relation to this where appropriate give access to such information and/or procure that relevant Third Parties provide such information or grant access to such information, as specified in the Service Level Document.
- 3.2.3 The Manager acknowledges and agrees that BNYM does not have any liability for the accuracy and correctness of such information.
- 3.2.4 The assessment whether the Fund holds ownership of the Assets shall be based on the information provided by the Manager to BNYM.
- 3.2.5 The Manager shall procure that Third Parties ensure that:
  - (a) Other Assets cannot be assigned, transferred, exchanged or delivered without prior notification to BNYM. In addition, all documents evidencing the transaction must be provided to BNYM promptly; and
  - (b) Other Assets are properly registered in the name of the Fund and there is consistency between the positions in the records of the Fund and the Inventory and that all relevant information is transmitted to BNYM, so as to permit BNYM to conduct its own reconciliation.
- 3.2.6 BNYM will verify on the basis of the above the ownership of the Fund of the Other Assets. Should BNYM detect anomalies and/or require further information, it will initiate the Escalation Procedure.

#### 4. **CASH FLOW MONITORING**

- 4.1.1 To discharge its cash flow monitoring obligations, BNYM shall ensure that the cash flows of the Fund are properly monitored in accordance with Article 85 up to and including 87 of the Regulation and shall in particular ensure that all payments made by or on behalf of Investors upon the subscription of units or shares of the Fund have been received and that all cash that has been received by the Fund has been booked on the Cash Accounts or on cash accounts opened by BNYM acting on behalf of the Fund at itself in accordance with the Custody Agreement or another entity that meets the requirement laid down in the Act, Decree, Directive and Regulation.
- 4.1.2 Where the cash accounts are opened in the name of BNYM acting on behalf of the Fund, such accounts shall not be used to book own cash of BNYM and/or cash of the entity where such accounts are opened.

- 4.1.3 The Manager shall provide BNYM or procure that relevant Third Parties provide BNYM at the commencement of this Agreement and on an ongoing basis with all relevant information with regard to the cash accounts for BNYM to discharge its duties pursuant to this Article 4, notably on all existing accounts and/or the opening of new accounts holding cash of the Fund, including such accounts that have been opened with Third Parties in which case the information is to be provided directly by such Third Party.
- 4.1.4 Based – where applicable – on the information received pursuant to Article 4.1.3 and having regard to the fact that BNYM does not have a duty to verify such information independently, BNYM shall further:
- (a) on a daily basis or, in case of infrequent cash movements, each time such a movement occurs, perform a reconciliation of the cash flows;
  - (b) on a daily basis or, in case of infrequent cash movements, each time such a movement occurs, identify significant cash flows and cash movement that are in the reasonable opinion of BNYM inconsistent with the Fund's operations; BNYM will, in such case, initiate the Escalation Procedure;
  - (c) from time to time and at least once a year check the adequacy of these controls as well as of the reconciliation processes and ascertain that all accounts of the Fund holding cash are included in the reconciliation process; and
  - (d) make sure that all monies paid by Investors with regards to their subscription of units or shares of the Fund have been received and booked properly.
- 4.1.5 BNYM may rely on the information received pursuant to Article 4.1.3 without a duty of independent verification and the Manager is responsible for any inaccuracies, omissions or other errors in such information provided to BNYM.

## 5. **OVERSIGHT**

- 5.1 BNYM must perform, in accordance with Article 92 until 99 of the Regulation, certain monitoring and supervisory duties.
- 5.2 BNYM shall perform ex post controls and verifications of the relevant processes and procedures of the Manager, the Fund and, where applicable, Third Parties appointed by the Manager or the Fund for the relevant functions, such as the central administration agent and/or registrar and transfer agent and, as the case may be, investment manager. BNYM shall ensure that appropriate verification and reconciliation procedures exist, are implemented, applied and reviewed from time to time, as appropriate.
- 5.3 The procedures, controls and verifications referred to in the preceding paragraph must take into account the nature, scale and complexity of the Fund.
- 5.4 In order to discharge its obligations, BNYM shall at the commencement of this Agreement assess the risks associated with the nature, scale and complexity of the Fund and the Manager's organisation and then establish oversight procedures which are appropriate and proportionate. BNYM shall regularly review and, where required, update such procedures. BNYM shall implement and apply such procedures.



- 5.5 The Manager shall provide or procure that relevant Third Parties, such as the central administration agent, the registrar and transfer agent, where applicable the investment manager and the external valuer, provide BNYM at the commencement of this Agreement and on an ongoing basis with all relevant information that BNYM needs to discharge its obligations, including notably reports and statements in relation to recognised external certifications on the adequacy and relevance of procedures and controls.
- 5.6 The Manager shall grant or procure that the relevant Third Parties grant to BNYM access to the books and the premises of the Manager and of the relevant Third Parties, as BNYM may require in its reasonable discretion.
- 5.7 BNYM may rely on the information received pursuant to this Article 5 without independent verification and the Manager is responsible for any inaccuracies, omissions, or other errors in relation to such information.
- 5.8 BNYM shall in accordance with the provisions in the Act, Decree, Directive, the Regulation, further EU implementing regulations, the Other Dutch Laws, the policy rules issued by the European Securities and Markets Authority , the AFM and DNB and the Constitutive Documents:
- (a) ensure that subscriptions, redemptions and conversions of units or shares of the Fund are carried out in accordance with the Act, Decree, Other Dutch Laws and the Constitutive Documents;
  - (b) ensure that the net asset value of units or shares of the Fund is calculated in accordance with the Act, Decree, Other Dutch Laws, the Constitutive Documents, the Directive and the Regulation;
  - (c) carry out the instructions of the Manager, unless they conflict with the Act, Decree, Other Dutch Laws and the Constitutive Documents;
  - (d) ensure that in transactions involving the Assets, the consideration is remitted to it within the usual time limits; and
  - (e) ensure that the income of the Fund is applied in accordance with the Act, Decree, Other Dutch Laws and the Constitutive Documents.
- 5.8.2 In case BNYM becomes aware of shortcomings that – even though notified to the Manager – have not been remedied to the satisfaction of BNYM, BNYM shall make use of the Escalation Procedure.

## 6. **OTHER DEPOSITARY SERVICES**

BNYM shall upon Authorised Instructions and insofar as the Assets allow it:

- (a) pay through the debit of the Cash Accounts, bills, statements, taxes, management fees, depositary fees and other fees and liabilities of the Fund;
- (b) execute all transfers of cash in relation with foreign exchange trades or investments;

- (c) receive the amounts transferred to cover subscriptions of units or shares of the Fund and pay redemption proceeds; and
- (d) perform such other acts as have been agreed from time to time between BNYM and the Manager in respect of the Fund.

## 7. DELEGATION OF DEPOSITARY SERVICES

### 7.1 General obligations

- 7.1.1 BNYM may not delegate to Third Parties any of the functions entrusted to BNYM by virtue of the Act, Decree, Directive and Regulation, save for the safe-keeping functions in relation to Assets, provided, however, that the requirements for such delegation (a "**Delegation**") as provided for in the Act, Decree, Directive and Regulation have been complied with.
- 7.1.2 The liability of BNYM shall not be affected by a Delegation.
- 7.1.3 A Third Party to whom such functions have been delegated may sub-delegate these under the same conditions as BNYM pursuant to this Article 7.
- 7.1.4 The provision of services as specified by the EU Directive 98/26/EC by securities settlement systems as designated for the purpose of that directive or the provision of similar services by third country securities settlement systems is, however, not regarded as a Delegation.
- 7.1.5 Any Delegation must be made in conformity with the Act, Decree, Directive and Regulation and consequently such Delegation is subject to the following requirements:
  - (a) there must be, as to be determined by BNYM in its reasonable discretion and in conformity with the Directive and Dutch market practice, an objective reason for the Delegation and notably there must be no intention to avoid the requirements of the Directive;
  - (b) BNYM must exercise due skill, care and diligence in the selection and the appointment of the relevant Third Party (a "**Delegate**") and in relation to the periodic review and the ongoing monitoring of the Delegate and the arrangements of the Delegate in respect of the matters delegated to it, including the regular monitoring of the Delegate's performance and compliance with BNYM's standards;
  - (c) BNYM must ensure that the Delegate:
    - (i) has appropriate structures and expertise in relation to the matters delegated having regard to the nature and complexity of the relevant Assets;
    - (ii) where applicable, having regard to the matters delegated and the type of Assets, shall segregate the relevant Assets from the Delegates own assets, BNYM's own assets and assets of clients of BNYM that are not AIFs in a way that such Assets can at any time be clearly identified as belonging to AIF clients of BNYM;

- (iii) maintains such records and accounts as are required for the segregation referred to above and to maintain such records and accounts in a manner to ensure their accuracy;
  - (iv) where applicable, having regard to the matters delegated and the type of Assets, shall not make use of the relevant Assets without the prior express and specific consent of the Fund and prior notification of BNYM and in addition applicable Other Dutch Laws must be complied with; and
  - (v) more generally, shall comply with all the duties and obligations BNYM would have to comply with, had BNYM not delegated the relevant matter.
- (d) BNYM must conduct regular reconciliations between its internal accounts and records and those of the Delegate.
- 7.1.6 BNYM has, to the broadest extent permitted by the Act, Decree, Directive, Regulation and Other Dutch Laws, no responsibility for any inaccuracy, omission or other error in relation to records kept and information provided by the Delegate to BNYM and as a result thereof cannot be held liable for such.

## 7.2 **Sub-Custody**

- 7.2.1 As regards the delegation of custody of Financial Instruments ("**Sub-Custody**"), the following must be complied with in relation to the selection and on-going monitoring of the Delegate to whom the custody of Financial Instruments is delegated (a "**Sub-Custodian**"):
- (a) BNYM must exercise due skill, care and diligence to ensure that the Sub-Custodian provides an adequate standard of protection, notably in relation to the Sub-Custodian's practices, procedures and internal controls, its financial strength and reputation and its operational and technological capabilities.
  - (b) BNYM shall in this context further assess at the outset and, as part of the periodic review, the regulatory and legal framework, including custody risk and enforceability of the contractual arrangements with the Sub-Custodian. Such assessment shall have a particular focus on potential implications of an insolvency of the Sub-Custodian. If so warranted for the reason of market turmoil or when a risk has been identified, the frequency and scope of the review shall be increased;
  - (c) BNYM shall inform the Manager without undue delay of any material changes of such risks.
- 7.2.2 If BNYM becomes aware that segregation is not sufficient to ensure protection from insolvency because of the law of the relevant jurisdiction, BNYM shall immediately inform the Manager and this matter shall be escalated to the board of directors of the Manager. The board of directors of the Manager shall decide promptly whether or not to maintain such investments. In case the investments are maintained BNYM may in its reasonable discretion, having regard to possible alternative solutions, such as a

transfer of the Financial Instruments to another Sub-Custodian and/or enhanced protection by way of additional contractual arrangements, decide to terminate this Agreement with cause.

- 7.2.3 BNYM must ensure that a Sub-Custodian is an entity subject to effective prudential regulation, including minimum capital requirements, and to supervision in the relevant jurisdiction and that the Sub-Custodian is subject to an external periodic audit to ensure that the Financial Instruments are in its possession, all as further detailed in the Directive.
- 7.2.4 Notwithstanding the above, where the law of a third country requires that certain Financial Instruments be held in custody by a local entity and no local entity meets the requirements in the preceding paragraph, BNYM may delegate to a local Sub-Custodian to the extent required by the law of such jurisdiction and as long as no other local entity meeting the relevant requirements exists, provided that:
- (a) the Investors have been duly informed of this;
  - (b) Authorised Instructions to delegate to the Sub-Custodian have been given; and
  - (c) this has been disclosed in the offering document of the Fund.

### 7.3 **Contingency Plans**

BNYM shall devise contingency plans for each market in which it appoints a Third Party in accordance with Article 7.2 to perform safekeeping duties. Such a contingency plan shall include the identification of an alternative provider, if any, and will be made available to the Manager upon request. More generally, BNYM shall take measures deemed appropriate by BNYM having regard to the best interest of the Fund and the Investors, including termination of the contract with the Sub-Custodian, where the Sub-Custodian does not comply with the requirements.

### 7.4 **Miscellaneous requirements**

BNYM may under its own responsibility, without prejudice to the above provisions, obtain assistance from Third Parties, in relation to the performance of tasks.

### 7.5 **List of Delegates**

BNYM shall as of the Effective Date indicate in Schedule 2 the names and details of all the Delegates it may use and, upon request by the Fund or the Manager, BNYM shall provide such information as it deems appropriate and reasonable in relation to the criteria used to select Delegates and the steps envisaged to monitor their relevant activities.

BNYM may add or remove Delegates from such Schedule, provided it has given prior notice to the Fund.

## **8. RIGHTS OF BNYM**

### **8.1 To receive advice**

If BNYM shall at any time be in doubt as to any action to be or not to be taken by it, it may, with the prior written consent of the Manager, obtain advice at the expense of the Fund or the Manager and may, but shall not be required to, act thereon.

### **8.2 To institute legal proceedings**

BNYM shall not be required to take any legal action hereunder unless it shall have received written confirmation to be fully indemnified to its reasonable satisfaction for costs and liabilities and, if the Manager requires BNYM in any capacity to take any action which in the opinion of BNYM might make BNYM liable for the payment of money or liable in any other way, BNYM shall be kept indemnified in any reasonable amount and form satisfactory to it as a prerequisite to taking such action.

### **8.3 To be indemnified**

The Manager agrees that it will indemnify and hold harmless BNYM and its employees, officers and directors from any and all reasonable costs, liabilities and expenses resulting directly or indirectly from the fact that BNYM or administrative officers appointed by the Fund and selected from among the staff of BNYM have acted hereunder as agent of the Fund in accordance with Authorised Instructions, except in the case of negligence, intentional failure or in case such indemnification would be contrary to mandatory provisions in the Act, Decree, Directive, Regulation or Other Dutch Laws.

### **8.4 To be reimbursed**

8.4.1 BNYM shall be entitled to receive reimbursement for its reasonable cash disbursements under this Agreement from the Fund out of the Assets on demand.

8.4.2 If the Manager or the Fund require BNYM to advance cash or securities for any purpose, BNYM shall be at liberty, however not under a duty, to advance such cash or securities. In the event that BNYM, its Sub-Custodians, its agents or correspondents shall incur, or be assessed to, any taxes, charges, expenses, assessments, claims or liabilities in connection with the performance of this Agreement, except such as may arise from its negligent action, failure to exercise reasonable care in the performance of its Services hereunder or wilful misconduct or in case of any liability imposed by law, the Fund must reimburse and indemnify BNYM promptly.

### **8.5 To use data processing records**

BNYM is authorised (so far as permitted by applicable laws) to maintain all accounts, registers, corporate books and other documents on computer records and to produce at any time during the course of legal proceedings, copies or reproductions of these documents made by photographic, photostatic or data processing procedures as judicial evidence.

## **9. DUTIES OF THE MANAGER OR THE FUND**

- 9.1 The Manager and/or the Fund will provide and, where relevant, procure that relevant Third Parties such as the Fund's central administration agent, the registrar and transfer agent, investment manager, independent (external) valuer, investment adviser, placing agents and distributors, will provide continued support and assistance to BNYM, as may be required for BNYM to discharge its obligations under the Act, Decree, Directive, Regulation and Other Dutch Laws.
- 9.2 The Parties agree to transmit all or part of the information that flows between them electronically provided that proper recording of such information is ensured.
- 9.3 With a view to the above, the Manager and the Fund shall provide or procure that relevant Third Parties provide, to BNYM, the information and confirmations as may be required by the Act, Decree, Directive, Regulation and Other Dutch Laws and as notably laid down in this Agreement.
- 9.4 The Manager shall further inform BNYM at the commencement of this Agreement in sufficient detail on the categories of assets and the countries in which the Fund may invest as well as other relevant salient features of the investment strategy.
- 9.5 Any changes must be notified to BNYM at least ten (10) Business Days prior to the investment being made to permit BNYM to take an informed view to properly assess potential relevant risks, notably custody risks. BNYM may refuse such changes if in the reasonable and documented assessment by BNYM the relevant Assets are not sufficiently protected. Changes to which BNYM has not opposed to within a reasonable time, which in any event must not be shorter than three (3) Business Days, shall be reflected in Schedule [...] and countersigned by all Parties.
- 9.6 The Manager or the Fund will inform BNYM immediately (but in any event prior to the opening of a cash account with another entity than BNYM) of the intention to open a cash account with another entity than BNYM and such cash account shall only be opened with Third Parties which are suitable having regard to the requirements of the Act, Decree, Directive and Regulation.
- 9.7 The Manager or the Fund opening securities accounts with another entity than BNYM shall be subject to the prior written approval of BNYM and shall in any case be subject to the entering into of a service letter agreement, by the Fund, BNYM and the Third Party.
- 9.8 The Manager and the Fund commit to ensure, in case of appointment of a prime broker, that the prime brokerage agreement requires the prime broker to promptly make available to BNYM any and all information for the latter to discharge its obligations under the Act, Decree, Directive, Regulation and Other Dutch Laws, or to be reflected in more detail in a Schedule to this Agreement.

## **10. OPERATIONAL ARRANGEMENTS AND PROCEDURES**

### **10.1 Enquiry into Conduct**

In order for BNYM to enquire into the conduct of the Manager and the Fund and to assess the quality of information transmitted and upon reasonable request, the

Manager and the Fund shall grant or procure that relevant Third Parties grant to BNYM access to the Fund's or such Third Party's physical and electronic books and records relating to the Fund during normal business hours, subject to the usual confidentiality arrangements.

## **10.2 Performance of BNYM**

The Manager and the Fund will regularly, but at least once a year, review and opine on the proper performance of BNYM of its Depositary Services. BNYM will provide all reasonable cooperation and provide such documents and other information as the Manager and/or the Fund may reasonably request, including on-site inspections during the business hours of BNYM, subject, however, to compliance to such confidentiality arrangement as BNYM may request in relation to on-site inspections, with a view to Dutch data protection and confidentiality obligations.

## **10.3 Units or Shares of the Fund**

The Manager will provide or procure that relevant Third Parties, such as notably the central administration agent and/or the registrar and transfer agent of the Fund, provide BNYM, at the end of each Business Day when a request for the subscription of units or shares of the Fund or subscription monies has been received, with the information that is necessary for BNYM to discharge its duties, such as information on subscriptions of units or shares of the Fund and information on subscription monies received by such Third Parties, as specified in the Service Level Document.

## **10.4 Modification of Rules**

10.4.1 The Manager or Fund will transmit to BNYM the version of the Constitutive Documents that is applicable and in effect at the date of signing of this Agreement and shall promptly transmit any changes to the Constitutive Documents to BNYM.

10.4.2 Any material changes to the Constitutive Documents must be notified sufficiently in advance to BNYM so as to permit BNYM to properly review such changes. In case of material changes that may be detrimental to BNYM, BNYM shall consult the Fund in order to find a mutually acceptable solution.

## **10.5 Money Laundering and Terrorism**

BNYM shall implement and apply measures against money laundering and the fight against terrorism in accordance with Dutch laws and regulations on anti-money laundering and European Union directives on anti-money laundering and counter-terrorism financing, each as amended from time to time.

## **10.6 Statements and Reports**

BNYM shall make available to the Manager, on a periodic basis as agreed from time to time between the Parties, reports of all transfers in relation to the Financial Instruments and statements of all holdings by BNYM. The Manager may elect to receive certain information electronically through the internet to an email address specified by it for such purpose.

## 10.7 **Review of Reports**

If, after BNYM makes a statement with respect to the Assets available to the Manager, the Manager has not given BNYM written notice of any exception or objection thereto within a period agreed between the Parties, the statement shall be deemed to have been approved.

## 10.8 **Inspection of Books and Records**

The Manager shall have the right, at its own expense and with reasonable prior written notice to BNYM, to inspect BNYM's books and records directly relating to the Assets during normal business hours, or to designate an accountant to make such inspection.

## 11. **LIABILITY**

### 11.1 **Liability for Custody of Financial Instruments**

11.1.1 BNYM hereby explicitly accepts the standard of care specified in Article 83c of the Decree and Article 21(10) of the Directive and the liability set out in Article 21(12) of the Directive and Article 100 of the Regulation. The provisions of this section 11 and any other section of this Agreement shall therefore not apply to the extent that they conflict with BNYM's standard of care and liability or other obligations under the Directive as implemented and interpreted in the Netherlands.

11.1.2 BNYM shall in accordance with Article 11.1.1 be liable for the loss of a Financial Instrument (a "**Loss**") by BNYM or a Sub-Custodian, subject to the exceptions set out in Articles 11.1.5 and 11.1.6. The occurrence of a Loss is assessed in accordance with the meaning given to this term in the Directive by the Manager acting on behalf of the Fund, the Fund or the Investors. The Manager acting on behalf of the Fund or the Fund shall act in cooperation with BNYM.

11.1.3 The proceedings in relation to the assessment of the occurrence of a Loss shall be documented, including the reasoning and arguments brought forward by the Manager acting on behalf of the Fund or the Fund in sufficient detail and any views and opinions of legal advisors or auditors shall form part of such documentation. Any views and opinions of legal advisors or auditors from the side of BNYM shall as well form part of such documentation.

11.1.4 Upon the compliance with (payment) obligations by BNYM following from (i) the occurrence of liability of BNYM for any Loss under this Agreement or the Act, Decree, Directive or Regulation, or (ii) any compensation made by BNYM to the Fund, BNYM will be entitled to take recourse and to assume any action and make all declarations, registrations and confirmations necessary or useful for such recourse to be effective. If such recourse cannot be enforced in the relevant jurisdiction, the Fund shall act on behalf of BNYM and shall transfer to it any recovered assets as the case may be. The Fund undertakes to use its best efforts to actively assist BNYM and act on its behalf upon request with a view to recovering any lost Assets or obtain any compensation. The Fund undertakes not to waive, exercise or refrain from exercising any right in relation to the lost Assets without prior consultation and authorisation from BNYM.



11.1.5 BNYM shall not be liable for a Loss if the Loss has arisen as a result of an external event beyond the reasonable control of BNYM (or, as the case may be, of the Sub-Custodian) the consequences of which would have been unavoidable despite all reasonable efforts to the contrary, in accordance with the meaning given to these terms in the Act, Decree, Directive and Regulation.

11.1.6 BNYM is further discharged from its liability for a Loss if the relevant Financial Instrument is held by a Sub-Custodian appointed in conformity with the requirements of this Agreement, and if the contract between BNYM and the Sub-Custodian expressly transfers the liability for a Loss to the Sub-Custodian as laid down in Article 21(13) of the Directive and Article 101 and 102 of the Regulation, and, if such discharge relates to an objective reason, such as the discharge being consistent with BNYM's policies and decisions or it being limited to precise and concrete circumstances characterising a given activity, or any other objective reason in the sense of the Directive and Regulation as to be reasonably assessed by BNYM notably in view of the type of Financial Instruments and/or the location of the Sub-Custodian. Such objective reason shall in any case exist where:

- (a) the law of a third country requires that certain Financial Instruments be held in custody by a local entity and local entities exist that satisfy the delegation criteria laid down in Article 21(11) of the Directive, as implemented in Dutch law; or
- (b) the Manager insists on maintaining an investment in a particular jurisdiction despite warnings by BNYM as to the increased risk this presents,

resulting in a discharge by BNYM.

## 11.2 **Liability in relation to safekeeping of Other Assets, in relation to oversight services and in relation to cash flow monitoring and in relation to other services**

11.2.1 BNYM shall be liable for damages suffered by the Fund or by the Investors as a direct result of BNYM's attributable failure (*toerekenbare tekortkoming*) to properly fulfil its obligations under this Agreement. To the extent not prohibited by the Act, Decree, Directive, Regulation and Other Dutch Laws, indirect and/or consequential damages (*indirecte schade of gevolgschade*) are excluded.

11.2.2 For the avoidance of doubt, it is acknowledged that - in relation to the obligation and liability for the proper performance of the oversight services - the functions rest with the Fund and/or the Manager and the relevant Third Parties, such as notably the central administration agent, the investment manager or the investment adviser, the registrar and transfer agent. The Parties acknowledge and agree that each Party is liable for its own acts and damages caused by its improper performance of its respective functions.

11.2.3 BNYM shall not be liable in case of force majeure. Force majeure includes an event caused in particular by the act of God, insurrection or civil disorder, war or military operations, national or local emergency, acts or omissions of government, regulatory authority or other competent authority, compliance with any statutory obligation, industrial disputes of any kind, fire, explosion, break-down of means of

communication, or any other situation whether similar or dissimilar outside its reasonable control and any such event or circumstance is a force majeure.

- 11.2.4 BNYM shall not be liable for damages resulting from bad or non transmission of messages and instructions due to technical failures.

### 11.3 **Third Party Stipulation**

The Manager and BNYM agree that this Article 11 shall also be for the benefit of the Fund and the Investors, constituting a third party stipulation (*derdenbeding*) within the meaning of section 6:253 of the Dutch Civil Code (*Burgerlijk Wetboek*).

## 12. **REPRESENTATIONS AND WARRANTIES**

### 12.1 **Certain Specific Undertakings of BNYM**

BNYM undertakes that:

- (a) it will not carry out activities that may create conflicts of interest between the Fund, the Investors, the Manager and itself unless BNYM has functionally and hierarchically separated the performance of its tasks from its other potentially conflicting tasks and the potential conflicts of interest are properly identified, managed, monitored and disclosed to Investors;
- (b) it shall make available to its competent authorities, on request, all information which it has obtained while performing its Depositary Services hereunder and what may be necessary for the competent authorities of the Fund or the Manager;
- (c) to the extent required by supervisory regulations and applicable (local) law, a regulatory body is entitled to verify whether the Depositary's performance of this Agreement is in conformity with the Agreement, supervisory regulations and applicable (local) law. The Depositary is obliged to provide, at its own reasonable expense and upon first request of the regulatory body, any access, information or other type of assistance as the regulatory body may require for the verification;
- (d) the Manager is entitled to (have a third party) audit the Depositary's operations and/or records related to the Agreement and the performance thereof by the Depositary, to the extent reasonably necessary to verify compliance with the provisions of the Agreement by the Depositary, as well as the processes, procedures, arrangements and standards used by the Depositary, during regular business hours with reasonable advance notice and subject to any reasonable legal obligation on the Manager, or any third party thereto appointed by the Manager, to maintain confidentiality and at the sole expense of the Manager, provided that where the operations or services provided are covered by a Statement on Standards for Attestation Engagements ("SSAE") 16 and/or International Standard on Assurance Engagements ("ISAE") 3402 report or equivalent, the Manager will limit its due diligence and/or audit to such information that is not covered by such report. For that purpose, the Depositary shall maintain true and correct records and documentation required

for and relating to the audit and shall allow and facilitate access to its relevant premises, staff, records and documentation related to its performance of the Agreement. Retention of all such records and documentation by the Depositary shall be for a period of at least one year after termination of the Agreement;

- (e) the Agreement has been duly authorised, executed and delivered on its behalf and constitutes its binding obligations enforceable in accordance with its terms and the execution, delivery and performance of this Agreement by BNYM and BNYM does not violate or conflict with any law or regulation applicable to it, its constitutional documents, or any document binding upon it or any of its respective assets and does not require the consent of any governmental or regulatory body except for such consents and approvals as have been obtained and which are in full force and effect with regard to this Agreement;
- (f) it has all necessary power, authorities and consents to enter into this Agreement and engage in the transactions contemplated hereunder upon the terms and conditions hereof;
- (g) in relation to data disclosed to the Manager and the Fund in connection with this Agreement, BNYM has complied with, and shall continue to comply with the provisions of all relevant data protection laws and regulations and shall not do anything, or permit anything to be done which might lead to a breach of such laws or regulations by the Manager and the Fund;
- (h) where relevant in connection with this Agreement, it has obtained, verified and recorded identification information about each Person in accordance with all applicable laws and regulation, including Financial Action Task Force on Money Laundering standards concerning Know Your Client (KYC) and the prevention of money laundering and the financing of terrorism and shall upon request furnish the money laundering reporting officer of the Manager and the Fund with all relevant identification information about each such Person;
- (i) it has not and shall not (in)directly pay, promise to pay, offer to pay or authorise the payment of any money or anything of value to any person or entity in connection with obtaining or retaining business or influencing such person or entity in order to secure an improper advantage;
- (j) it has adopted, shall maintain and comply with an anti-bribery policy and programme that, at a minimum, includes written policies, procedures and internal controls reasonably designed to prevent, detect and report bribery.

## **12.2 Representations, Warranties and Undertakings of the Manager and the Fund**

The Manager and the Fund, as applicable, represent, warrant and undertake that:

- (a) it is a Person duly incorporated and registered under the laws of its jurisdiction of incorporation;
- (b) the Manager is an AIFM pursuant to the Directive;
- (c) the Fund is established in the Netherlands;

- (d) the Fund qualifies as an AIF pursuant to the Directive;
- (e) the Manager is the Fund's AIFM;
- (f) the Agreement has been duly authorised, executed and delivered on its behalf and constitutes its binding obligations enforceable in accordance with its terms and the execution, delivery and performance of this Agreement by the Manager and the Fund does not violate or conflict with any law or regulation applicable to it, its constitutional documents, or any document binding upon it or any of its respective assets and does not require the consent of any governmental or regulatory body except for such consents and approvals as have been obtained and which are in full force and effect with regard to this Agreement;
- (g) it has all necessary power, authorities and consents to enter into this Agreement and engage in the transactions contemplated hereunder upon the terms and conditions hereof;
- (h) in relation to data disclosed to BNYM in connection with this Agreement, the Manager and the Fund have complied with, and shall continue to comply with the provisions of all relevant data protection laws and regulations and shall not do anything, or permit anything to be done which might lead to a breach of such laws or regulations by BNYM;
- (i) where relevant in connection with this Agreement, it has obtained, verified and recorded identification information about each Person in accordance with all applicable laws and regulation, including Financial Action Task Force on Money Laundering standards concerning Know Your Client (KYC) and the prevention of money laundering and the financing of terrorism and shall upon request furnish the money laundering reporting officer of BNYM with all relevant identification information about each such Person. To the best of the Fund's knowledge, no transactions undertaken by it are prohibited by applicable law, regulation or rule and no Assets held are derived from any activity prohibited by applicable law, regulation or rule.

### **12.3 Certain Specific Undertakings of the Manager**

The Manager undertakes that:

- (a) in performing its functions as AIFM, it shall act honestly, fairly, professionally, independently and in the interests of the Funds for which it from time to time acts as AIFM and the investors in such Funds; and
- (b) the Manager shall not act as depositary within the meaning of the Act, Decree, Directive and Regulation.

## **13. TERMINATION OF THE AGREEMENT AND REPLACEMENT OF THE DEPOSITARY**

### **13.1 Termination of the Agreement**

- 13.1.1 This Agreement shall remain in full force until terminated by BNYM or the Manager upon delivery of ninety (90) days' prior written notice to the other party.
- 13.1.2 This Agreement may be terminated by a party unilaterally with immediate effect by giving written notice of termination to the other party upon the occurrence of a material breach of contract by the other party which, if capable of being remedied, is not remedied within a reasonable period of time specified in a written notice of default to that effect by the first party to the other party.
- 13.1.3 This Agreement shall terminate automatically upon the dissolution of either party hereto or upon either party hereto being subject to insolvency or analogous proceedings, in any jurisdiction.
- 13.1.4 The provisions of Article 11, 13 and any indemnity provisions set out in this Agreement shall survive termination of this Agreement.
- 13.1.5 Termination of this Agreement will not affect accrued rights or existing commitments under this Agreement and will be without prejudice to the completion of any transactions already initiated.

## 13.2 **Replacement of the Depositary**

- 13.2.1 Prior to the termination date of this Agreement the Manager shall notify BNYM by way of an Instruction of the name of the person(s) that will replace BNYM. BNYM commits itself to cooperate fully in the transfer of its contractual position to a successor BNYM and shall transfer (or procure the transfer of) all Assets and data relevant in relation to the Assets that may reasonably be requested by the successor depositary.
- 13.3 In the event that the Manager fails to appoint a successor depositary on the termination of this Agreement, the Manager and BNYM shall act as follows:
- (a) the Manager shall provide BNYM with the reasons for such failure to appoint a successor depositary and BNYM shall – if requested by the Manager – assist the Manager in the preparation of an action plan to select and appoint a successor depositary and shall inform the AFM;
  - (b) BNYM shall continue to act as depositary for the term agreed in such action plan, or for such term as agreed separately, as may be extended with mutual agreement (the "**Agreed Term**"). The Manager shall keep BNYM and the AFM updated of its progress in the selection and appointment of a successor depositary; and
  - (c) if the Manager is unable to select an appoint a successor depositary during the Agreed Term or if no such term can be agreed , the Manager and BNYM shall jointly inform the AFM and shall convene a meeting of Investors at which a resolution to wind up the Fund will be considered. Termination will then be effected upon revocation of the Fund's authorisation;
  - (d) without prejudice to BNYM's liability hereunder, the Manager shall indemnify BNYM for any loss incurred by BNYM in continuing to act as such during the Agreed Term and the period thereafter pursuant to (iii) above (if applicable).

**14. ESCALATION PROCEDURE**

Except where provided otherwise in this Agreement, if (i) BNYM should detect anomalies and/or require further information, or (ii) the Manager fails to appoint a successor depositary on the termination of this Agreement, BNYM will notify the Authorised Persons and the respective Authorised Person shall ascertain that the request is properly and timely addressed so as to provide explanations and/or further information to BNYM that is regarded as satisfactory by BNYM. In case the anomaly or the request for information has not been resolved within a timely manner to the reasonable satisfaction of BNYM, BNYM will address the matter directly to the board of directors of the Manager, if BNYM deems this required with a view to the protection of the Fund and the Investors. The board of directors of the Manager shall then meet with urgency, resolve, take the appropriate actions and revert to BNYM. In case the aforementioned does not remedy the shortcomings in a manner deemed satisfactory to BNYM, (i) BNYM will inform the AFM thereof and (ii) BNYM may terminate the Agreement with cause.

**15. GOVERNING LAW**

This Agreement will be governed by and construed in accordance with Dutch law.