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**DEPOSITARY BANK AGREEMENT FOR RAIF**

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**Between**

**Edmond de Rothschild (Europe)**

**And**

**MERCUREIM EUROFUND I S.C.A. SICAV-FIAR**

**And**

**Fuchs Asset Management S.A.**

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THIS AGREEMENT is made between:

**Edmond de Rothschild (Europe)**, a Luxembourg credit institution incorporated in the form of a public limited company (*société anonyme*), whose registered office is located at 20, boulevard Emmanuel Servais, L-2535 Luxembourg, registered with the Luxembourg trade and companies register under no. B-19194 (the “**Depositary Bank**” or “**EDRE**”),

**AND**

**Mercureim Eurofund I S.C.A. SICAV-FIAR**, a corporate limited partnership by shares (*société en commandite par actions*) qualifying as a *société d'investissement à capital variable – fonds d'investissement alternatif réservé* under the RAIF Law (as defined hereunder), having its registered office at 20, boulevard, L-2535 Luxembourg and registered with the Luxembourg trade and companies register under no. B-204861, (the “**Company**”) hereby represented by its general partner, Mercureim S.à r.l., a Luxembourg private limited liability company (*société à responsabilité limitée*), having its registered office at 20, boulevard Emmanuel Servais, L-2535 Luxembourg and registered with the Luxembourg trade and companies register under number B-204486, acting in its capacity as general partner of the Company (the “**General Partner**”) (each reference to actions of, and determination by, the Company herein shall be a reference to actions of, and determination by, the General Partner acting in its capacity as general partner and for the account of the Company, unless the context requires otherwise);

**AND**

**Fuchs Asset Management S.A.**, a Luxembourg company whose registered office is located at 49, boulevard Prince Henri, L-1724 Luxembourg, registered with the Luxembourg trade and companies register under no. B-188.359 (the “**Management Company**”),

Hereafter collectively referred to as the “**Parties**” or individually as a “**Party**”.

WHEREAS

(A) The Company has been incorporated as a limited partnership by shares (*société en commandite par actions*) and qualifies as a *société d'investissement à capital variable – fonds d'investissement alternatif réservé* pursuant to the RAIF Law;

(B) The Management Company and the Company have selected the Depositary Bank to serve as depositary bank for the Company, and the Depositary Bank is ready and willing to serve as such, subject to and in accordance with the provisions of the Applicable Laws, the Prospectus (as defined hereunder), the Articles (as defined hereunder) and the provisions set forth hereinafter.

(C) The Company, the Management Company and the Depositary Bank wish to enter into this agreement (the “**Depositary Bank Agreement**”), which provides for the terms and conditions upon which the Depositary Bank will perform depositary bank services for the Company.

(D) The Company has appointed the Management Company, under a separate agreement, to serve as its designated external alternative investment fund manager in accordance with the RAIF Law.

(E) The Company is duly established and its establishment is recorded by notarial deed which has been submitted to the Luxembourg Register of Trade and Companies ("RCSL") and is published in the RESA in accordance with the Applicable Laws. The Company is inscribed on the list of reserved alternative investment funds kept by the RCSL in accordance with the circular RCSL 16/02.

(F) The Management Company is an alternative investment fund manager as defined in AIFM Law and is registered as such with its regulatory authority.

**IT IS HEREBY AGREED** as follows:

## **1. Definitions**

**"AIFM Law"** means the Luxembourg law dated 12 July 2013 concerning alternative investment fund managers.

**"Agreement"** means this Depositary Bank Agreement, as amended from time to time between the Parties, the applicable provisions of EDRE's standard terms and conditions and any other terms and conditions from time to time applicable to the provision by the Depositary Bank of its depositary services in relation to the Company, such as the Service Level and Operating Memorandum.

**"Applicable Laws"** means the RAIF Law, the AIFM Law, the Delegated Regulation and all applicable statutory (including any code, order, regulations, instrument or subordinate legislation) and other laws whether in Luxembourg or, where relevant, any other jurisdiction and all applicable guidelines, regulations, circulars or requirements of, or issued by, the CSSF (if and to the extent applicable) and any relevant European Union regulatory or supervisory authority and will include any amendments made thereto from time to time or equivalent provisions of like effect from time to time in force and respectively applicable in the jurisdiction of the Company or of the Management Company or of the Depositary Bank, as appropriate.

**"Articles"** means the articles of incorporation of the Company as amended, supplemented or restated from time to time.

**"Authorised Instructions"** means signed written instructions: (i) delivered by means of a letter, telecopy or facsimile or other mutually accepted electronic communication means emanating apparently from (a) person(s) authorised to give such instructions on behalf of the Company or the Management Company, as such authorisation(s) is/are notified to the Depositary Bank as soon as reasonably practicable or upon request; and (ii) containing all information required by the Depositary Bank to enable it to carry out the instructions.

**"Cash"**: means any cash denominated in any currency received by the Depositary Bank on behalf of the Company pursuant to this Agreement.

**“Cash Account”** means any cash deposit account in any currency whatsoever, opened in the books of the Depository Bank pursuant to this Agreement.

**“Central Administration Agreement”** means the central administration agreement pursuant to which EDRAM acts as the administrative, registrar and transfer agent of the Company, as amended or supplemented from time to time.

**“Central Securities Depositories”** means any central securities depository, any securities settlement system, any clearing house and any book-entry securities system which the Depository Bank may use from time to time, directly or via the intermediary of a Correspondent, pursuant to this Agreement, including (without limitation) *Clearstream, Euroclear, the Depository Trust Company, and CrestCo*.

**“Central Clearing Counterparty”** means any market clearance facility, settlement system, dematerialised book-entry system or similar facility, system or depository.

**“Company”** means **Mercureim Eurofund I S.C.A. SICAV-FIAR**.

**“Correspondent”** (i) means any duly appointed third-party credit institution or authorised agent or delegate of the Depository Bank to which the Depository Bank has from time to time delegated all or part of its duties with respect to the custody of the Financial Instruments in accordance with the provisions of the Applicable Laws and which, as a result, belongs to the sub-custody network of the Depository Bank and is listed in the Service Level and Operating Memorandum, but (ii) which, for the avoidance of doubt, shall not include Central Clearing Counterparties Systems or Central Securities Depositories.

**“CSSF”** means the *Commission de Surveillance du Secteur Financier* (i.e. the Luxembourg Supervisory Commission of the Financial Sector).

**“Delegated Regulation”** means the Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers - with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision.

**“Depository Bank”** means Edmond de Rothschild (Europe).

**“EDRE”** means Edmond de Rothschild (Europe).

**“EDRAM”** means Edmond de Rothschild Asset Management (Luxembourg).

**“Financial Instruments”** means such financial instruments of the Company or of the Management Company acting on behalf of the Company, as they are defined in the Applicable Laws, which are held in custody by the Depository Bank in accordance with the terms of this Agreement.

**“Grand-Ducal Regulation”** means the Luxembourg Grand-Ducal Regulation of 13 July 2007 relating to organisational requirements and rules of conduct in the financial sector and transposing Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

**“Other Assets”** means any and all Company’s assets which are not Financial Instruments or Cash.

**“Prospectus”** means the prospectus, offering memorandum or issuing document(s) of the Company, as amended from time to time and as issued with the prior written *nihil obstat* of the Depository Bank EdR(E), the Management Company and EDRAM.

**“RAIF Law”** means the Luxembourg law dated 23 July 2016 on reserved alternative investment funds as may be amended or restated from time to time.

**“RESA”** means the *Recueil Electronique des Sociétés et Associations*.

**“Securities Account”** means any securities account opened in the books of the Depository Bank pursuant to this Agreement which reflects the Financial Instruments.

**“Service Level and Operating Memorandum”** means the Depository Bank’s procedures handbook specific to, and approved by, the Company and the Management Company setting out the standard services provided by the Depository Bank and the operating procedures applicable to the provision by the Depository Bank of its depositary services in relation to the Company, as amended from time to time.

**“Shareholders”** means the shareholders of the Company.

**“Shares”** means the shares of the Company, or of the relevant sub-fund(s)/compartment(s) thereof, as appropriate.

**“Third-Party Custodian”** means any entity to which the Depository Bank has from time to time delegated all or part of its duties with respect to the custody of some Financial Instruments and to which the Depository Bank’s liability with respect to custody of such Financial Instruments has been transferred in accordance with the Applicable Laws.

### ***Interpretation***

A reference in this Agreement to:

- (a) a statutory provision or regulatory circular or decree or any subordinate legislation includes a reference to such statutory provision, circular, decree or subordinate legislation as modified or re-enacted or both from time to time;
- (b) a document includes a reference to such document as modified or replaced from time to time;
- (c) a Clause is, unless the context requires otherwise, a reference to a clause of this Agreement;
- (d) a Schedule is, unless the context requires otherwise, a reference to a schedule of this Agreement;
- (e) a person includes a reference to a corporation, body corporate, association or partnership; and
- (f) a person includes a reference to that person’s legal representatives, successors and permitted assignees.

In this Agreement:

- (a) the singular includes the plural and vice versa and words importing the masculine gender will include the feminine and neuter genders, and vice versa;

- (b) headings are for convenience only and do not affect the interpretation of this Agreement; and
- (c) any reference to the Company shall be deemed to be a reference to any of its sub-funds (if any) where appropriate; and
- (d) any list or examples following the word "including" will be interpreted without limitation to the generality of the preceding words.

## **2. Appointment of Depositary Bank**

2.1. In accordance with the provisions of this Agreement, the Company hereby appoints EDRE to act as depositary bank of the Company's categories of assets in which the Company may invest as they are described in the Service Level and Operating Memorandum.

2.2. EDRE hereby confirms acceptance of such appointment and of the duties and responsibilities attached to such appointment in accordance with the provisions of this Agreement. In performing its obligations under this Agreement, the Depositary Bank shall observe and comply with: (i) the Applicable Laws; (ii) this Agreement; (iii) the Prospectus; and (iv) the Articles.

2.3. The Depositary Bank will exclusively be obliged to perform such duties as are expressly set out in this Agreement and will have no implied duties or obligations to the Company or the Management Company hereunder.

## **3. Supervision/oversight (surveillance)**

### **3.1. Supervision/oversight (surveillance) General Requirements**

In order to enable the Depositary Bank to comply with its general oversight duties pursuant to this Agreement, the Company and the Management Company shall provide the Depositary Bank, upon commencement of its duties and on an on-going basis, with all relevant information it needs in order to comply with its obligations including information to be provided to the Depositary Bank by third parties appointed by the Company or the Management Company. The Management Company will particularly ensure that the Depositary Bank is able to enquire into the conduct of the Management Company's activities and, as the case may be, the Company and to assess the quality of the information transmitted including through the access to the books and on-site visits on premises of the Management Company and of those of any third party appointed by the Company or the Management Company, such as administrators or external valuers and/or, as the case may be, to review reports and statements of recognised external certifications by qualified independent auditors or other experts in order to ensure the adequacy and relevance of the procedures in place.

The Company and the Management Company confirm that they have provided all and complete information regarding the nature, scale and complexity of the Company's strategy and the Management Company's organisation to the Depositary Bank in order to enable it to assess such risks so as to devise oversight procedures which are appropriate to the assets of the Company.

The Company and the Management Company have read and agree with the oversight procedures of the Depositary Bank as they are laid down in the Service Level and Operating Memorandum.



### **3.1.1. Supervision/oversight (surveillance) of the Other Assets**

In relation to the Other Assets of the Company, the Depositary Bank will :

- (i) verify the ownership of the Company or the Management Company acting on behalf of the Company and maintain a record of the Other Assets for which it is satisfied that the Company or the Management Company acting on behalf of the Company holds the ownership;
- (ii) assess whether the Company or the Management Company acting on behalf of the Company holds the ownership based on information or documents provided by the Company or the Management Company and, where available, on external evidence;
- (iii) keep its record up-to-date.

In order to comply with the obligations referred to in the Applicable Laws, the Depositary Bank shall :

- (a) have access without undue delay to all relevant information it needs in order to perform its ownership verification and record-keeping duties, including relevant information to be provided to the Depositary Bank by third parties;
- (b) possess sufficient and reliable information for it to be satisfied of the Company's ownership right or of the ownership right of the Management Company acting on behalf of the Company over such Other Assets;
- (c) maintain a record of those assets for which it is satisfied that the Company or the Management Company acting on behalf of the Company holds the ownership. In order to comply with this obligation, the Depositary Bank will:
  - (i) register in its record, in the name of the Company, assets, including their respective notional amounts, for which it is satisfied that the Company or the Management Company acting on behalf of the Company holds the ownership;
  - (ii) be able to provide at any time a comprehensive and up- to-date inventory of the Company's Other Assets, including their respective notional amounts.

For the purpose of this Clause, the Company and the Management Company commit that registered Other Assets cannot be assigned, transferred, exchanged or delivered without the Depositary Bank having been informed of such transactions and the Depositary Bank shall have access without undue delay to documentary evidence of each transaction and position from the relevant third party. The Management Company shall ensure that the relevant third party provide the Depositary Bank without undue delay with certificates or other documentary evidence every time there is a sale or acquisition of assets or a corporate action resulting in the issue of financial instruments and at least once a year.

The Management Company undertakes to implement appropriate procedures to verify that the Other Assets acquired by the Company it manages are appropriately registered in the name of the Company or in the name of the Management Company acting on behalf of the Company, and to check the consistency between the positions in the Management Company's records and the Other Assets for which the Depositary Bank is satisfied that the Company or the Management Company acting on behalf of the Company holds the ownership. The Management Company shall ensure that all instructions and relevant

information related to the Company's Other Assets are sent to the Depository Bank, so that it is able to perform its own verification or reconciliation procedure.

Where potential irregularities are detected in the course of its duties under this Clause 3.1.1, the Depository Bank will apply the escalation procedure described in the Service Level and Operating Memorandum, the details of which shall be made available to the competent authorities upon request in accordance with Applicable Laws.

### **3.2. Due diligence of Correspondents**

3.2.1. In accordance with the applicable provisions of the Applicable Laws, the Depository Bank has implemented and applies an appropriate documented due diligence procedure for the selection and on-going monitoring of the Correspondents. That procedure is reviewed regularly, at least once a year, and will be made available upon request to the competent authorities in accordance with Applicable Laws.

3.2.2. When selecting and appointing a Correspondent the Depository Bank will exercise all due skill, care and diligence to ensure that Financial Instruments entrusted to such Correspondent are subject to an adequate standard of protection.

Accordingly, the Depository Bank will:

(a) assess the regulatory and legal framework, including country risk, custody risk and the enforceability of the Correspondent's contracts. That assessment will in particular enable the Depository Bank to determine the potential implication of an insolvency of the Correspondents for the Financial Instruments and rights of the Company. If the Depository Bank becomes aware that the segregation of Financial Instruments is not sufficient to ensure protection from insolvency because of the law of the country where the Correspondent is located, it shall immediately inform the Management Company;

(b) assess whether the Correspondent's practice, procedures and internal controls are adequate to ensure that the Financial Instruments are subject to a high standard of care and protection;

(c) assess whether the Correspondent's financial strength and reputation are consistent with the tasks delegated. That assessment will be based on information provided by the Correspondent or potential Correspondent as well as other data and information, where available.

(d) ensure that the Correspondent has the operational and technological capabilities to perform the delegated custody tasks with a satisfactory degree of protection and security.

3.2.3. The Depository Bank will exercise all due skill, care and diligence in the periodic review and on-going monitoring to ensure that the Correspondent i) continues to comply with the criteria provided for in Clause 3.2.2 and ii) keeps such records and accounts as are necessary to enable it at any time and without delay to distinguish assets of the Depository Bank's alternative investment fund clients from its own assets, from the assets of its other clients and the assets held for clients of the Depository Bank which are not alternative investment funds.

To this end, the Depository Bank will:

(a) monitor the Correspondent's performance and its compliance with the Depository Bank's standards;

(b) ensure that each Correspondent exercises a high standard of care, prudence and diligence in the performance of its custody tasks and in particular that it effectively segregates the Financial Instruments in line with the requirements of the Applicable Laws;

(c) review the custody risks associated with the decision to entrust the Financial Instruments to the Correspondent and without undue delay notify the Company or the Management Company of any change in those risks. That assessment shall be based on information provided by the Correspondent and other data and information where available. During market turmoil or when a risk has been identified, the frequency and the scope of the review shall be increased. If the Depository Bank becomes aware that the segregation of Financial Instruments is no longer sufficient to ensure protection from insolvency because of the law of the country where the Correspondent is located, it shall immediately inform the Management Company.

3.2.4. Where the Correspondent further delegates any of the functions delegated to it, the Depository Bank will ensure that the conditions and criteria set out in Clauses 3.2.1, 3.2.2 and 3.2.3 shall apply *mutatis mutandis*.

3.2.5. The Depository Bank has established a contingency plans for each market in which it appoints a Correspondent in accordance with the Applicable Laws to perform safekeeping duties. Such a contingency plan includes the identification of an alternative provider, if any available on the relevant market and/or fitting with the Depository Bank's eligibility criterias.

3.2.6. The Depository Bank will take measures, including termination of the contract, which are in the best interest of the Company and its investors where the Correspondent no longer complies with the requirements.

3.2.7. The Company and the Management Company hereby acknowledge the list of Correspondents in the Service Level and Operating Memorandum, which does not include cash correspondents. EDRE shall from time to time provide updates of such lists which the Company and the Management Company shall be deemed to approve in the absence of reaction to the contrary within thirty (30) calendar days of the notification of EDRE.

3.2.8. The Company and/or the Management Company shall be responsible for informing the Depository Bank sufficiently in advance of a proposed investment in financial instruments which is to be held at a location where no Correspondents are established, in order to allow the Depository Bank to put, on a best effort basis and without the Depository Bank being under an obligation to do so, the appropriate business relationships in place for the custody/safekeeping (*conservation*) of the relevant financial instruments and the Company shall not proceed with such investments until the appropriate business relationships are in place. Should no appropriate custody/safekeeping solutions be available in the Depository Bank's discretionary opinion, the Parties will consider the possibility to appoint a Third-Party Custodian and to transfer the responsibility of the custody of the financial instruments in accordance with Clause 5.4 of this Agreement or, to the extent possible, directly register the financial instruments in the name of the Company or of the Management Company on behalf of the Company at any register held by the issuer of such financial instruments or by any agent or service provider appointed by such

issuer (such issuer, agent or services provider being referred to hereafter as a “**Registrar**”). The appointment of a Third-Party Custodian or the registration in the name of the Company or of the Management Company on behalf of the Company with the Registrar can be, in the sole discretion of the Depository Bank, a condition precedent to the acceptance of an investment where no appropriate custody/safekeeping solution is available.

3.2.9. The Company and the Management Company hereby acknowledge and agree that the Depository Bank has no custody/safekeeping (*conservation*) duty with respect to financial instruments for which no custody/safekeeping (*conservation*) arrangements are in place and the Depository Bank declines any and all responsibility for any damages and losses suffered by the Company and/or the Management Company further to the acquisition by the Company of assets for which no such arrangements are in place and is entitled to terminate this Agreement in accordance with Clause 18 of this Agreement.

3.2.10. Where the Depository Bank has delegated the custody functions in relation to Financial Instruments to a Correspondent in accordance with this Clause, it will remain subject to the requirements of points (b) to (e) of Clause 5.2 . It will also ensure that the Correspondents comply with the requirements of points (b) to (g) of Clause 5.2 and the segregation obligations laid down in the Applicable Laws.

### 3.3. **Others supervision/oversight duties of the Depository Bank**

The Depository Bank shall :

(a) ensure that the sale, issue, re-purchase, redemption and cancellation of the Shares are carried out in accordance with the Applicable Laws and the Prospectus or the Articles;

(b) ensure that i) the value of the Shares is calculated in accordance with the Prospectus or the Articles and the procedures laid down in Applicable Laws and, where an external valuer has been appointed, that ii) such appointment is made in accordance with the Applicable Laws ;

(c) carry out the Authorised Instructions of the Management Company, unless they conflict with the Applicable Laws, the Prospectus or the Articles; in order to comply with this item (c), the Depository Bank shall:

(i) set up and implement appropriate procedures to verify that the Company and the Management Company comply with the Applicable Laws, the Prospectus and the Articles. In particular, the Depository Bank shall monitor the Company’s compliance with investment restrictions and leverage limits set in the Prospectus. Those procedures shall be proportionate to the nature, scale and complexity of the Company; and

(ii) set up and implement an escalation procedure as defined in the Service Level and Operating Memorandum where the Company has breached one of the limits or restrictions referred to in item (i) hereabove

(d) ensure that in transactions involving the assets of the Company any consideration is remitted to the Company within the usual time limits;

(e) ensure that a Company’s income is applied in accordance with the Applicable Laws and the Prospectus or the Articles.

Pursuant to the Applicable Laws, the Company and the Management Company hereby undertake to ensure that the Depository Bank is provided with or has access to (upon commencement of its duties and on an on-going basis) all relevant information it needs in order to comply with its obligations as set out in this Clause 3 of this Agreement.

In order to comply with the Applicable Laws, all relevant procedures related to the duties under this Clause 3 will be laid down in the Service Level and Operating Memorandum.

Where potential irregularities are detected in the course of its duties under this Clause 3.3, the Depository Bank will apply the escalation procedure described in the Service Level and Operating Memorandum, the details of which shall be made available to the competent authorities upon request in accordance with Applicable Laws.

#### **3.4. Cash account monitoring and Cash flow monitoring**

##### **3.4.1 Cash account monitoring**

Where a cash account is maintained or opened at an entity referred to in Article 19 (7) of the AIFM Law in the name of the Company or in the name of the Management Company acting on behalf of the Company, the Management Company shall ensure that the Depository Bank is provided, upon commencement of its duties and on an on-going basis, with all relevant information it needs to comply with its obligations.

In order to have access to all information regarding the Company's cash accounts and have a clear overview of all the Company's cash flows, the Management Company and the Company shall ensure that the Depository Bank:

- (a) is informed, upon its appointment, of all existing cash accounts opened in the name of the Company or in the name of the Management Company acting on behalf of the Company;
- (b) is informed at the opening of any new cash account by the Company or by the Management Company acting on behalf of the Company;
- (c) is provided with all information related to the cash accounts opened at a third party entity, directly by those third parties.

##### **3.4.2 Cash flow monitoring**

In accordance with the Applicable Laws, the Depository Bank will ensure effective and proper monitoring of the Company's cash flows and shall in particular ensure that all payments made by or on behalf of investors upon the subscription of Shares in the Company have been received.

Accordingly, the Depository Bank will :

- (a) ensure that all cash of the Company is booked in accounts opened with entities referred to in points (a), (b) and (c) of Article 18(1) of Directive 2006/73/EC in the relevant markets where cash accounts are required for the purposes of the Company's operations and which are subject to prudential regulation and supervision that has the same effect as European Union law, is effectively enforced and is in accordance with the principles laid down in Article 16 of Directive 2006/73/EC;

(b) implement effective and proper procedures to reconcile all cash flow movements and perform such reconciliations on a daily basis or, in case of infrequent cash movements, when such cash flow movements occur;

(c) implement appropriate procedures to identify at the close of business day significant cash flows and in particular those which could be inconsistent with the Company's operations;

(d) review periodically the adequacy of those procedures including through a full review of the reconciliation process at least once a year and ensuring that the cash accounts opened in the name of the Company, in the name of the Management Company acting on behalf of the Company or in the name of the Depositary Bank acting on behalf of the Company are included in the reconciliation process;

(e) monitor on an on-going basis the outcomes of the reconciliations and actions taken as a result of any discrepancies identified by the reconciliation procedures and notify the Management Company if an irregularity has not been rectified without undue delay and also the competent authorities in accordance with Applicable Laws if the situation cannot be clarified and, as the case may be, or corrected;

(f) check the consistency of its own records of cash positions with those of the Management Company. Accordingly, The Management Company shall ensure that all instructions and information related to a cash account opened with a third party are sent to the Depositary Bank, so that the Depositary Bank is able to perform its own reconciliation procedure.

In relation to subscription and redemption orders received by the Company, the Depositary Bank, shall:

- (1) ensure that the Company, the Management Company or the third party designated entity has established, implements and applies an appropriate and consistent procedure to:
  - (i) reconcile the subscription orders with the subscription proceeds, and the number of Shares issued;
  - (ii) reconcile the redemption orders with the redemptions paid, and the number of Shares cancelled with the redemptions paid by the Company;
  - (iii) verify on a regular basis that the reconciliation procedure is appropriate.

For the purpose of points (i), (ii) and (iii), the Depositary Bank shall regularly check the consistency between the total number of Shares in the Company's accounts and the total number of outstanding Shares that appear in the Company's register of Shareholders;

- (2) The Depositary Bank shall ensure and regularly check that the procedures regarding the sale, issue, repurchase, redemption and cancellation of Shares comply with the Applicable Laws and with the Articles and verify that these procedures are effectively implemented;

- (3) The frequency of the Depositary Bank's checks shall be consistent with the frequency of subscriptions and redemptions.

All relevant procedures related to the duties under this Clause 3.4 will be laid down in the Service Level and Operating Memorandum.

### 3.5. **Liability and indemnity**

The Depositary Bank shall make its best efforts to achieve the desired results, and use due care in the performance of those duties and at least the same degree of care as with respect to its own assets. The Parties hereby agree, for the avoidance of doubt, that the obligations of the Depositary Bank under this Clause 3 of this Agreement are to be considered as "*obligations de moyens*" (best-effort obligations), except to the extent prohibited by Applicable Laws. The Depositary Bank shall be liable only for losses incurred by the Company as a direct consequence of the negligence (*faute*) (whether through an act or omission) gross negligence (*faute lourde*) (whether through an act or omission) or wilful misconduct (*dol*) committed by the Depositary Bank. Under no circumstances shall the Depositary Bank be liable for indirect or consequential losses.

## **4. Accounts opening**

4.1.1. The Company and the Management Company on behalf of the Company hereby authorise the Depositary Bank to open and keep in its books:

- (i) Securities Accounts; and
- (ii) Cash Accounts.

4.1.2. The Company and/or the Management Company acting on behalf of the Company agree(s) to execute any additional document and to provide any information which the Depositary Bank may reasonably request to facilitate the opening and maintenance of any Securities Account or Cash Account, and more generally, to enable the Depositary Bank to fulfil its obligations in accordance with the terms and conditions of this Agreement.

4.1.3. All Cash Accounts which may be opened:

- (a) in the name of a given compartment or sub-fund of the Company if the Company is an umbrella company, in any currency whatsoever, will be considered as elements of a single indivisible account at the level of the relevant sub-fund/compartment; or
- (b) in the name of the Company if the Company is a stand-alone company in any currency whatsoever, will be considered as elements of a single indivisible account at the level of the Company.

4.1.4. The Depositary Bank reserves the right to transfer, at any time upon notice, any principal or interest debit balances to accounts which are in credit and vice versa at the level of the relevant sub-fund if the Company is organised as an umbrella vehicle or at the level of the Company if organised as a stand-alone vehicle. If any of such accounts are denominated in a foreign currency, the currency conversion will be made on the basis of the exchange rate applicable on the day of the transfer.

## **5. Custody (conservation)**

### **5.1. Custody (*conservation*) of the Financial Instruments**

In relation to Financial Instruments, the Depository Bank will :

(i) hold in custody all Financial Instruments that can be registered in the Securities Accounts and all Financial Instruments that can be physically delivered to the Depository Bank ;

(ii) ensure that the Financial Instruments registered in the Securities Accounts are registered in its books within segregated accounts in accordance with the principles set out in the Applicable Laws, opened in the name of the Company or the Management Company acting on behalf of the Company, so that they can be clearly identified as belonging to the Company in accordance with the Applicable Laws at all times;

5.1.1. The Depository Bank is authorised to delegate all or part of its custody (conservation) duties under this Agreement, and in this respect to use the services of any Correspondents, in accordance with Clause 3.2 of this Agreement.

5.1.2. The Depository Bank is also authorised by the Company and the Management Company to use the services of any Central Clearing Counterparty and/or Central Securities Depository which, in accordance with the Applicable Laws, shall not be considered as a delegation of the custody of the Financial Instruments.

5.1.3. The Correspondents are authorised to hold the Financial Instruments in omnibus accounts segregated from their own accounts and the Company shall accept delivery of financial instruments of the same class and denomination as the Financial Instruments deposited with the Depository Bank or any Correspondents.

5.1.4. When the Depository Bank holds Financial Instruments in a fungible group with those belonging to other clients of the Depository Bank, the Depository Bank will select Financial Instruments subject to partial redemption, partial payment or other actions relating to less than the total number of the Financial Instruments in the category concerned, in the non-discriminatory way the Depository Bank usually carries out this selection. If the Financial Instruments held by a Correspondent, Central Clearing Counterparty, or Central Securities Depository become the object of such partial redemption, partial payment or other action, the Company shall accept the selection method for the Financial Instruments concerned by such partial redemption, partial payment or other action chosen by such Correspondent, Central Clearing Counterparty, or Central Securities Depository.

5.1.5. The Company or the Management Company hereby acknowledges that any Correspondent may in turn use the services of Central Clearing Counterparties and/or Central Securities Depositories and/or sub-correspondents in the relevant local jurisdiction.

5.1.6. The Financial Instruments held by a Central Clearing Counterparty and/or Central Securities Depository and/or sub-correspondent will be held in accordance with the regulations and practices applicable to this Central Clearing Counterparty, Central Securities Depository or sub-correspondent.

5.1.7. The Depository Bank reserves the right to decline to accept to be entrusted with financial instruments other than Financial Instruments (i) in countries other than



those listed in the Service Level and Operating Memorandum, as updated or amended from time to time in accordance with this Agreement or (ii) when, in the opinion of the Depositary Bank, it would not be able to ensure the proper custody of such financial instruments.

5.1.8. In case any of the Financial Instruments are registered financial instruments held in the name of the Depositary Bank, acting in any function or quality whatsoever for the benefit of the Company, in a register held by the issuer of the Financial Instruments or by a Registrar, the Depositary Bank shall require their registration in such register, obtain evidence of such registration and verify the Company's ownership right over the Financial Instruments by any means generally accepted in the relevant jurisdiction. Financial Instruments registered in the name of the Depositary Bank with a Registrar for the benefit of the Company shall be accounted for in the relevant Securities Account and shall be deemed to be fungible financial instruments for the purpose of this Agreement. The Depositary Bank may, at any time, at its sole and full discretion and at the Company's or the Management Company acting on behalf of the Company's expenses and liabilities, request the Registrar to change the registration and register the Financial Instruments in the name of the Company or of the Management Company on behalf of the Company. To this effect, the Company and/or the Management Company acting on behalf of the Company hereby give(s) authority to EDRE to sign any document and do everything which is lawful, necessary or simply useful, on behalf of the Company, in order to achieve this change of registration. For the avoidance of doubt, Financial Instruments which are re-registered in the name of the Company or of the Management Company acting on behalf of the Company shall be immediately struck off from the relevant Securities Account and shall no longer be considered as Financial Instruments according to this Agreement and the Applicable Laws. As from such re-registration of the Financial Instruments in the name of the Company or of the Management Company on behalf of the Company, the Depositary Bank shall no longer have any liability with respect to the proper custody (conservation) of such Financial Instruments.

5.1.9. The Depositary Bank undertakes, and shall cause any Correspondents not to re-use the Financial Instruments without the prior approval of the Company.

## **5.2. Supervision/oversight (surveillance) of the Financial Instruments held in custody**

The Depositary Bank shall perform its oversight duties on the Financial Instruments in accordance with the Applicable Laws and this Agreement and shall ensure that :

- (a) the Financial Instruments are properly registered in accordance with the Applicable Laws;
- (b) records, Securities Accounts and Cash Accounts are maintained segregated in a way that ensures their accuracy, and in particular record the correspondence with the Financial Instruments and Cash held for the Company;
- (c) reconciliations are conducted on a regular basis between the Depositary Bank's internal accounts and records and those of any Correspondent to whom custody functions are delegated in accordance with Applicable Laws;
- (d) due care is exercised in relation to the Financial Instruments;

- (e) all relevant custody risks throughout the custody chain are assessed and monitored and the Company and/or the Management Company on behalf of the Company 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 the Financial Instruments as a result of fraud, poor administration, inadequate registering or negligence;
- (g) the Company's ownership right or the ownership right of the Management Company acting on behalf of the Company over the Financial Instruments of the Company is verified.

### 5.3. Other duties related to Financial Instruments

Upon receipt of Authorised Instructions, the Depository Bank shall receive, deliver, transfer or exchange the Financial Instruments for the account of the Company, or shall instruct its Correspondents or any relevant financial instruments intermediary to do so, unless the Depository Bank considers at its sole discretion that such Authorised Instructions are contrary to (i) the interest of the Company and/or its Shareholders, (ii) any Applicable Laws, (iii) the Articles, the Prospectus, or market practices. The Company and the Management Company acknowledge that the Depository Bank shall execute Authorised Instructions only if the Company's accounts show sufficient credit balances to cover the transactions. However, the Depository Bank shall not be prevented from executing Authorised Instructions solely at the risk of the Company on account of insufficient credit balance(s) or delivery, and/or any pre-advised cash without limitation of the Depository Bank's right to require that the debit balance be covered and without limitation in respect of any other action the Depository Bank may deem necessary. The Company, the Management Company and/or its/their agents will be responsible for all debits or damages caused by investment decisions based on pre-advised cash.

Unless the Depository Bank has received Authorised Instructions to the contrary in sufficient time for the Depository Bank to act on them, the Depository Bank will in relation to Financial Instruments :

- (i) collect, as they become payable, all interest, dividends and all other income and payments, whether paid in cash or in kind;
- (ii) present for payment all such Financial Instruments which are called, redeemed or otherwise become payable and all coupons and other income items which call for payment upon presentation, provided that the Depository Bank is actually aware of the opportunities;
- (iii) credit to the account of the Company all Financial Instruments and/or Cash received by the Depository Bank as a result of a corporate event or otherwise with respect to the Financial Instruments ;
- (iv) execute, solely in its custodial capacity, in the Company's name or in the name of the Management Company acting on behalf of the Company any declaration of (beneficial) ownership, filing or other documentation, incidental to the Depository Bank's performance under this Agreement, as may be required by any third parties, including governmental or administrative agencies, or in relation to existing or former Financial Instruments. For the avoidance of doubts, the Depository Bank will exclusively perform such declarations as are

expressly set out in this Agreement and will have no implied declaration duties to the Company or the Management Company which have to be carried out by the latter (such as, but not limited to, declaration of ownership resulting from the Applicable Laws on the transparency requirements in relation to information about issuers whose financial instruments are admitted to trading on a regulated market);

(v) pay out of the Company's Cash Accounts any taxes, duties, levies or charges due on any principal or interest or any other liability arising from or in connection with the Financial Instruments in so far as the Depository Bank is under an obligation (whether governmental or otherwise) to pay the same on behalf of the Company;

(vi) pay fees and expenses as agreed between the Company and/or the Management Company on behalf of the Company and third parties or on an invoice basis.

The Depository Bank shall use its reasonable efforts to notify the Company, the Management Company and/or the agents appointed by them, as soon as reasonably practicable after receipt of corporate event notices related to any of the Financial Instruments as detailed in the Service Level and Operating Memorandum, and the Company and/or the Management Company shall be responsible in relation thereto for the follow-up of the Financial Instruments and for taking all suitable measures to protect the rights pertaining to the Financial Instruments. The Depository Bank is under no obligation to check the information contained in any corporate event notice and the Depository Bank is not responsible for taking any action with respect to any such notice, even if purely administrative (except for transmitting such notice to the Company and/or the Management Company), or for the exercise of any rights to subscribe for financial instruments, conversion rights, voting rights or any other rights related to the Financial Instruments. The Depository Bank shall not be held responsible for the truth or accuracy of corporate event notice and shall not therefore guarantee that any such notice is accurate, comprehensive or up to date. The Depository Bank shall not be liable to the Company and/or the Management Company for any loss whatsoever which may result from the Company's and/or the Management Company's reliance on any such notices.

The Depository Bank will not take any measure to exercise any voting rights associated with the Financial Instruments unless it has received an Authorised Instruction to do so, to the extent provided for by, and within the limits of, the Service Level and Operating Memorandum. Upon receipt of an Authorised Instruction the Depository Bank will, on a best effort basis, execute and deliver, or procure to be executed and delivered, to the Company or as the Company or the Management Company may direct, any powers of attorney or proxies as may be reasonably required in order to act in respect of any Financial Instruments.

The Depository Bank will, upon request, provide the Company and/or the Management Company with periodic statements or reports for the Securities Account and/or the Cash Account. The pricing of the Financial Instruments as indicated in such statements or reports is solely provided as a non-binding information and the Depository Bank, acting in its capacity as depository bank hereunder, will not accept any liability with respect to such pricing in the absence of breach by the Depository Bank of its duties under Applicable Laws. The periodic statements or reports may also reflect with an appropriate disclaimer, Others Assets that are not kept in custody by the Depository Bank.

The Depository Bank is authorised to grant the Company, the Management Company and their respective auditors reasonable access to its records relating to the assets of the

Company. The Depositary Bank is not under any obligation to keep these records for a period of more than ten (10) years.

If the Depositary Bank, enters on request of the Company and/or the Management Company into a subscription document (i.e. any document and/or agreement regarding subscriptions, redemptions or any comparable action related to financial instruments and defined hereinafter as "**Subscription Document**"), or where a Subscription Document is required to be completed in the name of the Depositary Bank, its Correspondents or nominees, the Company and the Management Company expressly acknowledge and agree that the Depositary Bank, its Correspondents or nominees are entering into such Subscription Documents on behalf of and for the account and sole risks of the Company. The Company and the Management Company further expressly acknowledge and agree that the Company will (i) be bound by any Subscription Document entered into by the Depositary Bank, its Correspondents or nominees as if the Company would have entered into such Subscription Document in its own name and (ii) to comply with, inter alia, any obligation, warranty, representation made in such Subscription Document.

#### 5.4. **Liability and indemnity**

5.4.1. In accordance with the Applicable Laws, the Depositary Bank shall be liable to the Company or to the Shareholders for the loss of Financial Instruments by the Depositary Bank or its Correspondents. A loss of a Financial Instrument held in custody by the Depositary Bank or a Correspondent shall be deemed to have taken place when any of the following conditions is met:

- (a) a stated right of ownership of the Company is demonstrated not to be valid because it either ceased to exist or never existed; or
- (b) the Company has been definitively deprived of its right of ownership over the Financial Instrument; or
- (c) the Company is definitively unable to directly or indirectly dispose of the Financial Instrument.

5.4.2. For avoidance of any doubt, a Financial Instrument shall not be deemed to be lost where the Company is definitively deprived of its right of ownership, but this Financial Instrument is substituted by or converted into another financial instrument or instruments.

5.4.3. In case of loss of Financial Instruments by the Depositary Bank or any Correspondent, the Depositary Bank shall return financial instruments of identical type or the corresponding amount to the Company without undue delay. However, the Depositary Bank's liability shall not be triggered provided the Depositary Bank can prove that all the following conditions are met in accordance with the Applicable Laws:

- i. the event which led to the loss is not the result of any act or omission of the Depositary Bank or of a Correspondent;
- ii. the Depositary Bank could not have reasonably prevented the occurrence of the event which led to the loss despite adopting all precautions incumbent on a diligent depositary bank as reflected in common industry practice;

- iii. despite rigorous and comprehensive due diligence, the Depositary Bank could not have prevented the loss.

The requirements referred to in items i and ii hereabove may be deemed to be fulfilled in the following circumstances:

- (a) natural events beyond human control or influence;
- (b) the adoption of any law, decree, regulation, decision or order by any government or governmental body, including any court or tribunal, which impacts the Financial Instruments;
- (c) war, riots or other major upheavals.

5.4.4. The Depositary Bank's liability shall not be affected by any delegation of its custody functions unless a Third-Party Custodian has been appointed and that the Depositary Bank has discharged itself of its liability in accordance with the Applicable Laws. The Company and the Management Company hereby acknowledge and accept that the Service Level and Operating Memorandum shall set out the list of the Third-Party Custodians to which the liability with respect to Financial Instruments shall have been transferred and, to the extent required by Applicable Laws, the objective reason of such transfer of liability.

5.4.5. In case of discharge of the Depositary Bank's liability to a Third-Party Custodian in accordance with Applicable Laws, the Company hereby undertakes, to the extent required by Applicable Laws:

- a) to authorise such discharge under the conditions set out in the Applicable Laws; and
- b) to duly inform the Shareholders of that discharge and of the circumstances justifying such discharge prior to their investment.

5.4.6. The Company, as sole (beneficial) owner of all Financial Instruments held in custody by the Depositary Bank, its Correspondents or nominees, hereby undertakes to indemnify and hold harmless the Depositary Bank, its Correspondents and nominees (in the absence of negligence (faute) or wilful misconduct (dol) on their part) from and against all costs, expenses and liabilities in relation to these Financial Instruments, including without limitation in case of clawback or any similar measure directed against the Depositary Bank, its Correspondents or nominees as registered holder of the Financial Instruments.

5.4.7. The Company and the Management Company acknowledge and accept the Depositary Bank shall not be held liable in case of loss of Financial Instrument which are directly held by the Depositary Bank on behalf of the Company at Central Securities Depositories due to the Central Securities Depositories' negligence, wilful misconduct or fraud.

5.4.8. Furthermore, when financial instruments are registered in the Company's name or in the name of the Management Company on behalf of the Company, the Company and/or the Management Company shall be responsible for the consequences of any failure on its/their part to design the appropriate reporting process from the relevant Registrar to the Depositary Bank or to forward any confirmation or information statement to the Depositary Bank, or of any delay on its/their part in forwarding any such information. In such instance, the Company and

the Management Company acknowledge that notices of corporate actions on the Company's financial instruments directly received by the Company or the Management Company may have been obtained from sources which are not under the Depository Bank's control, and may have been translated or summarised. The Company and the Management Company acknowledge and accept that the Depository Bank (i) shall be under no obligation to verify the information contained in such corporate event notice forwarded to or received by it, (ii) shall not be held responsible for the truth or accuracy of any information, translation or summary, and (iii) shall not therefore guarantee that any such notice is accurate, comprehensive or up to date. The Depository Bank shall not be liable to the Company and/or the Management Company for any loss whatsoever which may result from the Company's and/or the Management Company's reliance on any such notices.

## **6. Intermediaries for transaction on assets of the Company**

6.1. The Company and/or the Management Company undertake(s) to obtain information on the terms and restrictions, if any, concerning transactions in assets of the Company according to the markets concerned.

6.2. The Company and/or the Management Company may select any intermediaries (brokers or other agents) of good repute for the execution and/or settlement of transactions concluded on behalf of the Company.

6.3. The Company and/or the Management Company shall be responsible for supplying its/their intermediary with any and all information and instructions necessary for timely settlement of transactions, and shall take any action necessary to avoid and resolve any delays or settlement errors relating to transactions settled by such intermediary.

6.4. Where relevant, the Company and/or the Management Company undertake(s) to set up escrow accounts to guarantee secure payment of transactions in assets of the Company, and to give the Depository Bank appropriate Authorised Instructions.

For the avoidance of doubt, the intermediaries for transactions on assets of the Company will not be subject to the supervision or oversight of the Depository Bank.

## **7. Miscellaneous services: fiduciary deposits and domiciliary agency services**

### **7.1. Fiduciary Deposits**

The Depository Bank may, only at the Company's and/or Management Company's request and subject to the entering into a specific agreement, act as fiduciary in accordance with the Luxembourg law of 27 July 2003 on trusts and fiduciary contracts.

### **7.2. Domiciliary agency services**

The Company hereby appoints the Depository Bank, and the Depository Bank hereby accepts such appointment, to act as the domiciliary agent of the Company.

#### **7.2.1 Registered address**

The Depositary Bank allows the Company to set its registered office at the following address of the Depositary Bank: 20 Boulevard Emmanuel Servais L- 2535 Luxembourg, Grand-Duché de Luxembourg. However, if and when needed, the Company agrees to make the necessary arrangements to transfer its registered office to such other address as the Depositary Bank may deem appropriate in the context of the fulfillment of its duties under this Agreement.

#### 7.2.2 Management of the Company's received correspondence

The Depositary Bank shall accept, forward and transfer to the person(s) designated by the Company, any and all notices, correspondence, telegrams, telex, messages, telephonic advice, e-mails or other representations and communications received on behalf of the Company.

The Company hereby instructs the Depositary Bank to open all documents and correspondence sent to the attention of the Company in order to be aware of its content to fulfill its obligations as required by Luxembourg law and to forward any such information to the relevant persons of the Company or acting on behalf of the Company.

### **8. Duties of the Company and the Management Company**

8.1. The Company and the Management Company hereby undertake to make any and all necessary arrangements to oblige all third parties (such as administrators, external valuers) to (i) provide the Depositary Bank with all information and documents/evidence requested by the Depositary Bank, and (ii) authorise the Depositary Bank to carry out on-site visits with such third parties in the context of its supervision/oversight (*surveillance*) obligations as further specified under Clause 3 of this Depositary Bank Agreement.

8.2. The Parties hereby agree and acknowledge that the assets of the Company may be owned or acquired on behalf of the Company, directly or indirectly, through various wholly – or partially – owned subsidiaries incorporated in Luxembourg or in any other jurisdictions as it is needed for the ownership of the Company's assets (each a "**Subsidiary**" and collectively, the "Subsidiaries"). For the purposes of this Clause 8.2., the assets of the Company shall mean the shares of the Subsidiaries, cash deposits of the Company and its Subsidiaries, the Company's and its Subsidiaries' interests, and other assets of the Company and its Subsidiaries (including without limitation securities, bonds, notes, and debentures as well as receivables, derivatives, contractual rights or entitlements and other intangible assets). The Company represents and warrants that it shall make the necessary arrangements to organize appropriate contractual arrangements with the Subsidiaries to enable the Depositary Bank to perform its duties hereunder in respect of such Subsidiaries in compliance with the Applicable Laws.

8.3. The Parties hereby accept that the Depositary Bank shall have the right to request, at its sole and full discretion and at the Company's expenses, the relocation of any assets entrusted to any Correspondent, if the Depositary Bank is not fully satisfied with the cooperation of such Correspondent or not sufficiently comfortable with such Correspondent in terms of security or preservation of the assets of the Company.

8.4. Where a prime broker has been appointed, the Company and/or the Management Company shall ensure that from the date of that appointment an agreement is in place pursuant to which the prime broker is required to make available to the Depositary Bank in particular the statement as specified in Article 91 of the Delegated Regulation.

8.5. The Parties expressly agree that the obligations of the Company and the Management Company under this Clause are of the essence in the context of this Agreement and that a failure by the Company and/or the Management Company to comply with any of its obligations under this Agreement may lead the Depositary Bank to terminate this Agreement forthwith for cause.

## **9. Submission to the Service Level and Operating Memorandum**

9.1. The provision by the Depositary Bank of its services under this Depositary Bank Agreement is subject to the Service Level and Operating Memorandum. The Service Level and Operating Memorandum is legally binding on the Parties hereto and its terms form part of the Agreement.

9.2. The Service Level and Operating Memorandum will, inter alia, describe the means and procedures by which each Party transmit to the other Party all relevant information that it needs to perform its duties in accordance with the Applicable Laws and notably the procedures ensuring that the Depositary Bank will receive all information from other parties appointed by either the Company or the Management Company acting on behalf of the Company.

9.3. The Service Level and Operating Memorandum may be amended from time to time by the Depositary Bank. The Company and the Management Company, or their duly appointed agents, shall be responsible for the review and approval of the amendments brought to the Service Level and Operating Memorandum. Such amendments shall be notified to the Company, the Management Company or their duly appointed agents with ten (10) days prior notice and the relevant amendments shall only become applicable subject to the condition that the Company, the Management Company or their appointed agents do not raise any reasonable objection prior to the lapsing of the relevant notice period or immediately upon written acceptance of these amendments by the Company, the Management Company or their appointed agents.

9.4. In case of discrepancy between this Depositary Bank Agreement and any provision included in any document which is part of the Agreement, such as the Service Level and Operating Memorandum, the Depositary Bank Agreement shall prevail. In case of discrepancy between the Service Level and Operating Memorandum and any provision included in any document which is part of the Agreement (other than this Depositary Bank Agreement), such as EDRE's standard terms and conditions, the Service Level and Operating Memorandum shall prevail.

## **10. Remuneration**

10.1. In consideration of the depositary bank services provided to the Company, the Depositary Bank is entitled to receive from the Company, a remuneration of such amount as is set out in an appendix hereto or a duly approved fee proposal. Unless otherwise stipulated in such appendix or fee proposal, the figures referred to therein shall be deemed to be all taxes excluded (i.e. the Company shall bear any present or future sales, value added or excise taxes that may be imposed upon the supply of services by the Depositary Bank under this Agreement).

10.2. The Company agrees to reimburse to the Depositary Bank all documented assessments, charges and expenses including without limitation, legal expenses and attorneys fees, incurred by the Depositary Bank in connection with this Agreement, where



the engagement of such assessments, charges and expenses is, in the sole discretionary assessment by the Depositary Bank, ancillary and proportionate to execute measures required to protect the best interests of the Company and its Shareholders or investors, or where such assessments, charges and expenses are incurred due to legal, regulatory or common business practice requirements.

10.3. Upon termination of this Agreement, fees and expenses will be calculated up to the later of (i) the delivery to the Company (or such other person, such as the new depositary bank, as is specified in Authorised Instructions) of all the assets of the Company entrusted to the Depositary Bank, (ii) the actual transfer or termination of the supervision duty of all the assets of the Company, or (iii) the expiry of any notice period, and will be payable on or before the proposed day of delivery of the assets of the Company.

## **11. Indemnity**

11.1. The Company and the Management Company undertake to indemnify the Depositary Bank, its directors and officers and hold the Depositary Bank, its directors and officers, harmless from and against:

(i) all expenses, claims, damages, losses, commitments, costs, disbursements, taxes and other liabilities incurred or suffered by the Depositary Bank resulting directly or indirectly from the Depositary Bank carrying out its obligations under this Agreement, except in the case of a gross negligence (*faute lourde*) (whether through an act or an omission) or wilful misconduct (*dol*) committed by the Depositary Bank, its relevant director(s) or officer(s); and

(ii) all claims, losses or commitments resulting from a breach by the Company or the Management Company of the representations and warranties made in this Depositary Bank Agreement.

## **12. Rebus sic stantibus**

12.1. The Company and the Management Company hereby acknowledge and agree that the legal and regulatory framework applicable as of the date of entering into the Depositary Bank Agreement is of the essence for EDRE and led to the fee structure applicable to the services provided hereunder.

12.2. If the Applicable Laws applicable to this Depositary Bank Agreement change in a way that, in the opinion of either Party, the legal or regulatory conditions relevant to this Depositary Bank Agreement change substantially (either at Luxembourg level or European level) or should any significant events modify the Company's structure, either of the Parties may give the other Party notice of intent to renegotiate this Depositary Bank Agreement in order to rebalance the risks or the costs inherent thereto. In the event that the Parties are unable to agree on relevant amendments to this Depositary Bank Agreement within two (2) months following the giving of the notice of intent to renegotiate, the Party which gave notice of intent to renegotiate the Depositary Bank Agreement shall have the right to terminate this Depositary Bank Agreement by giving the other Party notice of termination, which shall become effective at the expiry of the thirty (30) calendar days period following the delivery of the termination notice to the other Party.

### **13. Authorised Instructions and refusal to act**

13.1. The Company and the Management Company hereby authorise the Depository Bank to act on all Authorised Instructions, without further investigation. Without prejudice to the above, the Depository Bank may require the Company and/or the Management Company to clarify or confirm any Authorised Instruction, and may decline to act in accordance with an Authorised Instruction if it does not receive an explanation or confirmation which is satisfactory to it. The Depository Bank shall not be responsible for any loss resulting from any delay by the Company and/or the Management Company in providing any clarification or confirmation, or from the Depository Bank exercising its right to decline to act in their absence. In relation thereto, the Company and the Management Company undertake to comply and to require its agents to comply with the procedures for Authorised Instructions (and more particularly concerning the level of information, formats, modes, procedures or deadlines) as set forth in the Service Level and Operating Memorandum.

13.2. The Depository Bank is entitled to consider the aforesaid Authorised Instructions as being in full force and effect until receipt of written notice to the contrary.

13.3. The Depository Bank will only have to make cash payments or Financial Instruments deliveries to the extent that sufficient Cash is in the Cash Account or is otherwise made available to it, or (as applicable) as regards Financial Instruments deliveries, to the extent that sufficient Financial Instruments are in the Securities Account and available for delivery.

13.4. The Depository Bank shall not be obliged to act in accordance with Authorised Instructions which are in its opinion contrary to any Applicable Laws, the Articles, the Prospectus, or market practices, nor shall it be required to verify whether such Authorised Instructions comply with all Applicable Laws, the Articles, the Prospectus or market practices.

13.5. In the case where an Authorised Instruction does not, in the Depository Bank's reasonable opinion, comply with any Applicable Laws, the Articles, the Prospectus, or market practices, the Depository Bank will inform the Company and/or the Management Company so that it/they may send an Authorised Instruction which complies with such Applicable Laws, the Articles, the Prospectus, or market practices. The Depository Bank shall not be under any obligation to modify any Authorised Instruction which does not comply with any Applicable Laws, the Articles, the Prospectus, or market practices.

13.6. The Depository Bank shall be entitled (subject to a notice given to the Company and/or the Management Company) to refuse to effect any investment, realisation or other transaction required to be carried out by it on behalf of the Company or by the Management Company acting on behalf of the Company pursuant to this Agreement if in the opinion of the Depository Bank:

- (i) there are reasonable grounds for estimating that liabilities to be incurred in the case of such investment, realisation or other transaction may not be adequately covered by the assets of the Company held immediately prior to the time that such investment, realisation or other transaction is required to be effected; or
- (ii) its personal liability may be incurred pursuant to such investment, realisation or other transaction; or

(iii) there are reasonable grounds for estimating that such investment, realisation or other transaction is contrary to the interest of the Company or its Shareholders;

provided always that the foregoing (save as aforesaid) shall not absolve the Depositary Bank from performing the duties expressly assumed by it under this Agreement.

#### **14. Taxation**

14.1. The Company shall be solely responsible for the payment of all taxes, duties and fees, including interests and penalties (“**Taxes**”) relating to the assets of the Company, and to transactions carried out on behalf of the Company. The Company hereby undertakes to indemnify the Depositary Bank for any Taxes which the Depositary Bank might be required to pay in relation to the Company’s assets and transactions.

14.2. With respect to the Financial Instruments of the Company, the Depositary Bank is authorised to sign any declaration and documents relating to these assets which may be required by the competent Luxembourg or foreign tax authorities (as long as, in the case of foreign tax authorities, their request is not contrary to Applicable Laws applicable to the Depositary Bank).

14.3. With respect to the Financial Instruments of the Company, the Depositary Bank will, upon request from the Company and/or the Management Company acting on behalf of the Company, submit to the Luxembourg and foreign tax authorities the forms and documents produced by the Company and/or the Management Company acting on behalf of the Company for the purpose of obtaining the benefit of advantages provided for in international double taxation agreements, provided that the Company and/or the Management Company comply(ies) with the timing schedule communicated to it by the Depositary Bank. The Depositary Bank shall not be required to verify any such forms or documents and the Company and/or the Management Company shall be solely responsible for ensuring that the information contained in these forms is true and accurate in every respect.

14.4. The Company and/or the Management Company shall use its/their best efforts to produce the documents which may be requested by Luxembourg or foreign tax authorities. The Company and/or the Management Company further undertake(s) to promptly supply any information relating to the Company’s tax residence and status which the Depositary Bank may reasonably require. The Company and/or the Management Company shall also promptly inform the Depositary Bank of any change regarding the Company’s tax residence or status.

14.5. The Company hereby undertakes to indemnify the Depositary Bank for all Taxes, fines or penalties due by the Depositary Bank in its capacity as depositary bank of the Company, resulting from incorrect information in the documents provided on behalf of the Company or by any other person, or from the delivery to the Depositary Bank or to any other third party of erroneous or incorrect information, or from the withholding of information by the Company or any other person whatsoever, or from any delay on the part of any tax administration or any other event beyond the Depositary Bank’s control.

14.6. The Company and the Management Company hereby authorise the Depositary Bank to debit any Cash Account with all duties or Taxes (including any penalties for delay) payable to any tax authorities for any reason whatsoever.

14.7. The Depositary Bank shall only provide the services specified in this section 14 in respect of taxes levied by the tax authorities of the jurisdictions notified by the Depositary Bank to the Company and/or the Management Company from time to time, and the Depositary Bank may, by written notice and at its sole discretion, extend or modify the list of local jurisdictions for which it offers tax reclaim services. The services specified in this section will be provided on the basis of documents executed by or on behalf of the Company. The Depositary Bank shall not be held responsible for the tax situation or status of the Company or any other person in any jurisdiction whatsoever. For the avoidance of doubt, the services specified in this section shall not be considered as tax advisory services.

## **15. Lien on assets, right to set off, right of retention and collateral**

15.1. Lien on assets, right to set off, right of retention and collateral in favour of the Depositary Bank

15.1.1 In order to secure the payment obligations of each sub-fund/compartment of the Company or of the Company, as applicable, towards EDRE in any capacity whatsoever, including any extension of credit separately agreed by the Depositary Bank (the "**Secured Obligations**"), the Company hereby grants to the Depositary Bank: (i) a first ranking pledge over the Cash and Financial Instruments held in the Cash Account(s) and the Securities Account(s) of the sub-fund/compartment of the Company concerned or of the Company, as applicable; and (ii) a right to set off or retain Cash and Financial Instruments held in the Cash Account(s) and the Securities Account(s) of the sub-fund/compartment of the Company concerned, or of the Company, as applicable, against the Secured Obligations. The pledging of Cash and/or Financial Instruments of one sub-fund/compartment of the Company for the benefit of another sub-fund/compartment of the Company as well as the setting-off and retaining of Cash and/or Financial Instruments of one sub-fund/compartment of the Company for the benefit of another sub-fund/compartment of the Company are expressly excluded.

15.1.2 It is understood that the enforcement of the first ranking pledge, the right to set-off and/or the right of retention referred to above is limited to the amount of the Secured Obligations. In the event of any portfolio transactions affecting the pledged assets and except if the Depositary Bank indicates otherwise, the Depositary Bank shall be deemed to have implicitly released its first ranking pledge only on the relevant assets. The Depositary Bank shall be entitled without prior notice to withhold delivery of the pledged assets, sell or otherwise realise any such assets and to apply the proceeds and any other monies credited to the relevant Cash Account(s) in satisfaction of the relevant sub-fund's/compartment's or of the Company's liabilities.

15.1.3 The Depositary Bank may set off any amount due by each sub-fund/compartment of the Company or the Company, as applicable, pursuant to this Agreement with any amount credited to any account of the relevant sub-fund/compartment of the Company or the Company opened in the Depositary Bank's books.

15.1.4 The Company and the Management Company expressly acknowledge that the Depositary Bank shall have the right to retain all Financial Instruments held by it or by any Central Clearing Counterparty, Central Securities Depository or Correspondent until payment in full by the relevant sub-fund/compartment of the Company or by the Company of all amounts due by the relevant sub-

fund/compartment of the Company or by the Company, as applicable, under the terms of this Agreement. The Depository Bank shall assume no liability for the losses and/or damages incurred by the Company and/or the Management Company resulting, directly or indirectly, from the Depository Bank's option to enforce its first ranking pledge and/or its right to set-off instead of its right of retention as provided herein, and conversely.

15.1.5 The Company and the Management Company authorise the Depository Bank to grant to any Central Clearing Counterparty, Central Securities Depositories or Correspondent a pledge and/or right to set off or retain the Company's assets deposited with such Central Clearing Counterparty, Central Securities Depository or Correspondent in order to secure any payment or obligations resulting from the agreements concluded between the Depository Bank and said entities.

15.1.6 The Company and the Management Company authorise the Depository Bank to carry out all required formalities, where applicable, on behalf of and/or in the name of the Company, so as to make this first ranking pledge enforceable against all third parties with whom assets of the Company have been entrusted to or registered with. The Company shall bear all costs, duties and fees in connection with enforceability measures taken in relation to the rights created hereunder.

15.2. Second ranking pledge, right to set-off and right of retention in favour of EDRAM

15.2.1 The Depository Bank hereby acknowledges and accepts the second ranking pledge granted by the Company to EDRAM in order to secure the Company's payment obligations towards EDRAM pursuant to the Central Administration Agreement. The Company hereby requests the Depository Bank, and the latter hereby accepts, to act as third party pledge keeper ("*tiers détenteur de gage*") in relation to this second ranking pledge. Therefore, the Depository Bank is hereby authorised to execute (without any prior notice to, and without any consent of, the Company and/or the Management Company any instruction received from EDRAM aiming at enforcing this second ranking pledge granted in favour of EDRAM under the Central Administration Agreement. The Company's assets pledged in favour of EDRAM shall be deemed as being designated as pledged in the books of the Depository Bank in favour of EDRAM in accordance with the Luxembourg law dated 5 August 2005 on financial collateral arrangements.

15.2.2 In addition, the Company hereby authorises the Depository Bank to execute (without any prior notice to, and without any consent of, the Company and/or the Management Company any instruction received from EDRAM aiming at exercising the right to set-off and/or the right of retention as granted in favour of EDRAM under the Central Administration Agreement.

15.2.3 The Depository Bank shall not be liable for any losses and/or damages whatsoever incurred by any other Party or third party resulting, directly or indirectly, from the execution by the Depository Bank of EDRAM's instructions relating (i) to the enforcement of the second ranking pledge and/or (ii) to the exercise of EDRAM's right to set-off and/or right of retention, as mentioned above. For the avoidance of doubt, the Depository Bank shall have no obligation to verify whether the second ranking pledge and/or EDRAM's right to set-off and/or right of retention has/have actually become enforceable and/or exercisable.

For the avoidance of doubt, the acceptance by the Depository Bank to act in accordance with the Clause 15.2 of this Agreement shall not be considered as a waiver of its first

ranking pledge, of its right to set-off or of its right of retention as provided for in the Clause 15.1 of this Agreement.

## **16 Acknowledgment and approval of Company documents**

- 16.1 The Company and/or the Management Company shall deliver to the Depositary Bank, within a reasonable time frame in order for the Depositary Bank to review prior to finalisation thereof, a draft of any Prospectus update or addendum, letter to Shareholders, voting materials to be sent to Shareholders, proposed amendment to the Articles or to any material contract entered into by the Company or the Management Company acting on behalf of the Company (each a "**Company Document**"). For the avoidance of doubt, the review of the Company Documents performed by the Depositary Bank will mainly be made in order to determine the operational feasibility of the process described in those documents, the compliance of the amendments with the Depositary Bank's policies and procedures and to verify the description of the scope of duties and liabilities of the Depositary Bank. The Company and the Management Company are the sole responsible for the content and accuracy of the Company Documents. Any alteration to, or amendment of, any Company Document shall not be effective against the Depositary Bank if it affects the manner in which it performs its duties under this Agreement, unless the Depositary Bank has given its prior written approval or its prior written *nihil obstat* thereto. The Company and the Management Company hereby undertake that no such Company Document will be finalised, issued, registered or distributed unless and until all necessary regulatory consents and authorisations of any jurisdiction have been obtained. In addition, the Company and the Management Company undertake that no new version of the Prospectus will be issued, registered and/or distributed until the Depositary Bank and EDRAM have confirmed in writing (via a formal letter) to have no objection with respect to the content of this new version of the Prospectus.
- 16.2 The Company and the Management Company shall deliver to the Depositary Bank, within a reasonable time frame in order for the Depositary Bank to review prior to issue thereof, a copy of all statements, notices, circulars, marketing materials and advertisements to be issued on behalf of or relating to the Company or the Management Company in which the name or any reference to the Depositary Bank may appear and any such document shall not be published by or on behalf of the Company or the Management Company without the prior written approval or prior written *nihil obstat* of the Depositary Bank. The Company and the Management Company hereby undertake that no such statement, notice, circular or advertisement will be published and that no monies shall be raised nor any Shares issued unless and until all necessary consents and authorisations of any jurisdiction have been obtained.

## **17 Assignment and amendment**

This Depositary Bank Agreement may not be assigned or amended by either Party hereto without the prior written consent of the other Party.

## 18 Termination

- 18.1 The appointment of the Depositary Bank under this Agreement shall remain in force until terminated by either Party giving to the other not less than ninety (90) calendar days' notice in writing (or such shorter notice as the Parties may agree).
- 18.2 The Parties may terminate this Agreement forthwith by notice taking immediate or subsequent effect if the Depositary Bank or the Company and/or the Management Company have/has committed a material breach or is in persistent breach of any of the terms of this Agreement (including the representations and warranties of this Depositary Bank Agreement) or the Applicable Laws and has not remedied such breach within thirty (30) calendar days after service of notice by the other Party requiring it to be remedied.
- 18.3 The appointment of the Depositary Bank, shall automatically be terminated:
- (i) when the Company, the Management Company or the Depositary Bank goes into liquidation (except for the Company, the case of a voluntary liquidation for the purposes of restructuring, amalgamation or merger under the terms previously approved in writing by the Depositary Bank), goes into insolvency or into similar proceedings or has a receiver or its equivalent in any jurisdiction appointed over all or any of its assets; or
  - (ii) when the CSSF withdraws the license or authorization to operate for the Depositary Bank or the Management Company .
- 18.4 Termination of this Agreement shall be without prejudice to any claims or rights which either Party may have by reason of any breach of the other Party's obligations and, without prejudice to the generality of the foregoing, any indemnity provisions, any provisions limiting the liabilities of either Party, Clauses 5.1.8., and 32 of this Depositary Bank Agreement shall survive the termination of this Agreement.
- 18.5 Upon termination of this Agreement, the Depositary Bank may, at the cost of the Company, notify the Shareholders, by way of publication or otherwise, of the termination of this Agreement, if the Company and/or the Management Company have/has not arranged for such notification, and the Company and/or the Management Company shall arrange for the Prospectus to be promptly amended if such termination results in a transfer of the services under this Agreement to another depositary bank.
- 18.6 Upon termination of this Agreement, the Company and/or the Management Company undertake(s) to immediately notify any competent supervisory authority (if applicable) and the auditor of the Company and take all necessary steps to appoint a new depositary bank in accordance with the RAIF Law and to obtain, as the case may be, all required approval by the relevant competent authorities. The Company and the Management Company undertake to proceed with diligence and to act promptly.
- 18.7 Termination shall be without prejudice to the completion of transactions entered into but not completed prior to termination and following termination, the Depositary Bank will continue to hold the assets of the Company under the terms and

conditions of the Agreement until the assets are delivered to the Company (or such other person, such as the new depositary bank, as is specified in Authorised Instructions) it being understood that upon termination of this Agreement pursuant to Clause 18 of this Depositary Bank Agreement the Depositary Bank shall no longer be responsible for the supervision/oversight (surveillance) of the assets of the Company which are not held in safe custody by the Depositary Bank.

- 18.8 Upon termination of this Agreement, fees and expenses due by the Company to the Depositary Bank will be calculated and payable in accordance with Clause 10.3. of this Depositary Bank Agreement.
- 18.9 Upon termination of this Agreement, the Depositary Bank shall deliver or cause to be delivered to any succeeding depositary bank the credit balance of the Cash Account(s) and all Financial Instruments of the Company with all certified copies and other documents relating thereto in its possession which are valid and in force at the date of termination without prejudice to the provisions of Clause 15 of this Agreement.
- 18.10 In any case upon termination of this Agreement pursuant to Clause 18 of this Depositary Bank Agreement, the Depositary Bank will have to be replaced within two (2) months from this termination. The Depositary Bank shall continue its activities during this period of two months until the Company's assets entrusted to the Depositary Bank have been transferred to the new depositary bank. However, if not replaced before the expiry of this two-month period, the Depositary Bank may refuse to process any Authorised Instructions, except for the delivery to the Company (or such other person, such as the new depositary bank, as is specified in Authorised Instructions) of all the assets of the Company entrusted to the Depositary Bank.

## **19 Confidentiality and data protection**

- 19.1 The Depositary Bank undertakes to treat information about the Company, its assets and any of the services provided under this Agreement ("**Company Confidential Information**") and personal data in relation to individuals or entities investing in the Company or associated with the Company ("**Personal Confidential Information**") ("**Company Confidential Information**" and "**Personal Confidential Information**" are also referred to together as "**Confidential Information**") as secret and confidential and will not, without the Company's and/or the Management Company's and, if required by Applicable Laws, the relevant individual's or entity's prior written consent, disclose to any third party such Confidential Information. The Depositary Bank also undertakes not to process Personal Confidential Information other than according to the Company's and/or Management Company's instructions, in particular as set out in this Agreement.
- 19.2 The Depositary Bank confirms that it will put into place procedures and controls and will, in accordance with EDRE standards and in compliance with the Luxembourg law of 2 August 2002 on the protection of persons with regard to the processing of personal data, as amended from time to time, and any applicable rules, monitor the services provided by any of its service providers to ensure the safekeeping of the Company's interests and rights at any time.
- 19.3 The Depositary Bank may collect and use Personal Confidential Information, to enable the Depositary Bank to carry out its obligations to the Company and its legal



obligations on fraud and crime prevention, anti-money laundering, terrorism financing, legal and regulatory compliance.

## **20 Company's information disclosures**

- 20.1 In providing services under this Agreement, the Depositary Bank may, and is authorised by the Company and the Management Company to, disclose, information concerning the Company or this Agreement to its parent company, Correspondents and other providers of services (including, without limitation, lawyers and auditors for the Depositary Bank) worldwide. Notwithstanding the foregoing, before disclosing any information, the Depositary Bank shall ensure that such persons are submitted to a strict duty of confidentiality.
- 20.2 The Company and the Management Company acknowledge that the Depositary Bank may be obliged to provide information concerning the Company, its assets, the Cash Account(s), the Securities Account(s) or this Agreement to market or regulatory authorities, courts and government agencies, including but not limited to the CSSF and other stock exchanges, and to law enforcement authorities, including outside of Luxembourg. The Company and the Management Company hereby authorise the Depositary Bank to disclose the information to such market, regulatory, court and government agencies, or law enforcement authorities, or otherwise as required by applicable laws, rules, regulations or court or administrative order in jurisdictions where the Depositary Bank operates for the account of the Company, and in particular to disclose the identity of the Company or, in compliance with the Applicable Laws, its Shareholders.

## **21 Notices**

- 21.1 With the exception of Authorised Instructions (which shall be forwarded to such address, facsimile number or email address as may be notified in writing by the Depositary Bank to the Company and/or the Management Company from time to time) each of the Parties chooses its address set forth at the beginning of this Depositary Bank Agreement as its address (the "**Notice Address**") for the purposes of the giving of any notice, the serving of any process and for any other purpose arising from this Agreement.
- 21.2 Each of the Parties shall be entitled from time to time, by written notice to the other to change its Notice Address to any other address.
- 21.3 Any notice given by one Party to the other (the "**Addressee**") which:
- (i) is delivered by hand during the normal business hours of the Addressee at the Addressee's Notice Address shall be deemed (until the contrary is proved by the Addressee) received by the Addressee at the time of delivery;
  - (ii) is posted by registered letter to the Addressee's Notice Address shall be deemed (until the contrary is proved by the Addressee) received by the Addressee on the fifth calendar day after the date of posting;

(iii) is delivered by facsimile shall be deemed received during the normal business hours of the Addressee.

21.4 Formal notice – *Mise en demeure*. Unless otherwise provided for in writing between the Parties, no Party shall be in default of performance of its obligations under this Agreement without formal notice of default given by the other Party, unless the performance of the relevant obligations has become impossible. Formal notice to this effect shall be sent to the other party by registered letter formally requesting performance of the relevant obligation(s).

## **22 Representations and warranties**

a) The Company hereby represents and warrants that:

(i) it is duly incorporated and existing as a limited partnership by shares (*société en commandite par actions*) qualifying as a *société d'investissement à capital variable - fonds d'investissement alternatif réservé* (reserved alternative investment fund) under the RAIF Law and it conducts its activities in accordance with the Applicable Laws and provisions of its Articles;

(ii) it has full power and capacity to enter into this Depositary Bank Agreement and to the extent applicable, all permits, licences and authorisations which may be necessary for the conclusion and performance of this Depositary Bank Agreement have been obtained and remain valid;

(iii) when contemplating the appointment of a third party, it will carry out its own initial and ongoing due diligence regarding the third party, and, upon request, will make available to the Depositary Bank the relevant information supporting its due diligence process in the selection and ongoing monitoring of those third parties;

(iv) it will ensure that no person or entity is solicited for investment in the Company where:

- this could result in the Company being obliged to meet certain specific legal or regulatory reporting requirements for tax or other purposes and where such reporting obligations would have an impact on the services provided by the Depositary Bank; the Company will further ensure to communicate any such obligations that may arise during the existence of the Company to the Depositary Bank, in order to allow the latter to assess potential impacts; and/or
- such solicitation would be unauthorised or unlawful, in particular where prior registration with local authorities is required;

(v) the conclusion and performance of this Agreement does not contravene any provision of any Applicable Laws or the Articles, and the Agreement constitutes a set of rights and obligations which are binding on the Company in all respects;

(vi) the content of the Prospectus and Articles does not differ in any material respect from the content of the version of such documents, on the basis of which the Depositary Bank has agreed to enter into this Depositary Bank Agreement;

(vii) it will make the necessary arrangements to inform the Depositary Bank, or obtain its consent where necessary, prior to the creation of any security over the assets of the Company, by way of charge, mortgage, pledge or other such encumbrance; and

(viii) it will have legal, regulatory, tax and compliance aspects checked by professional advisors which the Company considers necessary to consult and will not rely on any advice (whether written or oral) given by the Depositary Bank.

(ix) if one of the sub-funds/compartments of the Company subscribes, acquires and/or holds Shares to be issued or issued by one or more of the other sub-funds/compartments of the Company, the Company will inform the Depositary Bank prior to such cross-investment and the Company will ensure compliance at all times with the requirements set out in the RAIF Law as well as with the Articles and the Prospectus;

(x) it will periodically assess the shareholding structure of the Company, any of its sub-funds/compartments and any of its classes of Shares, as well as the investment activities carried out by the Company and/or any of its sub-funds/compartments in light of the requirements set out in Article 46 (2) of the RAIF Law, as applicable, for the purposes of the application of the exemption from the subscription tax under said Article.

b) The Management Company hereby represents and warrants that:

(i) it is duly incorporated and it conducts its activities in accordance with the Applicable Laws and provisions of its articles of incorporation;

(ii) it has full power and capacity to enter into this Agreement and all permits, licences and authorisations which may be necessary for the conclusion and performance of this Agreement have been obtained and remain valid;

(iii) it will act honestly, fairly, professionally, independently and in the interest of the Company and the Shareholders of the Company

(iv) when contemplating the appointment of a third party, it will carry out its own initial and ongoing due diligence regarding the third party, and, upon request, will make available to the Depositary Bank the relevant information supporting its due diligence process in the selection and ongoing monitoring of those third parties;

(v) it will ensure that no person or entity is solicited for investment in the Company where:

- this could result in the Company being obliged to meet certain specific legal or regulatory reporting requirements for tax or other purposes and where such reporting obligations would have an impact on the services provided by the Depositary Bank; the Management Company will further ensure to communicate any such obligations that may arise during the existence of the Company to the Depositary Bank, in order to allow the latter to assess potential impacts; and/or
- such solicitation would be unauthorised or unlawful, in particular where prior registration with local authorities is required;

(vi) the persons appointed at the management body of the Management Company have been duly authorised as such to conduct the business of the Company by the Management Company's supervisory authority;

(vii) the conclusion and performance of this Agreement does not contravene any provision of any Applicable Laws, and the Agreement constitutes a set of rights and obligations which are binding on the Management Company in all respects;

(viii) the content of the Prospectus and Articles does not differ in any material respect from the content of the version of such documents, on the basis of which the Depositary Bank has agreed to enter into this Agreement;

(ix) it will have legal, regulatory tax and compliance aspects checked by professional advisors which the Management Company considers necessary to consult and will not rely on any advice (whether written or oral) given by the Depositary Bank;

(x) it will ensure that adequate control procedures in all areas of the Company's activities in relation to financial, organisational, administrative, operational and internal control system aspects have been implemented from the beginning and during the whole duration of the Company and it has disclosed and explained in detail to the Depositary Bank these control procedures.

(xi) if one of the sub-funds/compartments of the Company subscribes, acquires and/or holds Shares to be issued or issued by one or more of the other sub-funds/compartments of the Company, the Management Company will inform the Depositary Bank prior to such cross-investment and the Company will ensure compliance at all times with the requirements set out in the RAIF Law as well as with the Articles and the Prospectus;

(xii) it will periodically assess the shareholding structure of the Company, any of its sub-funds/compartments and any of its classes of Shares, as well as the investment activities carried out by the Company and/or any of its sub-funds/compartments in light of the requirements set out in Article 46 (2) of the RAIF Law, as applicable, for the purposes of the application of the the exemption from the subscription tax under said Article.

## **23 Prevention of money laundering and terrorism financing activities**

23.1 The Parties agree that each Party will implement the measures it deems necessary or appropriate in the context of prevention of money laundering and terrorism financing activities, in accordance with all Applicable Laws regarding prevention of money laundering and terrorism financing activities.

23.2 The Parties acknowledge and agree that the Depositary Bank shall, as a rule, not accept subscription monies when such monies are debited – or to be debited - from an account opened in the prospective investor's/Shareholder's name (i) with a credit institution or professional of the financial sector that is not covered by the obligations foreseen in the Council Directive 2005/60/EC on the prevention of the use of a financial system for the purpose of money laundering, as amended, or (ii) with a credit institution or financial institution situated in a third country that the Depositary Bank deems, on a discretionary basis, as not imposing equivalent requirements to those laid down by the Applicable Laws regarding prevention of money laundering and terrorism financing activities.

23.3 The Company and the Management Company acknowledge and agree that the Depositary Bank might be obliged to cooperate and answer in the best possible way any legal request emanating from the Luxembourg authorities in charge of the enforcement of the anti-money laundering and terrorism laws which they might

address to the Depositary Bank in the exercise of their competence. The Depositary Bank is also obliged to cooperate with the Luxembourg authorities in charge of the fight against money laundering and terrorism in providing these authorities, upon their request, with all necessary information in application of the procedures requested under the relevant legislation as well as in informing, on its own initiative, the Public Prosecutor to the District Court of Luxembourg ("*Tribunal d'Arrondissement*") of any act potentially constituting of money laundering or terrorism financing and the Parties acknowledge and agree that the Depositary Bank shall not be in a position to inform the other Parties in such circumstances.

- 23.4 The Company and the Management Company acknowledge and agree that the Depositary Bank shall, as a rule, not accept instructions of payment to Shareholders (e.g. redemption of Shares or dividends) that would not be made to the same account from where the subscription monies have been received.

## **24 Limitation of liability**

- 24.1 The Parties agree that the duties of the Depositary Bank pursuant to this Agreement are to be considered as "*obligations de moyens*" (best-effort obligations), except to the extent prohibited or otherwise prescribed by Luxembourg law.

- 24.2 Notwithstanding anything to the contrary contained in this Agreement or elsewhere and for the avoidance of doubt, it is specifically agreed that the Parties shall only be liable for losses that were foreseen or which could have been foreseen at the time of the entering into this Depositary Bank Agreement, to the extent such losses do not arise as a consequence of a wilful misconduct (*dol*) in accordance with article 1150 of the Luxembourg Civil Code. Unless otherwise agreed in this Agreement, the Parties shall be liable for losses incurred as a direct consequence of their negligence (*faute*) (whether through an act or omission) gross negligence (*faute lourde*) (whether through an act or omission) or wilful misconduct (*dol*). Under no circumstances shall the Parties be liable for indirect or consequential losses.

- 24.3 The Parties agree that the liability of the Depositary Bank for losses or damages shall not exceed the market value of the assets to which the losses or damages relate, at the time such liability arises.

## **25 Force majeure**

- 25.1 Without prejudice to the provisions of Clause 5.4, no Party to this Agreement shall be deemed to be in breach of this Agreement or otherwise be liable for any failure to perform its duties and obligations hereunder, if it is prevented, hindered from or delayed in performing any and/or all such duties and obligations by any *force majeure* event as defined below.

*Force majeure* shall mean any compelling and unforeseeable circumstance or event which is beyond the reasonable control of the relevant Party and which adversely affects the performance of the duties and obligations of such Party, including any compelling and unforeseeable event beyond the reasonable control of the relevant Party caused by, arising out of or involving: (a) accident, fire, water damage or explosion; (b) any strike or other work stoppage, whether partial or total; (c) any delay or disruption resulting from or reflecting the occurrence of any sovereign risk as defined below; (d) natural events

beyond human control or influence, or (e) any other compelling and unforeseeable cause similarly beyond the reasonable control of the relevant Party.

Sovereign risk shall mean: (a) any act of war, terrorism, riot, insurrection or civil commotion; (b) the imposition or adoption by any government or governmental body, including any court or tribunal, of (i) any investment, repatriation or exchange control restrictions or (ii) any law, decree, regulation, decision or order, impacting the assets of the Company or (c) any other economic or political risk incurred.

25.2 In this regard the Depositary Bank confirms that it maintains a business continuity plan.

## **26 Severance**

If any provision shall be determined to be void or unenforceable in whole or in part for any reason whatsoever, such invalidity or unenforceability shall not affect the remaining provisions, or any part thereof, of this Depositary Bank Agreement and such void or unenforceable provisions shall be deemed to be severable from any other provision or part thereof.

## **27 Waivers**

27.1 Any provision of this Agreement may be waived if, but only if, such waiver is in writing and is signed by all the Parties .

27.2 A failure or delay in exercising a right under this Agreement shall not be construed as a waiver of such right and shall not prevent any further exercise of such right at a later stage.

## **28 Miscellaneous**

### **28.1 Evidence and claims**

28.1.1 The Depositary Bank's books and records (whether on paper, microfilm, microfiche, by electronic or magnetic recording, or any other mechanically reproducible form or otherwise) shall, save in the case of manifest error, be deemed to constitute sufficient evidence of any obligations of the Company and/or the Management Company to the Depositary Bank and of any facts and events relied upon by the Depositary Bank.

28.1.2 The Company, the Management Company or their relevant agent must inform the Depositary Bank immediately in writing of errors, differences and irregularities observed in the Depositary Bank's books and documents concerning the affairs of the Company (e.g. account statements). All claims of the Company, the Management Company or their relevant agents must be made in the form provided for under Clause 21 hereabove, within three (3) calendar days following the receipt by the relevant recipient of the statements of account. In the absence of any notification by the Company, the Management Company or their relevant agent(s) to the Depositary Bank, the Depositary Bank shall not (in the absence of gross negligence or wilful misconduct on its part) be liable for the consequences of any discrepancy or error. If the Depositary Bank receives no written objection, the Company, Management Company or their relevant agent(s) shall be deemed to have approved and ratified the transaction as of the trade date.

## **28.2 Recordings**

The Company and the Management Company understand and agree that the Depositary Bank may record telephone and electronic dealings and that the Depositary Bank may use such recordings. Accordingly the Company and the Management Company will inform their respective officers of the recording of telephone conversations and electronic dealings with the Depositary Bank.

## **28.3 Professional advice**

If the Depositary Bank shall at any time be in doubt as to any action to be or not to be taken by it, it is authorised, with the prior consent – email shall be sufficient – of the Company and/or the Management Company, which shall not be unreasonably withheld, to obtain advice from a professional approved by the Company and/or the Management Company or by a person or persons authorised by the Company and/or the Management Company, at the expense of the Company (such expense to be duly evidenced by an invoice).

## **28.4 Legal proceedings**

The Depositary Bank shall not be required to take any legal action in the context of the performance of its obligations hereunder unless fully indemnified to its reasonable satisfaction for reasonable costs and liabilities and, if the Company and/or the Management Company require(s) the Depositary Bank in any capacity to take any action which, in the opinion of the Depositary Bank, might hold the Depositary Bank liable for the payment of money or liable in any other way, the Depositary Bank shall be indemnified in any reasonable amount and form satisfactory to it as a prerequisite to taking such action.

## **28.5 Identification of the authorised signatories of the Company and the Management Company**

The Depositary Bank is hereby allowed to request the Company and the Management Company to accept to communicate to the Depositary Bank all documents necessary to enable the Depositary Bank to properly identify the authorised signatories of the Company and the Management Company.

## **29 Delegation**

Without prejudice to other sections of this Agreement (and in particular Clause 19 of this Agreement), the Company and the Management Company hereby accept that the Depositary Bank may, under its control and responsibility, delegate any of its functions, powers, and duties under this Agreement and may also employ agents to perform, or advise in relation to the performance by the Depositary Bank of, any of the services required to be performed or provided by the Depositary Bank under this Agreement.

The Parties undertake to provide, on a regular basis, details of any third party appointed by them and, upon request, information on the criteria used to select the third party and the steps envisaged to monitor the activities carried out by the selected third party.

### 30 Other services

Ancillary services may be rendered by EDRE, such services being subject to the acceptance by the Company and/or the Management Company of the specific standard terms related to the relevant service.

### 31 Classification under MIFID

Pursuant to article 33 of the Grand-Ducal Regulation, the Depositary Bank has to classify its clients in one of the following three categories: Private Customer, Professional Customer or Eligible Counterparty.

The Company has requested to be treated as a eligible counterparty within the meaning of the MiFID requirements and accepts the Depositary Bank's execution policy which is part of the Service Level and Operating Memorandum. As provided by Applicable Laws, the Company is advised that it may opt to be classified as either of the other categories which may offer increased or lower protection. However, should the Company choose to do so, the Depositary Bank may be unable to continue to provide investment services that it has decided to provide only to Eligible Counterparties.

### 32 Governing law and jurisdiction

32.1 This Agreement shall be governed by and construed in accordance with the laws of Luxembourg.

32.2 Any litigation relating to this Agreement and particularly its validity, interpretation, performance, or non-performance, will fall under the exclusive jurisdiction of the courts of Luxembourg, it being understood that this exclusive jurisdiction shall not prevent the Depositary Bank from suing the Company and/or the Management Company as a co-defendant before any court of any jurisdiction where the Depositary Bank might be sued by a third-party plaintiff, for example in relation to the assets of the Company.

Signed in Luxembourg.

The contract is made with effect as from 01.08.2018

in three (3) originals.

Signed for and on behalf of **MERCUREIM EUROFUND I S.C.A. SICAV-FIAR**

By \_\_\_\_\_

Name: *Proie Sylvie*

Title: *gérant*

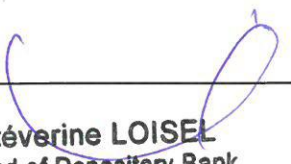
By \_\_\_\_\_


Name: *NADAL Christophe*

Title: *gérant*




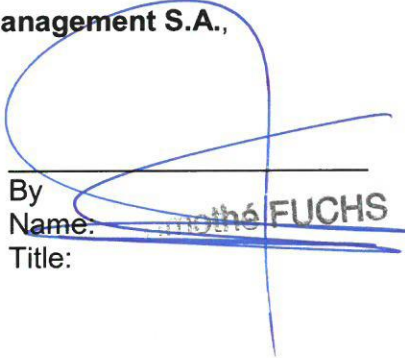
Signed for and on behalf of **Edmond de Rothschild (Europe)**,

  
By \_\_\_\_\_  
Name: **Séverine LOISEL**  
Title: **Head of Depository Bank**

  
By \_\_\_\_\_  
Name: **Emile Cremmer**  
Title: **First Vice-President**

Signed for and on behalf of **Fuchs Asset Management S.A.**,

  
By \_\_\_\_\_  
Name: **Enrico MELA**  
Title:

  
By \_\_\_\_\_  
Name: **Antoine FUCHS**  
Title: