

DATED: 12 September 2011

**COLFAX UK HOLDINGS LIMITED**

**AND**

**CAPITA TRUST COMPANY (JERSEY) LIMITED**

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**CUSTODIAN AGREEMENT**

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## CUSTODIAN AGREEMENT

THIS CUSTODIAN AGREEMENT is made on 12 September 2011 (the "Agreement")

### BETWEEN:

- (1) **COLFAX UK HOLDINGS LTD**, a company incorporated under the laws of England and Wales whose registered office is at 40 Bank Street, Canary Wharf, London, United Kingdom E14 5DS (the "Company");
- (2) **CAPITA TRUST COMPANY (JERSEY) LIMITED**, a company incorporated under the laws of Jersey whose registered office is at 12 Castle Street, St Helier, Jersey, Channel Islands, JE2 3RT (the "Custodian").

The Company and the Custodian are hereinafter individually referred to as a "Party" and collectively as the "Parties".

### NOW IT IS HEREBY AGREED AS FOLLOWS:

#### 1. Interpretation and Construction

1.1 In this Agreement, unless the context otherwise requires, the following expressions shall have the following meanings:

- "Accounts" means the Cash Accounts and the Securities Accounts (each as defined in Clause 2.1) and "Account" shall mean any one of them;
- "Articles" means the memorandum and articles of association of the Company;
- "Assets" means Cash and Securities;
- "Associate" means in relation to a company, any company which is a subsidiary or holding company of that company or a subsidiary of any such holding company and any individual, partnership or other unincorporated association or firm which has direct or indirect control of that company and any company which is directly or indirectly controlled by any such individual, partnership or other unincorporated association or firm, and in relation to an individual, partnership or other unincorporated association means any

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|                            | company which is directly or indirectly controlled by that individual, partnership or other unincorporated association;   |
| <b>"Authorised Person"</b> | means any person authorised by the Company to give Proper Instructions or any particular class thereof. The name, signature and office address of each Authorised Person shall be delivered to the Custodian by the Company. A certified copy of a resolution of the Directors, may be received and accepted by the Custodian as conclusive evidence of the authority of any such person to act and may be considered as in full force and effect until receipt of written notice to the contrary. Different persons may be authorised to give instructions for different purposes and such persons may also include officers of corporations other than the Company, so authorised by the Company; |
| <b>"Business Day"</b>      | means any day on which the Custodian and relevant Depositories and Sub-Custodians are open for business;  |
| <b>"Cash"</b>              | shall have the meaning given to such term in Clause 2.1;  |
| <b>"Cash Account"</b>      | shall have the meaning given to such term in Clause 2.1.2;  |
| <b>"Depository"</b>        | means Euroclear, Clearstream Banking S.A. and any other securities depository, securities settlement system, book-entry system or clearing agency (and their respective successors and nominees) authorised to act as a central securities depository, securities settlement system, book-entry system or clearing agency pursuant to applicable law;   |
| <b>"Directors"</b>         | means the directors of the Company from time to time;   |
| <b>"Distributions"</b>     | means all interest, dividends and other income distributed or paid in respect of Assets;  |
| <b>"Losses"</b>            | means, collectively, losses (including without limitation losses arising out of delay, mis-delivery or error in the transmission of any letter, cable, telex, telephonic communication, telephone, facsimile transmission or other electronic communication in a readable form), costs, expenses (including without limitation legal expenses), damages, actions, proceedings, suits, claims, demands and liabilities;  |
| <b>"Proper"</b>            | means written, cabled, facsimiled or telexed instructions or  |

- Instructions** instructions given by any other means of electronic transmission in a readable form in respect of any of the matters referred to in this Agreement signed or purported to be signed by an Authorised Person that has been authorised to give the particular class of instruction in question;
- Records** means all corporate records, registers, books of account, correspondence, files, tables, documents, discs, print outs, data and information systems;
- Securities** means all negotiable financial instruments including, without limitation, any common stock and other equity securities, depository receipts, bonds, debentures and other debt securities, notes or other obligations, and any instruments representing rights to receive, purchase, or subscribe for the same, or representing any other rights distributions or interests therein (whether represented by a certificate or held in a Depository, with a Sub-Custodian or on the books of the issuer) that are acceptable to the Custodian;
- Securities Account** shall have the meaning given to such term in Clause 2.1.1;
- Sub-Custodian** shall mean a bank or other financial institution (other than a Depository) that is utilised by the Custodian, in its discretion, in connection with the purchase, sale or custody of Assets;
- Tax Obligations** shall mean taxes, withholding, certification and reporting requirements, claims for exemptions or refund, interest, penalties, additions to tax and other related expenses.

1.2 In this Agreement, any reference to:-

- 1.2.1 a Recital, a Clause or a Schedule is, unless the context otherwise requires, a reference to a recital or a clause of, or a schedule to, this Agreement and any reference to a sub-clause is, unless otherwise stated, a reference to the sub-clause of the Clause in which the reference appears;
- 1.2.2 this Agreement or to any agreement or document referred to in this Agreement shall be construed as a reference to such agreement or

- document as amended, varied, modified, supplemented, restated, novated or replaced from time to time;
- 1.2.3 any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to such statute or statutory provision as the same may have been or may from time to time be amended, modified, extended, consolidated, re-enacted or replaced and shall include any subordinate legislation made thereunder;
- 1.2.4 a "subsidiary" or "holding company" shall be construed in accordance with Articles 2 and 2A of the Companies (Jersey) Law, 1991.
- 1.3 Unless otherwise defined herein, terms and expressions defined in the Articles shall, where the context permits, bear the same meaning in this Agreement provided that no amendment to the Articles shall affect the rights, duties or obligations of the Custodian hereunder without it being notified in advance of such proposed amendment.
- 1.4 In this Agreement, except where the context otherwise requires, words denoting the singular include the plural and vice versa, words denoting a gender include every gender and references to persons include bodies corporate and unincorporate.
- 1.5 The Recitals and the Schedule form part of this Agreement and shall have the same force and effect as if they were expressly set out in the body of this Agreement and any reference to this Agreement shall include the Recitals and the Schedule.
- 1.6 Clause headings in this Agreement are inserted for convenience only and shall not affect the construction of this Agreement.

## **2. Appointment of Custodian and Establishment of Accounts**

- 2.1 The Company hereby appoints the Custodian to be the custodian of the Securities deposited by the Company for safekeeping with the Custodian and to hold any cash, Distributions and other monies received for deposit for the account of the Company which arise or are paid in respect of the Securities ("**Cash**") subject to and in accordance with the terms and conditions set out in this Agreement.
- 2.2 The Custodian hereby accepts such appointment and is authorised and instructed to open and maintain in its own name on behalf of the Company in such currencies and with such banks or other institutions acceptable to the Custodian as the Company shall by Proper Instructions request:

- 2.2.1 one or more securities accounts for the custody and safekeeping any of the Securities deposited with the Custodian (each, a "**Securities Account**"); and
- 2.2.2 one or more cash accounts for all Cash (each, a "**Cash Account**").
- 2.3 The Custodian and the Company shall not, either during the continuance of this Agreement or after its termination, do, omit to do or commit any act or thing which might prejudice or bring into disrepute in any manner the business or reputation of the other Party or its directors.

**3. Proper Instructions**

- 3.1 The Custodian shall accept and shall be entitled to rely upon and act upon any instruction that the Custodian reasonably believes to be a Proper Instruction.
- 3.2 The Custodian is under no duty to question any Proper Instruction however the Custodian may, in its sole discretion, decline to act upon any Proper Instruction which it considers to be insufficient, incomplete or is not received by the Custodian in sufficient time for the Custodian to act upon or which may breach any applicable law, rule or regulation.
- 3.3 If the Custodian receives written, cabled, facsimiled or telexed instructions or instructions given by any other means of electronic transmission in a readable form in respect of any of the matters referred to in this Agreement that appear on their face to have been transmitted by an Authorised Person, the Company understands and agrees that the Custodian cannot determine the identity of the actual sender of such instructions and that the Custodian shall be entitled to conclusively presume that such instructions have been sent by the Authorised Person and that such instructions are Proper Instructions.
- 3.4 The Company acknowledges and agrees that it is fully aware of the protections and risks associated with the various methods of transmitting Proper Instructions to the Custodian and that there may be more secure methods of transmitting Proper Instructions than the method selected by the sender. The Company agrees that the security procedures, if any, to be followed in connection with a transmission of Proper Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances.

#### 4. Custody Services

- 4.1 **Ownership** – Securities held for the Company hereunder shall be segregated on the Custodian's books and records from the Custodian's own property. The Custodian will identify the Securities credited to the Securities Accounts of the Company, as being proprietary to the Company or, and only if the Company has advised the Custodian in writing that it is acting on behalf of others, to customers of the Company.
- 4.2 **Client** – Notwithstanding Clause 4.1 or any other provision contained in this Agreement, the Company only, and not the underlying clients of the Company, will be the Custodian's client. The underlying clients of the Company will have no right to make any claim against the Custodian in relation to any Assets beneficially or otherwise owned by such underlying client.
- 4.3 **Regulatory Duties** – The Custodian has a duty to comply with all relevant Jersey anti-money laundering laws, regulations and rules. The Custodian must, inter alia, verify the identity and residence of the Company prior to providing services under this Agreement and must report suspicious transactions to the appropriate law enforcement agencies. The Custodian will not begin providing services to the Company until the Custodian considers that it has performed sufficient due diligence to meet all relevant Jersey anti-money laundering laws.
- 4.4 **Holding Assets** – The Custodian shall hold Assets at the Custodian, Depositories or Sub-Custodians. Assets held with Sub-Custodians shall be held subject to the terms and conditions of the relevant Sub-Custodian Agreement, and in accordance with, and subject to, the laws, regulations and local market practices imposed on such Sub-Custodians. Assets held in Depositories shall be held in accordance with, and subject to, the agreements, rules, laws, regulations, local market practices and conditions imposed by and on such Depositories. Depending on the relevant agreements, rules, laws, regulations, local market practices and conditions Securities held by the Custodian with Sub-Custodians or Depositories may be held on a fungible or non-fungible basis. Where Assets are held outside Jersey, settlement, legal and regulatory requirements and local market practices relating to the separate identification and protection of these Assets may apply that are different from Jersey law.

4.5 **Segregation** – Any Securities held by the Custodian with a Sub-Custodian or Depository will be held in separate client securities accounts of the Custodian with the Sub-Custodian or Depository. The Company's Securities (including Securities belonging to the Company's underlying customers) may be held however in a commingled client securities account with or by a Sub-Custodian or Depository and may not be identifiable by separate certificates, other physical documents of title or an equivalent electronic record. Should there be an irreconcilable shortfall after a liquidator, administrative receiver or administrator is appointed in relation to the Custodian or a Sub-Custodian or Depository (or after the occurrence of an equivalent event), the Custodian's clients may share in that shortfall in proportion to their original share of the assets in the pool. However, the manner in which such a shortfall will be dealt with may vary in accordance with the provisions of applicable law and rules.

4.6 **Sub-Custodians** –

4.6.1 The Custodian shall exercise reasonable care in the selection or retention, monitoring and continued use of Sub-Custodians in light of prevailing rules, practices and procedures in the relevant market. Notwithstanding any other provisions hereof, with respect to any Losses incurred by the Company as a result of the acts or the failure to act by any Sub-Custodian (other than an Associate of the Custodian), the Custodian shall take appropriate action to recover such Losses from such Sub-Custodian, and the Custodian's sole responsibility and liability to the Company shall be limited to amounts so received from such Sub-Custodian (exclusive of costs and expenses incurred by the Custodian).

4.6.2 The Custodian's responsibility for Losses with respect to Assets held by the Custodian with or through a Sub-Custodian is limited to the failure on the part of the Custodian to exercise reasonable care in the selection and retention, monitoring and continued use of such Sub-Custodian in light of prevailing rules, practices and procedures in the relevant market.

4.6.3 The Company acknowledges that the Custodian intends to appoint The Bank of New York Mellon SA/NV, London Branch ("**BNYM**") as Sub-Custodian on the terms and conditions set out in the BNYM Global Custody Agreement (the "**Sub-Custodian Agreement**") in Schedule B hereto. The Company confirms that the appointment of



BNYM and the terms and conditions set out in the Sub-Custodian Agreement are acceptable to the Company.

- 4.7 **Depositories** – The Custodian shall have no liability whatsoever for the action or inaction of any Depository or for any Losses resulting from the maintenance of Assets with a Depository.
- 4.8 **Nominees** - The Custodian hereby notifies the Company and the Company agrees that the Company's Securities may be registered in the register of the issuer or any person so acting for its account in the name of the Custodian, a Sub-Custodian, a Depository, a nominee company that is an Associate of the Custodian, or a nominee company controlled by a Sub-Custodian or a Depository on such terms and conditions as any of the foregoing may require.
- 4.9 **Documents of Title** – The Custodian may hold any documents of title to a Security:
- 4.9.1 in the physical possession of the Custodian;
  - 4.9.2 with a Sub-Custodian in a safe custody account generally designated for clients' Securities;
  - 4.9.3 in any other manner that the Custodian may think proper for the purpose of providing for the safe-keeping thereof (whether within or outside the Island of Jersey); or
  - 4.9.4 as the Company may otherwise direct with the consent of the Custodian which may be withheld in its sole discretion. Where this sub-clause 4.9.4 applies, such documents of title shall be so held at the Company's risk and expense, including the inapplicability of certain provisions of this Agreement.
- 4.10 **No Duty** – The Custodian will not review investments in the Accounts nor recommend the purchase, retention or sale of any Assets. The Custodian will not monitor the Securities in the Accounts to determine whether the Company complies with limitations on ownership or any restrictions on investors provided for by local law or regulations or market practice or provisions in the issuer's articles of incorporation or by-laws.
- 4.11 **Agents** – The Custodian and Sub-Custodians may outsource and/or appoint agents, including Associates, at the expense of the Company on such terms and conditions as it deems appropriate to perform or concur in performing any of the duties required to be performed hereunder. Except as otherwise specifically provided herein, no such outsourcing or appointment shall discharge the Custodian from its obligations hereunder.

**4.12 Custodian Actions without Direction** – With respect to Assets held hereunder, the Custodian is authorised to, and may authorise Sub-Custodians and Depositories to:

- 4.12.1 receive all eligible income and other payments due to the Account;
- 4.12.2 execute ownership and other certificates and affidavits for all purposes from time to time required in connection with the collection of bonds and note coupons and do all other things necessary or proper in connection with the collection of such income and other payments and without limiting the generality of the foregoing shall:-
  - 4.12.2.1 present for payment all coupons and other income payments requiring presentation;
  - 4.12.2.2 present for payment all Securities which may mature or be called, redeemed, retired or otherwise become repayable;
  - 4.12.2.3 endorse for collection in the name of the Company cheques, drafts and other negotiable instruments;
- 4.12.3 carry out any exchanges of Securities or other corporate actions not requiring discretionary decisions;
- 4.12.4 facilitate access by the Company or its designee to ballots or online systems to assist in the voting of proxies received for eligible positions of Securities held in the Account (excluding bankruptcy matters). In this regard, a provider of proxy voting services will be appointed to provide global proxy voting services. Other than providing access to such provider of global proxy services, the Custodian shall have no obligation or liability to the Company in respect of such global proxy voting services or the acts or omissions of the provider of such global proxy voting services;
- 4.12.5 forward to the Company or its designee information (or summaries of information) that the Custodian receives from Depositories or Sub-Custodians concerning Securities in the Account (excluding bankruptcy matters);
- 4.12.6 forward to the Company or its designee an initial notice of bankruptcy cases relating to Securities held in the Account and a notice of any required action related to such bankruptcy cases as may be received by the Custodian. No further action or notification related to the bankruptcy case shall be required; and

- 4.12.7 execute and deliver, solely in its custodial capacity, certificates, documents or instruments incidental to the Custodian's performance under this Agreement.
- 4.13 **Custodian Actions with Direction** – The Custodian shall take the following actions in the administration of the Accounts only pursuant to Proper Instructions:
- 4.13.1 settle purchases and sales of Securities and process other transactions, including free receipts and deliveries;
  - 4.13.2 take actions necessary to settle transactions in connection with futures or options contracts, short-selling programs, foreign exchange or foreign exchange contracts, swaps and other derivative investments;
  - 4.13.3 pay or cause to be paid, in so far as un-invested monies of the Company are available for the purpose, such bills, statements or other obligations of the Company as may be approved generally, or from time to time;
  - 4.13.4 deliver Securities in the Account if an Authorised Person advises the Custodian that the Company has entered into a separate securities lending agreement, provided that the Company executes such agreements as Custodian may require in connection with such arrangements; and
  - 4.13.5 make any transfers of Cash from the Cash Account unless in connection with any of the actions referred to in sub-clauses 4.13.1, 4.13.2 and 4.13.3 of this Clause 4.13.
- 4.14 **Tax Obligations** – The Company shall be liable for all taxes, assessments, duties and other governmental charges, including interest and penalties, with respect to any Assets held on behalf of the Company and any transaction related thereto. To the extent that the Custodian has received relevant and necessary information with respect to the Accounts, the Custodian shall perform the following services with respect to Tax Obligations:
- 4.14.1 The Custodian shall, upon receipt of sufficient information, file claims for exemptions or refunds with respect to withheld taxes in instances in which such claims are appropriate;
  - 4.14.2 The Custodian shall withhold appropriate amounts, as required by applicable tax laws, with respect to amounts received upon receipt of Written Instructions; and

4.14.3 The Custodian shall provide to the Company such information received by the Custodian that could, in the Custodian's reasonable belief, assist the Company or its designee in the submission of any reports or returns with respect to Tax Obligations. An Authorised Person shall inform the Custodian in writing as to which Party or Parties shall receive information from the Custodian.

The Custodian shall not be responsible for determining whether Tax Obligations exist in respect of the Company and the assets held in the Account.

- 4.15 **Foreign Exchange Transactions** – Any foreign exchange transaction effected by the Custodian in connection with this Agreement may be entered into with the Custodian or an Associate of the Custodian acting as a principal or otherwise through customary channels. The Company may issue standing Proper Instructions with respect to foreign exchange transactions, but Custodian may establish rules or limitations concerning any foreign exchange facility made available to the Company.
- 4.16 **Rate of Exchange** – The Custodian is hereby authorised to effect any necessary currency conversions pursuant to this Agreement at the Custodian's and/or any Sub-Custodian's own rate of exchange then prevailing.
- 4.17 **Custodian Responsibility** – The Custodian will not review investments in the Accounts nor recommend the purchase, retention or sale of any Asset. The Custodian will not monitor the Securities in the Accounts to determine whether the Company complies with limitations on ownership or any restrictions on investors provided for by local law or regulations or market practice or provisions in the issuer's articles of incorporation or by-laws.
- 4.18 **Incidental Authority** – Notwithstanding anything expressed in this Agreement, including but not limited to the generality of the provisions of this clause 4, it is understood and agreed between Company and the Custodian that the scope of the services the Custodian is obligated to perform shall be limited to the holding of the rights to title of all issued shares in Charter International Plc registered in the name of the Custodian on behalf of the Company pursuant to this agreement (the "**Jersey Security**") and perfecting the transfer or re-transfer of title of the same to the Company or, as the case may be, to such other entity pursuant to any security arrangement between the Company and such other entity. The Custodian shall have authority at its absolute discretion (but shall not be obliged) to do all acts and perform such

other services as it shall reasonably determine incidental to the holding of the rights in respect of the Jersey Security.

- 4.19 **Other Services** – the Custodian may provide additional services as may be required by the Company other than those contemplated by clause 4.18 of this Agreement subject to the Custodian and the Company agreeing further terms as to the provision of such additional services, including but not limited fees to be charged by the Custodian in respect of such additional services.

## 5. Dealing Arrangements

- 5.1 As soon as reasonably practicable after the purchase or sale of Securities by the Company, the Company shall procure that the Custodian receives Proper Instructions specifying all information necessary for the Custodian to settle such purchase or sale, including:
- 5.1.1 dealing date;
  - 5.1.2 whether a sale or a purchase;
  - 5.1.3 description of Securities;
  - 5.1.4 quantity;
  - 5.1.5 price per unit;
  - 5.1.6 amount of monies to be received or delivered;
  - 5.1.7 name of the stockbroker and/or other party concerned with the execution of such purchase or sale;
  - 5.1.8 settlement date; and
  - 5.1.9 any other relevant details.
- 5.2 For the purpose of settling purchases of Securities, the Company shall also provide the Custodian with sufficient immediately available funds for all such transactions by such time and date as conditions in the relevant market dictate.
- 5.3 If the Custodian is required to deliver any Securities which have been sold, such delivery may be made either:
- 5.3.1 against payment therefor; or
  - 5.3.2 against an undertaking to pay in accordance with the normal procedures for transactions in the Securities concerned,
- in each case, as specified in Proper Instructions.
- 5.4 The Custodian may, as a matter of bookkeeping convenience, credit the Account with the proceeds from the sale, redemption or other disposition of Securities or payable Distributions prior to its actual receipt of final payment therefor. All such credits shall be conditional until the Custodian's actual

receipt of final payment and may be reversed by the Custodian to the extent that final payment is not received. Payment with respect to a transaction will not be "final" until the Custodian shall have received immediately available funds that under applicable local law, rule or practice are irreversible and not subject to any security interest, levy or other encumbrance, and that are specifically applicable to such transaction.

- 5.5 Transactions will be settled using practices customary in the jurisdiction or market where the transaction occurs. The Company understands that when the Custodian is instructed to deliver Securities against payment, delivery of such Securities and receipt of payment related to such Securities may not be completed simultaneously. The Company assumes full responsibility for all risks involved in connection with the Custodian's delivery of Securities pursuant to Proper Instructions in accordance with local market practice.
- 5.6 If any liability involving the payment of money in respect of the Securities arises or if any of the Securities are acquired on behalf of the Company which are in the reasonable opinion of the Custodian capable of imposing liability on the Custodian, or if any right or option is offered in respect of any of the Securities, the Company shall, if required by the Custodian, pay or provide the Custodian with any monies reasonably required to meet such liability or payment or otherwise secure the Custodian against such liability in any manner requested by the Custodian. The Custodian shall not be required to accept receipt or delivery of such Securities nor be obliged to take any action in respect of such liability or payment unless the Company shall have previously paid or provided such monies or have otherwise secured the Custodian as requested.

**6. Deposits, Overdrafts and Drawings**

- 6.1 **Deposits** – The Custodian may hold Cash in Cash Accounts or, where required under applicable local law, rule or practices, arrange to have Cash directly held by an Associate, Sub-Custodian, or with a Depository. Where Cash is on deposit with the Custodian or an Associate, it will be subject to the terms of this Agreement and such deposit terms and conditions as may be issued by the Custodian or an Associate from time to time, including rates of interest and deposit account access.
- 6.2 **Credits, Advances and Overdrafts** –
- 6.2.1 The Company understands that when the Custodian receives a Proper Instruction to deliver Securities against payment or in

exchange for Cash (for example in connection with the settlement of a Securities transaction or a redemption, exchange, tender offer or similar corporate action) such payment or exchange of Cash may not occur simultaneously with the delivery of Securities and that the Custodian may deliver such Securities before actually receiving final payment for such delivery of Securities. Consequently, as a matter of bookkeeping convenience, the Custodian may credit the Company's Cash Account with Cash equal to the amount the Custodian anticipates will be received by it, a Sub-Custodian or a Depository prior to actual receipt by the Custodian, a Sub-Custodian or Depository of the Cash by way of final payment for such delivery of Securities.

- 6.2.2 The Custodian may also credit the Company's Cash Account with Cash equal to the amount the Custodian anticipates will be received by the Custodian, a Sub-Custodian or a Depository in relation to a Distribution prior to actual receipt by the Custodian, a Sub-Custodian or Depository of the Distribution by way of final payment of the Distribution. The Company assumes full responsibility for all risks involved in connection with the Custodian's delivery of Securities pursuant to Proper Instructions in accordance with local market practice.
- 6.2.3 All credits to a Cash Account in anticipation of receipt of final payment of sales and redemptions of, and similar corporate actions in respect of, Securities and Distributions shall be extensions of credit which are conditional upon receipt by the Custodian of final payment and may be reversed to the extent that final payment is not received.
- 6.2.4 The Custodian, and the Company expressly agrees that the Custodian, may also extend credit or otherwise advance cash to the Company for facilitating settlement of securities transactions (including, for the avoidance of doubt, purchases), or any other transfers. Notwithstanding the foregoing, the Custodian shall have no obligation whatsoever to extend any credit or to make advance of any cash to the Company to facilitate the settlement of any transaction or transfer of any Asset. In the event that the Custodian in its discretion advances funds to the Company to facilitate the settlement of any transaction, or elects to permit the Company to use

funds credited to a Cash Account in anticipation of final payment, or if the Company otherwise becomes indebted to the Custodian (including, without limitation, overdrafts incurred in connection with the settlement of securities transactions, funds, transfers or foreign exchange transactions), the Company shall, upon demand or upon becoming aware of the amount of the advance, overdraft or indebtedness, whichever is the earlier, immediately reimburse the Custodian for such amounts in the same currency if legally available plus accrued interest at a rate then charged by the Custodian to its institutional asset servicing customers.

6.2.5 For the purposes of this Agreement, payment will not be "final" until the Custodian has received immediately available funds which, under applicable local laws, regulations, rules, customs or practices, are not reversible and not subject to any security interest, levy or other encumbrance, and that are specifically applicable to such transaction.

6.3 **Single Cash Account** – There is only one cash account relationship between the Company and the Custodian. Even if several Cash Accounts are attributed to the Company - accounts in various currencies, time accounts and current accounts, creditor and debtor accounts, accounts paying different interest - all these constitute subdivisions for bookkeeping purposes of the same. In addition to any rights which the Custodian may have under applicable law or pursuant to other agreements, the Custodian shall have the right to, and may, without notice to the Company, combine, consolidate or merge all or any of the Company's Cash Accounts with, and liabilities to, the Custodian and may setoff from or transfer any Cash in any currency held for the Company or standing to the credit of any such Accounts in or towards the satisfaction of any liability of the Company to the Custodian whether arising from or as a result of a foreign exchange transaction, a Securities transaction, this Agreement or otherwise, and may do so notwithstanding that Cash held for the Company or the balances of such Accounts may be held or deposited at different branches of the Custodian or held by the Custodian with any Sub-Custodian and may not be expressed in the same currency as the currency of the Company's liability to the Custodian and the Custodian may effect any necessary conversions at the Custodian's own rate of exchange then prevailing.



- 6.4 **Acknowledgement of Security Interests** – The Company acknowledges and agrees that Depositories and Sub-Custodians may have a lien, pledge or other security interest (statutory or otherwise) over, or right of setoff or retention and sale in respect of, Securities credited to the Company's Securities Accounts or Cash credited to the Company's Cash Account in relation to claims for payment of obligations owed to them (including administration and safe custody charges) as provided in the applicable Depository agreement or Sub-Custodian Agreement.
- 6.5 **Drawings** – The Company's Securities may be held in a commingled client securities account with securities of other clients of the Custodian (or the relevant Sub-Custodian or Depository) and shall be treated as fungible. The Company hereby further agrees and consents to the Custodian using the Company's Securities (including Securities belonging to the Company's underlying customers) for the account of another client of the Custodian and vice versa. However, the Custodian may only do so (or permit a Sub-Custodian or Depository to do so) in connection with facilitating timely settlement of Securities trades, and the Custodian may not and shall not use the Company's Securities for its own account or for account of a Sub-Custodian or Depository and no Securities Account on the books of the Custodian or a Sub-Custodian shall hold Securities which are beneficially owned by the Custodian or such Sub-Custodian, as the case may be.

## 7. **Rights of Voting**

- 7.1 Except as otherwise expressly instructed by the Company, the Custodian shall on receipt of Proper Instructions procure that all rights of voting, if any, conferred by any Securities held by the Custodian shall be exercised by the Company and the Custodian shall at the request and expense of the Company by Proper Instructions from time to time execute and deliver or cause to be executed and delivered to the Company or its nominees sufficient powers of attorney or proxies in such name or names as the Company may request authorising such attorneys and proxies to vote consent or otherwise act in respect of all or any of the Securities.
- 7.2 Except as aforesaid, the Company shall be entitled to exercise the said rights in such manner as it may determine and none of the Parties shall be under any liability or responsibility in respect of the management of any corporation in which Securities are held nor in respect of any vote, action or consent given or taken by the Company whether in person or by proxy and no such

Party or the holder of any such proxy or power of attorney shall incur any liability or responsibility by reason of any error of law or mistake of fact or any matter or thing done or omitted or approval voted or given or withheld by the Company or by the holder of such proxy or power of attorney.

- 7.3 The term "rights of voting" and the word "vote" as used in this Clause shall include not only a vote at a meeting but any consent to or approval of any arrangement scheme or resolution or any alteration in or abandonment of any rights attaching to any Securities and the right to requisition or convene any meeting or to give notice of any resolution or to circulate any statement.

## **8. Representations and Warranties**

- 8.1 **Representations of the Custodian** – The Custodian represents and warrants that:

8.1.1 it is a company duly organised and validly existing under the laws of its jurisdiction of incorporation; and

8.1.2 the Agreement has been duly authorised, executed and delivered on its behalf and constitutes the legal, valid and binding obligations of the Custodian and the execution, delivery and performance of this Agreement by the Custodian does not and will not violate or conflict with any law or regulation applicable to it, its constitutional documents, or any document binding upon it or any of its respective assets and does not require the consent of any governmental or regulatory body except for such consents and approvals as have been obtained and which are, and shall remain, in full force and effect.

8.1.3 during the continuance of this Agreement the Custodian shall comply with applicable law and applicable rules of any relevant market or Depository in performing its or their obligations pursuant to this Agreement.

- 8.2 **Representations of the Company** – The Company represents, warrants and undertakes that:

8.2.1 it is a company duly incorporated and validly existing under the laws of its jurisdiction of incorporation;

8.2.2 the Agreement has been duly authorised, executed and delivered on its behalf and constitutes the legal, valid and binding obligations of the Company and the execution, delivery and performance of this Agreement by the Company does not and will not violate or conflict

with any law or regulation applicable to it, its constitutional documents, or any document binding upon it or any of its respective assets and does not require the consent of any governmental or regulatory body except for such consents and approvals as have been obtained and which are, and shall remain, in full force and effect;

8.2.3 it has all necessary power, authority and consent to enter into this Agreement and to appoint the Custodian as custodian under this Agreement;

8.2.4 in relation to data disclosed to the Custodian in connection with this Agreement, or any previous custody arrangements, the Company has complied with, and shall continue to comply with the provisions of all relevant data protection laws and regulations and shall not do anything, or permit anything to be done which might lead to a breach of such laws or regulations by the Custodian;

8.2.5 the Company:

8.2.5.1 is fully authorised and empowered and has the capacity to engage in the transactions contemplated by this Agreement; and

8.2.5.2 and to the extent circumstances require or as required by applicable laws has established and maintains policies and procedures (a copy of which will be provided to the Custodian on request) which require the Company to obtain, verify and record identification information about the persons on whose behalf the Company is acting and which are reasonably designed to ensure that the Company is not being used by any such other person as a conduit for money laundering or other illegal or illicit purposes; and

8.2.5.3 and to the extent circumstances require or as required by applicable laws has obtained, verified and recorded identification information about each person or underlying client of the Company on whose behalf the Company is acting, in accordance with EU Directives and Financial Action Task Force standards concerning Know Your Client ("KYC") and the prevention of money laundering and the financing of terrorism, and where required (and to the

extent permitted) by any legal or regulatory authority, shall upon request furnish the Money Laundering Reporting Officer of the Custodian with all relevant identification information about each such person or underlying client of the Company. To the best of the Company's knowledge, no transaction undertaken in respect of the Transactions is prohibited by applicable law, regulation or rule and no Asset held in the Account is derived from any activity prohibited by applicable law, regulation or rule; and

8.2.5.4 and to the extent circumstances require or as required by applicable laws if acting for the account of others and not itself being a credit institution or a financial institution as defined under EU Directives concerning KYC and the prevention of money laundering and the financing of terrorism, shall provide the Custodian with satisfactory identification information about the Persons or underlying clients of the Company for whose account the Company is acting.

## **9. Maintenance of Records**

The Custodian shall keep or cause to be kept such records, statements and books as may be necessary or desirable to maintain a complete record of all Assets held by the Custodian and of all transactions carried out on behalf of the Company. The Company shall have the right, at its own expense and with reasonable prior written notice to the Custodian, to inspect the Custodian's books and records directly relating to the Accounts during normal business hours or to designate an accountant to make such inspection.

## **10. Remuneration**

10.1 The Company shall pay to the Custodian the fees and charges in accordance with the Fee Schedule set out in Schedule A as may be amended in accordance with that schedule.

10.2 The Company shall reimburse to the Custodian all disbursements (including Government taxes, stamp duties, registration costs, scrip fees and other market charges) incurred in connection with the discharge of its duties hereunder provided that the Custodian shall on request by the Company provide reasonable documentary evidence of such disbursements.

10.3 The Company shall reimburse to the Custodian its reasonable legal and other professional fees in connection with the negotiation and entry by the Custodian into this Agreement provided that the Custodian shall on request by the Company provide reasonable documentary evidence of such fees.

**11. Non-Exclusivity**

11.1 The Custodian and any Associate of the Custodian may:-

11.1.1 act as custodian or bankers or in any other capacity for any other company, corporation or body of persons on such terms as may be arranged with such company, corporation or body of persons and shall be deemed not to be affected with notice of or to be under any duty to disclose to the Company any fact or thing which may come to the knowledge of the Custodian or any servant or agent of the Custodian in the course of so doing or in the course of its business in any other capacity or in any manner whatsoever otherwise than in the course of carrying out its duties hereunder; and

11.1.2 acquire, hold or deal with for its own account or for the account of any customer or other person and in its own name or in the name of such customer or person or of a nominee any shares or securities for the time being issued by the Company and any Assets notwithstanding that Assets of the same type may be held by the Custodian for the account of the Company.

11.2 Neither the Custodian nor any Associate of the Custodian shall be liable to account to the Company, the Members nor any of them for any profits or benefits made by or derived from or in connection with any transaction permitted by sub-clause 11.1.2 above.

11.3 The Custodian and any Associate of the Custodian may act as bankers to the Company and nothing herein contained shall prevent the Custodian or any Associate of the Custodian from contracting or entering into any financial, banking or other transaction with the Company or any Member or any company or body shares or interests in which are comprised in any of the Assets or which are held by or for the account of the Company or from being interested in any such contract or transaction and neither the Custodian nor any Associate of the Custodian shall be liable to account to any person for any profits or benefits made or derived by them in connection with any such transaction and shall not be bound to pay interest on any money held by them on behalf of the Company provided that:-

- 11.3.1 nothing herein contained shall permit the Custodian or any Associate of the Custodian to enter into any such transaction with the Company unless the terms thereof are no less beneficial to the Company than those which could reasonably be expected by the Parties to have been applicable to such transaction on the same day effected or entered into at arm's length by a person other than the Custodian or any Associate of the Custodian; and
- 11.3.2 the Custodian and any Associate of the Custodian providing banking facilities for the Company shall pay interest on any moneys transferred on the instructions of the Company to a deposit account with the Custodian or any Associate of the Custodian on terms which are no less beneficial to the Company than those which could reasonably be expected to have been applicable to such a deposit of the relevant term in the relevant currency on the same day effected or entered into at arm's length by a person other than the Custodian or any Associate of the Custodian.

## **12. Provisions regarding the Custodian**

- 12.1 **Appropriate Action** – The Custodian is hereby authorised and empowered, in its sole discretion, to take any action with respect to an Account that it deems necessary or appropriate in carrying out the purposes of this Agreement.
- 12.2 **Standard of Care** – In performing its duties under this Agreement, the Custodian shall exercise the standard of care and diligence that a professional custodian would observe in these affairs.
- 12.3 **Protections for the Custodian** –
- 12.3.1 When acting pursuant to Proper Instructions, the Custodian shall not be under any duty to make any enquiry as to the genuineness or authenticity of any such instructions so long as such instructions reasonably appear to be genuine and authentic.
- 12.3.2 The Custodian shall not be responsible for:-
- 12.3.2.1 the selection of Assets or for establishing whether the price to be paid or received for any Assets is fair or reasonable; or
- 12.3.2.2 preserving or enhancing the value of Assets; or

12.3.2.3 ascertaining or verifying whether any transaction which is instructed by Proper Instructions accords with the applicable Articles;

provided that the Custodian may refuse to act upon Proper Instructions until the Company has furnished the Custodian with such information as it may reasonably request for the purpose of satisfying itself in relation to any of the above matters.

**12.4 Limitation of Duties and Liability** – Notwithstanding anything contained elsewhere in this Agreement, the Custodian's liability hereunder is limited as follows:

12.4.1 The duties of the Custodian shall only be those specifically undertaken pursuant to this Agreement and shall be subject to such other limits on liability as are set out herein;

12.4.2 The Custodian shall not be liable for any Losses incurred by or asserted against the Custodian or the Company, except those Losses arising out of the Custodian's fraud, negligence or wilful misconduct, but only to the extent such Losses constitute direct money damages;

12.4.3 The Custodian shall not be responsible for the title, validity or genuineness of any Securities or evidence of title thereto received by it or delivered by it pursuant to this Agreement or for Securities held hereunder being freely transferable or deliverable without encumbrance in any relevant market;

12.4.4 The Custodian shall not be responsible for the failure to receive payment of, or the late payment of, income or other payments due to the Account;

12.4.5 The Custodian shall have no duty to take any action to collect any amount payable on Securities in default or if payment is refused after due demand and presentment;

12.4.6 The Custodian may obtain the advice of legal counsel and other experts (including, without limitation, any broker, valuer, surveyor or auctioneer) and shall not be liable for any Losses arising as a result of or in connection with anything done or omitted by it in good faith in conformity with the opinion or advice of, or any information obtained from, such person.

12.4.7 The Custodian shall have no duty or responsibility to inquire into, make recommendations, supervise, or determine the suitability of

- any transactions affecting any Account, and shall have no liability with respect to the Company's or an Authorised Person's decision to invest in Securities or to hold Cash in any currency;
- 12.4.8 The Custodian shall have no liability with respect to any Losses arising from the use by the Company (or any person authorised or acting on its behalf) of any method of transmission such as facsimile, email or other electronic method of transmission or communication which are deemed not to be secure; and
- 12.4.9 The Custodian shall have no liability with respect to any Losses arising from a delay by the Custodian, a Sub-Custodian or Depository to act subject to and in accordance with a Proper Instruction when such delay is due to any procedure or process to be performed by the Custodian, a Sub-Custodian or Depository and required in accordance with local laws and regulations, court or regulatory order;
- 12.4.10 The Custodian shall have no liability with respect to any Losses arising from the use of any third party appointed or selected by the Company or by the Custodian at the express request of the Company;
- 12.4.11 The Custodian shall have no liability with respect to any Losses arising from the use of any third party appointed or selected by the Company or by the Custodian at the express request of the Company;
- 12.4.12 If and to the extent that the Custodian appoints or permits the Company to perform or concur in performing any of the duties required to be performed by the Custodian hereunder, the Custodian shall have no liability with respect to any Losses arising as a result of or in connection with such appointment or permission;
- 12.4.13 The Custodian shall have no responsibility if the rules or procedures imposed by Sub-Custodians, Depositories, exchange controls, asset freezes or other laws, rules, regulations or orders at any time prohibit or impose burdens or costs on the transfer to, by or for the account of the Company of Securities or Cash;
- 12.4.14 The Custodian shall have no responsibility for the accuracy of any information provided to the Company which has been obtained from or provided to the Custodian by any other entity;



- 12.4.15 The Custodian shall have no liability for any Losses incurred by or asserted against the Company arising from the default or insolvency of any Person, including but not limited to a Sub-Custodian, Depository, broker, bank, and a counterparty to the settlement of a transaction or to a foreign exchange transaction, except to the extent that the Custodian is negligent in its selection or continued retention of such Sub-Custodian; and
- 12.4.16 The Custodian's liability in connection with this Agreement in respect of any loss of, or failure to acquire any asset will be limited to the market value or, in the absence of a relevant market, the fair value of that asset, as determined by the Custodian as at the date when notice of that loss or failure is given by the Custodian to the Company, plus interest on that amount at the Custodian's prevailing deposit rate for that amount from the date the notice is given until the amount is paid to the Company.
- 12.5 **Losses** – Under no circumstances shall the Custodian be liable to, or be required to indemnify, the Company or any third party for indirect, consequential or special damages or for loss of business opportunity or loss of profit arising in connection with this Agreement and whether or not such liability is foreseeable and even if the Custodian has been advised or was aware of the possibility of such losses.
- 12.6 **Gains** – Where an error or omission has occurred under this Agreement, the Custodian may take such remedial action as it considers appropriate under the circumstances and, provided that the Company is put in the same or equivalent position as it would have been in if the error or omission had not occurred, any favourable consequences of the Custodian's remedial action shall be solely for the account of the Custodian, without any duty to report to the Company any loss assumed or benefit received by it as a result of taking such action.
- 12.7 **Force Majeure** – Notwithstanding anything in this Agreement to the contrary, the Custodian shall not be responsible or liable for any delay or failure to perform under this Agreement or for any Losses to the Account resulting, in whole or in part, from or caused by any event beyond the reasonable control of the Custodian, and Sub-Custodian or any Depository. In no event shall the Custodian be liable for any Losses arising out of the holding of any Assets in any particular country, including but not limited to, Losses resulting from nationalisation, expropriation or other governmental actions; regulation of the

banking or securities industry; exchange or currency controls or restrictions, devaluations or fluctuations; availability of Assets or market conditions which prevent the transfer of Assets or the execution of Securities transactions or affect the value of Assets.

- 12.8 **Indemnification** – The Company shall indemnify and hold harmless the Custodian and its Associates from and against all Losses, including, but not limited to, penalties, taxes, judgments and awards, reasonable counsel fees and expenses in third party suits and in a successful defense of claims asserted by the Company, relating to or arising out of the performance of the Custodian's or Associates' obligations under this Agreement, except to the extent resulting from the Custodian's negligence, wilful misconduct or fraud. This provision shall survive the termination of this Agreement.

**13. Proceedings**

The Custodian shall not be required to take any legal action on behalf of the Company unless fully indemnified to its reasonable satisfaction for all costs and liabilities incurred or suffered by the Custodian and if the Company requires the Custodian to take any action which in the reasonable opinion of the Custodian might make the Custodian liable for the payment of money or liable in any other way the Custodian shall be and be kept indemnified in any reasonable amount and form satisfactory to the Custodian as a pre-requisite to taking action.

**14. Disclosure**

- 14.1 Except in so far as required by any governmental or regulatory organisation or any applicable law or rule in any jurisdiction including an order of a court of competent jurisdiction, the Custodian shall not without the written authority of the Company, disclose any information relating to or to the affairs of the Company, which is not in the public domain to any person (other than to the directors, officers, auditors and accountants of the Company) and the Custodian will use its best endeavours to prevent any such disclosure as aforesaid whether by any officer, employee or agent of itself or by anyone else.
- 14.2 The Custodian shall not without the prior written consent of the Company at any time after the termination of this Agreement represent itself as providing custodial services to the Company.

14.3 None of the Parties shall do or commit any act, matter or thing which would or might prejudice or bring into disrepute in any manner the business or reputation of all or any of the other Parties or any director thereof.

14.4 In the event of this Agreement being terminated the provisions of this Clause shall remain in full force and effect.

## 15. Notices

All notices served under this Agreement shall be in writing and addressed to the other Party concerned at its address set out in the execution pages to this Agreement or such other address as may have been notified in writing by such other Party from time to time. Notices may be delivered by hand, registered mail or by facsimile. All notices shall be effective upon receipt.

## 16. Termination

16.1 Subject to the Articles and sub-clauses 16.2 and 16.3 below, this Agreement shall be terminated:-

16.1.1 upon the expiration of not less than ninety (90) days' notice of termination given by the Company to the Custodian; or

16.1.2 upon the expiration of not less than thirty (30) days' notice of termination given by the Custodian to the Company; or

16.1.3 immediately, upon any Party giving to the other Party notice of immediate termination in the event of:-

16.1.3.1 the property of such other Party being declared *en désastre* or the commencement of any action or proceedings seeking liquidation, winding up, insolvency reorganisation or other similar relief in respect of such other Party (other than a voluntary liquidation for the purpose of reconstruction or amalgamation upon terms previously approved in writing by all Parties) or a receiver being appointed of any of the other Party's assets or if some event having equivalent effect occurs; or

16.1.3.2 the other Party committing a material breach of this Agreement and (if such breach shall be capable of remedy) the Party in breach not making good such breach within thirty (30) days of service upon the Party in breach of notice requiring the remedy of such breach or, in the case of the Custodian, being in the opinion of the Directors

guilty of fraud, bad faith, wilful misconduct or negligence in the performance of its duties hereunder; or

16.2 The termination of this Agreement shall be without prejudice to any antecedent liability of any of the Parties. The Custodian shall be entitled to receive all fees and other monies accrued up to the date of such termination provided that the Custodian shall not be entitled to compensation in respect of such termination.

16.3 Upon termination the Custodian shall follow such reasonable Proper Instructions concerning the transfer of Assets and Records as the Company shall give; provided that:

16.3.1 the Custodian shall have no liability for any costs associated therewith; and

16.3.2 full payment has been made to the Custodian of all fees and other monies accrued under or in relation to this Agreement.

16.4 If any Assets remain in any Account after termination, the Custodian may deliver such Assets to the Company.

**17. Delivery of Assets and Records on Termination**

Immediately upon the termination of this Agreement the Custodian shall deliver to the Company (or as it shall direct) and shall use all reasonable endeavours to procure that its officers, servants, agents, advisers or any person appointed by it under this Agreement shall deliver to the Company (or as it shall direct) all assets of the Company and Records pertaining to the Company's business as are in the possession or under the control of the Custodian or any such persons and shall do all such further acts and things as the Company may reasonably require in consequence of such termination.

**18. Conditions Precedent**

In the event that the Company has not provided to the Custodian all authorisations and documentation required by law or this Agreement, the Custodian may suspend the commencement or the performance of its obligations and the provision of its services under this Agreement, and/or may elect to terminate this Agreement whereupon this Agreement shall have no further effect and all liabilities and obligations of the Custodian shall cease immediately.

**19. Amendment**

This Agreement may be amended only by written agreement between the Company and the Custodian.

**20. Waiver**

The waiver of or failure or delay by either Party in exercising any right or remedy under the law or this Agreement shall not preclude or inhibit the subsequent exercise of such right or remedy. No single or partial exercise of a right or remedy provided by this Agreement or by law prevents further exercise of the right or remedy or the exercise of another right or remedy.

**21. Severance**

The invalidity, illegality or unenforceability of any provision of this Agreement shall not affect the validity, legality or enforceability of any other provision; and if any provision is held to be unenforceable as a matter of law, the other provisions shall remain in full force and effect. The rights and remedies contained in this Agreement are cumulative and not exclusive of rights and remedies provided by law.

**22. Assignment**

No Party may assign the benefit of this Agreement without the consent in writing of the other Party except that (i) the Custodian may with the written consent of the Company (such consent not to be unreasonably withheld or delayed) assign the benefit of this Agreement to an Associate of the Custodian and (ii) the Company may assign its rights under this Agreement without the written consent of the Custodian for the purpose of granting security over its rights under this Agreement.

**23. Counterparts**

This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, each of which so executed and delivered shall be an original, but all counterparts shall constitute one and the same agreement.

**24. Governing Law and Jurisdiction**

This Agreement and all matters arising from or relating to it (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of Jersey and the Parties irrevocably submit to the non-exclusive jurisdiction of the Courts of Jersey as regards any such matter arising from or relating to this Agreement.

**IN WITNESS WHEREOF** this Agreement has been entered into the day and year first written above.

Authorised Signatory of:

Authorised Signatories of:

IN WITNESS WHEREOF this Agreement has been entered into the day and year first written above.

Authorised Signatory of:  
COLFAX UK HOLDINGS LTD

By: C. Brannan

Name: C. Scott Brannan

Title: Director

Date: 12 September 2011

Authorised Signatories of:  
CAPITA TRUST COMPANY (JERSEY)  
LIMITED

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**COLFAX UK HOLDINGS LTD**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**CAPITA TRUST COMPANY (JERSEY)  
LIMITED**

By: Norma Sullivan

Name: NORMA O' SULLIVAN

Title: Director

Date: 9 Sept 2011

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Address for Notice:**

Lynne Puckett  
Senior Vice President and General  
Counsel  
Colfax Corporation  
8170 Maple Lawn Blvd, Suite 180  
Fulton, MD 20759  
USA  
Fax: + 301-323-9001  
Phone: + 310 323-9000

**Address for Notice:**

Capita Trust Company (Jersey) Limited  
12 Castle Street  
St Helier, Jersey  
JE2 3RT  
Attention: Paul Horton

## **SCHEDULE A**

### **FEE SCHEDULE**

An establishment fee of £2,500 together with any legal or related costs incurred by Capita will be invoiced at the date of execution of the documents or in the case of the transfer not proceeding, 50% of the establishment fee and all legal costs will become payable immediately if a decision is made to abort the project.

For the provision of custodian services, Capita will charge a fixed fee of £5,000 per annum.

Capita will charge an activity fee of £75 for each transaction affecting the shares held in safekeeping. Capita will provide a schedule of transactions for each quarterly period.

Capita reserves the right to negotiate "special fees" to cover any additional work considered to be outside of the normal contractual arrangements.

Capita's fees are exclusive of any agents fees, which if incurred will be payable by the Company.

All fees will be payable quarterly in arrears as at each quarter end date.

Capita shall be entitled to recover all out of pocket expenses or disbursements reasonably incurred in the performance of its duties. Such costs will include all external tax, legal and other professional advisors fees, telephone costs, fax costs, postage costs, travel and accommodation costs, the cost of financial statements and such other reports as may be necessary under all applicable laws and regulations.

All fees may be subject to annual review on the anniversary date of our formal appointment.



**SCHEDULE B**  
**SUB-CUSTODIAN AGREEMENT**



# BNY MELLON

Dated: 9<sup>th</sup> September, 2011

- (1) **CAPITA TRUST COMPANY (JERSEY) LTD – JO779**
  
- (2) **THE BANK OF NEW YORK MELLON SA/NV,  
LONDON BRANCH**

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## GLOBAL CUSTODY AGREEMENT

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**THE BANK OF NEW YORK MELLON**  
One Canada Square  
London  
E14 5AL  
United Kingdom  
Tel: 020 7694 5268  
Fax: 020 7694 5555



# BNY MELLON

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THIS AGREEMENT is made on 9<sup>th</sup> September, 2011 between:

- (1) Capita Trust Company (Jersey) Limited incorporated and registered in Jersey with company number 702 whose registered office is at 12 Castle Street, St Helier, Jersey, JE2 3RT ("Client"); and
- (2) **THE BANK OF NEW YORK MELLON SA/NV, LONDON BRANCH**, a public limited liability credit institution organised under the laws of Belgium, with company number 0806.743.159, whose registered office is at 46 Rue Montoyerstraat, B-1000 Brussels, Belgium operating through its branch at The Bank of New York Mellon Centre, 160 Queen Victoria Street, London EC4V 4LA, United Kingdom ("**Custodian**").

### WHEREAS:

- (A) The Client wishes to use certain global custody services provided by the Custodian.
- (B) The Custodian wishes to provide these global custody services on the terms set out in this Agreement.

### IT IS AGREED THAT:

#### 1. INTERPRETATION

##### 1.1 Definitions

Whenever used in this Agreement, the following words shall have the meanings set forth below:

"**Accounts**" shall mean the Securities Accounts and the Cash Accounts opened with the Custodian, and Account shall mean any of them as the context may require;

"**Authorised Instructions**" shall have the meaning set forth in clause 2.3;

"**Authorised Person**" shall mean any Person authorised by the Client to give Oral Instructions or Written Instructions with respect to one or more Accounts or with respect to foreign exchange, derivative investments or information and transactional web based services provided by the Custodian or a BNY Mellon Affiliate. Authorised Persons shall include Persons authorised by an Authorised Person. Authorised Persons, their signatures and the extent of their authority shall be provided by Written Instructions. The Custodian may conclusively rely on the authority of such Authorised Persons until it receives a Written Instruction to the contrary;

"**Belgian Fungible Securities Rules**" shall mean:

- (a) with respect to Belgian public debt securities, the Act of January 2, 1991 on the Market of Public Debt Securities and the Instruments of Monetary Policy, Articles 3 to 12;
- (b) with respect to Treasury Paper issued by companies established in Belgium and Deposit Certificates issued by banks established in Belgium, the Act of July 22, 1991 on Treasury Paper and Deposit Certificates, Article 7, paragraph 1;
- (c) with respect to dematerialised shares or bonds issued by Belgian limited liability companies, the Company Code, Articles 460 and 468 to 475; and



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(d) with respect to all other negotiable financial instruments, Belgian as well as foreign, listed in article 2, 1° of the Law of 2 August 2002 on the supervision of the financial sector and on financial services, the Royal Decree 62;

**"BNY Mellon Affiliate"** shall mean any entity in which The Bank of New York Mellon Corporation (a Delaware corporation with registered office at One Wall Street; New York, NY 10286, U.S.A) controls (directly or indirectly) an interest of no less than 30% in the voting stock or interests in such entity;

**"Business Day"** shall mean any day on which the Custodian and relevant Depositories and Subcustodians are open for business;

**"Cash"** shall have the meaning set forth in clause 2.1;

**"Cash Account"** shall have the meaning as set out in clause 2.1(b);

**"Client Customer Account"** shall have the meaning as set out in clause 6.7;

**"Data Providers"** shall mean pricing vendors, brokers, dealers, Investment Managers, Authorised Persons, Subcustodians, Depositories and any other Person providing Market Data to the Custodian;

**"Data Licensor Terms"** shall mean the set of terms and conditions (as may be amended by the Custodian or any BNY Mellon Affiliate without notice to the Client) available at <http://www.bnymellon.com/products/assetservicing/vendoragreement.pdf> or any successor website the address of which is provided by the Custodian to the Client;

**"Depository"** shall include the Federal Reserve/Treasury book entry system for receiving and delivering securities, the Depository Trust Company, Euroclear, Clearstream Banking S.A., the Canadian Depository System, CLS Bank and any other securities depository, securities settlement system, book-entry system or clearing agency (and their respective successors and nominees) authorised to act as a central securities depository, securities settlement system, book-entry system or clearing agency pursuant to applicable law;

**"Distributions"** shall mean all interests, dividends and other income distributed or paid in respect of Cash and Securities;

**"FSMA"** means the Financial Services and Markets Authority which is in charge of the securities markets, conduct of business and consumer protection in Belgium;

**"FSA Rules"** shall mean those rules that apply to the Custodian as promulgated by the United Kingdom's Financial Services Authority (and any successor regulatory authority) ("**FSA**") whose registered office is at 25 The North Colonnade, Canary Wharf, London E14 5HS under the Financial Services and Markets Act 2000, as amended or replaced from time to time;

**"Losses"** shall mean, collectively, losses, costs, expenses, damages, liabilities, claims, actions, proceedings and judgments (including, without limitation, professional advisors and legal costs and disbursements);

**"Market Data"** shall mean pricing or other data related to Securities and other assets. Market Data includes but is not limited to security identifiers, valuations, bond ratings, classification data, and other data received from Data Providers;

**"NBB"** means the National Bank of Belgium which authorises, regulates and supervises the Custodian as a credit institution;



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**"Non-Custody Assets"** shall have the meaning set forth in clause 12.1;

**"Oral Instructions"** shall mean instructions expressed in spoken words received by the Custodian. Where the Custodian provides recorded lines for this purpose, such instructions must be given using such lines;

**"Party"** means either the Client or the Custodian and **"Parties"** means both the Client and the Custodian;

**"Person"** or **"Persons"** shall mean any legal entity or individual;

**"Property"** shall mean Cash and Securities;

**"Royal Decree 62"** shall mean the Belgian Coordinated Royal Decree N° 62 of 10 November 1967 on the deposit of fungible financial instruments and the settlement of transactions in these instruments;

**"Securities"** shall include all negotiable financial instruments including, without limitation, any common stock and other equity securities, depository receipts, bonds, debentures and other debt securities, notes or other obligations, and any instruments representing rights to receive, purchase, or subscribe for the same, or representing any other rights distributions or interests therein (whether represented by a certificate or held in a Depository, with a Subcustodian or on the books of the issuer) that are acceptable to the Custodian but excluding investments into any partnership;

**"Securities Account"** shall have the meaning as set forth in clause 2.1(a);

**"Subcustodian"** shall mean a bank or other financial institution (other than a Depository) that is utilised by the Custodian or by a BNY Mellon Affiliate, in its discretion, in connection with the purchase, sale or custody of Securities or Cash hereunder;

**"Tax Obligations"** shall mean taxes, withholding, certification and reporting requirements, claims for exemptions or refund, interest, penalties, additions to tax and other related expenses;

**"Unsecured Client Customer Account"** shall have the meaning as set forth in clause 6.7; and

**"Written Instructions"** shall mean written communications received by the Custodian by S.W.I.F.T., overnight delivery, postal services, facsimile transmission, email, on-line communication system or other method or system, each as specified by the Custodian as available for use in connection with the services hereunder.

1.2 The headings in this Agreement are only for convenience and do not affect its meaning. The schedules are part of this Agreement. Any reference to any provision of statute, enactment, order, regulation or other legislation refers to the provision as it is amended or re-enacted from time to time.

## 2. CUSTODY ACCOUNTS; INSTRUCTIONS

### 2.1 Appointment of Custodian and Establishment of Accounts

The Client appoints the Custodian with effect from the date of this Agreement as custodian of the Securities deposited by it for safekeeping with the Custodian and to hold any cash, Distributions and monies received for deposit for the account of the Client ("**Cash**") in accordance with the terms of this Agreement. The Custodian hereby accepts such



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appointment and is authorised and instructed to open and maintain in its books in such name as the Client shall reasonably direct:

- (a) one or more securities accounts for the custody and safekeeping in accordance with the terms of this Agreement of any Securities deposited with the Custodian (each a "Securities Account"); and
- (b) one or more Cash Accounts for all Cash (each a "Cash Account"). Cash held for the Client in a Cash Account with the Custodian is held as banker under applicable Belgian regulations and the Custodian is not subject to the FSA Rules on client money.

### 2.2 Distributions

The Custodian shall make Distributions or transfers of cash and monies out of an Account pursuant to Written Instructions. In making payments to service providers pursuant to Written Instructions, the Client acknowledges that the Custodian is acting as a paying agent, and not as the payor, for tax information reporting and withholding purposes.

### 2.3 Authorised Instructions

The Custodian shall be entitled to rely upon any Oral or Written Instructions actually received by the Custodian and reasonably believed by the Custodian to be from an Authorised Person ("Authorised Instructions"). The Client agrees that an Authorised Person shall forward to the Custodian Written Instructions confirming Oral Instructions by the close of business of the same day that such Oral Instructions are given to the Custodian. The Custodian shall act on such Oral Instructions, but is however not obligated to do so until confirming Written Instructions are received. The Client agrees that the fact Written Instructions confirming Oral Instructions are not received or that contrary Written Instructions are received by the Custodian shall in no way affect the validity or enforceability of transactions authorised by such Oral Instructions and effected by the Custodian. The Custodian is under no duty to question any Authorised Instruction. The Custodian may in its sole discretion decline to act upon any instruction (whether or not an Authorised Instruction) which is insufficient, incomplete or is not received by the Custodian in sufficient time for the Custodian to act upon or which may breach any applicable law, rule or regulation.

### 2.4 Authentication

If the Custodian receives Written Instructions that appear on their face to have been transmitted by an Authorised Person via (a) facsimile, email, or other electronic method that is not secure, or (b) secure electronic transmission containing applicable authorisation codes, passwords or authentication keys, the Client understands and agrees that the Custodian cannot determine the identity of the actual sender of such Written Instructions and that the Custodian shall be entitled to conclusively presume that such Written Instructions have been sent by an Authorised Person. The Client shall be responsible for ensuring that only Authorised Persons transmit such Written Instructions to the Custodian and that all Authorised Persons treat applicable user and authorisation codes, passwords and authentication keys with extreme care.

### 2.5 Security Procedure

The Client acknowledges and agrees that it is fully aware of the protections and risks associated with the various methods of transmitting Written Instructions to the Custodian and that there may be more secure methods of transmitting Written Instructions than the method selected by the sender. The Client agrees that the security procedures, if any, to be followed in connection with a transmission of Written Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances.





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### 2.6 On-Line Systems

If the Client elects for a Person to have access to information relating to the Accounts and/or transmit Written Instructions via or through an online communication system (including but not limited to the internet) offered by the Custodian or BNY Mellon Affiliate, the use of such system shall be governed by the terms of a separate written agreement, and each such Person will be deemed to be an Authorised Person in respect of their actions undertaken via such system. If the Client elects, with the Custodian's prior consent, for a Person to transmit Written Instructions through an on-line communications service owned or operated by a third party, the Client agrees that the Custodian shall not be responsible or liable for the reliability, availability or use of such service.

### 2.7 Regulatory Duties

The Custodian has a duty to comply with all laws, regulations and rules (including but not limited to those pertaining to anti-money laundering) applicable to the Custodian. The Custodian must, inter alia, verify the identity and residence of the Client prior to providing services under this Agreement and must report suspicious transactions to the appropriate law enforcement agencies. The Custodian will not be required to provide services to the Client until the Custodian considers that it has performed sufficient due diligence to comply with all laws, regulations and rules (including internal corporate policies) that are applicable to both the Custodian and BNY Mellon Affiliates.

## 3. CUSTODY SERVICES

### 3.1 Submission to Belgian Fungible Securities Rules

The Client agrees that all Securities deposited in the Securities Accounts with the Custodian shall be subject to the provisions of the Belgian Fungible Securities Rules. In accordance with the Belgian Fungible Securities Rules, all Securities of any issue shall be treated as fungible with all other Securities of the same issue held by the Custodian. Therefore, the Client shall have no right to any specific Securities of an issue but shall instead be entitled, subject to applicable laws and regulations and to the terms of this Agreement, to direct the Custodian to transfer or deliver an amount of Securities of such issue that is equivalent, i.e. that has the same class, denomination and issue, to the amount of such Securities credited to an Account, without regard to the certificate numbers (or other identifying information) of the Securities originally deposited, and the Custodian's obligation to the Client with respect to such Securities shall be limited to effecting such transfer or delivery.

### 3.2 Ownership

Securities held for the Client hereunder shall be segregated on the Custodian's books and records from the Custodian's own property. The Custodian will identify the Securities credited to the Securities Accounts of the Client, as being proprietary to the Client or, and only if the Client has advised the Custodian in writing that it is acting on behalf of others, to customers of the Client.

### 3.3 Client

Notwithstanding clause 3.2, the Client only, and not the underlying clients of the Client, will be the Custodian's client. The underlying clients of the Client will have no right to make any claim against Custodian in relation to any Property beneficially or otherwise owned by such underlying client, unless in those circumstances specifically provided under the Belgian Fungible Securities Rules.

### 3.4 Holding Property



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The Custodian shall hold Property at the Custodian, Depositories or Subcustodians. Property may be held only with Subcustodians which have entered into a written agreement with the Custodian in relation to Subcustodian's appointment as such (the "**Subcustodian Agreement**"), with the Custodian and with Depositories. Subcustodians may hold Property with other subcustodians and in Depositories in which such Subcustodians participate or are a member. Property held with Subcustodians shall be held subject to the terms and conditions of the relevant Subcustodian Agreement, and in accordance with, and subject to, the laws, regulations and local market practices imposed on such Subcustodians. Property held in Depositories shall be held in accordance with, and subject to, the agreements, rules, laws, regulations, local market practices and conditions imposed by and on such Depositories. Depending on the relevant agreements, rules, laws, regulations, local market practices and conditions Securities held by the Custodian with Subcustodians or Depositories may be held on a fungible or non-fungible basis. Where Property is held outside the United Kingdom, settlement, legal and regulatory requirements and local market practices relating to the separate identification and protection of this Property may apply that are different from English law.

### 3.5 Segregation

Any Securities held by the Custodian with a Subcustodian or Depository will be held in separate client securities accounts of the Custodian with the Subcustodian or Depository. The Client's Securities (including Securities belonging to the Client's underlying customers) may be held however in a commingled client securities account with or by a Subcustodian or Depository and may not be identifiable by separate certificates, other physical documents of title or an equivalent electronic record. Should there be an irreconcilable shortfall after a liquidator, administrative receiver or administrator is appointed in relation to the Custodian or a Subcustodian or Depository (or after the occurrence of an equivalent event), the Custodian's clients may share in that shortfall in proportion to their original share of the assets in the pool. However, the manner in which such a shortfall will be dealt with may vary in accordance with the provisions of applicable law and rules.

### 3.6 Subcustodians

The Custodian shall exercise reasonable care in the selection or retention, monitoring and continued use of Subcustodians in light of prevailing rules, practices and procedures in the relevant market. Notwithstanding any other provisions hereof, with respect to any Losses incurred by the Client as a result of the acts or the failure to act by any Subcustodian (other than a BNY Mellon Affiliate), the Custodian shall take appropriate action to recover such Losses from such Subcustodian, and the Custodian's sole responsibility and liability to the Client in relation to any such act or failure to act by such Subcustodian shall be limited to amounts so received from such Subcustodian (exclusive of costs and expenses incurred by the Custodian). The Custodian's responsibility for Losses with respect to Securities or Cash held by the Custodian with or through a Subcustodian is limited to the extent that such Losses were directly caused by failure on the part of the Custodian to exercise reasonable care in the selection and retention, monitoring and continued use of such Subcustodian in light of prevailing rules, practices and procedures in the relevant market.

### 3.7 Depositories

The Custodian shall have no liability whatsoever for the action or inaction of any Depository or for any Losses resulting from the maintenance of Securities or Cash with a Depository.

### 3.8 Nominees

The Custodian hereby notifies the Client and the Client agrees that the Client's Securities may be registered in the register of the issuer or any person so acting for its account in the name of the Custodian, a Subcustodian, a Depository, a nominee company that is a BNY



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Mellon Affiliate, or a nominee company controlled by a Subcustodian or a Depository on such terms and conditions as any of the foregoing may require.

### 3.9 Documents of Title

The Custodian may hold any documents of title to a Security:

- (a) in the physical possession of the Custodian;
- (b) with a Subcustodian in a safe custody account generally designated for clients' Securities; or
- (c) as the Client may otherwise direct with the consent of the Custodian which may be withheld in its sole discretion. Where (c) applies, such documents of title shall be so held at the Client's risk and expense, including the inapplicability of certain provisions of this Agreement.

### 3.10 No Duty

The Custodian will not review investments in the Accounts nor recommend the purchase, retention or sale of any Property. The Custodian will not monitor the Securities in the Accounts to determine whether the Client complies with limitations on ownership or any restrictions on investors provided for by local law or regulations or market practice or provisions in the issuer's articles of incorporation or by-laws.

### 3.11 Outsourcing/Use of Agents

The Custodian and Subcustodians may outsource and/or appoint agents, including BNY Mellon Affiliates, on such terms and conditions as it deems appropriate to perform its services hereunder. Except as otherwise specifically provided herein, no such outsourcing or appointment shall discharge the Custodian from its obligations hereunder.

### 3.12 Custodian Actions without Direction

With respect to Securities held hereunder, the Custodian is authorised to, and may authorise Subcustodians and Depositories to:

- (a) receive all eligible income and other payments due to the Account;
- (b) carry out any exchanges of Securities or other corporate actions not requiring discretionary decisions;
- (c) facilitate access by the Client or its designee to ballots or online systems to assist in the voting of proxies received for eligible positions of Securities held in the Account (excluding bankruptcy matters). In this regard, a provider of proxy voting services will be appointed to provide global proxy voting services. Other than providing access to such provider of global proxy services, the Custodian shall have no obligation or liability to the Client in respect of such global proxy voting services or the acts or omissions of the provider of such global proxy voting services;
- (d) forward to the Client or its designee information (or summaries of information) that the Custodian receives from Depositories or Subcustodians concerning Securities in the Account (excluding bankruptcy matters);
- (e) forward to the Client or its designee an initial notice of bankruptcy cases relating to Securities held in the Account and a notice of any required action related to such



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bankruptcy cases as may be received by the Custodian. No further action or notification related to the bankruptcy case shall be required;

- (f) endorse for collection cheques, drafts or other negotiable instruments; and
- (g) execute and deliver, solely in its custodial capacity, certificates, documents or instruments incidental to the Custodian's performance under this Agreement.

### 3.13 Custodian Actions with Direction

The Custodian shall take the following actions in the administration of the Account only pursuant to Authorised Instructions:

- (a) settle purchases and sales of Securities and process other transactions, including free receipts and deliveries;
- (b) take actions necessary to settle transactions in connection with futures or options contracts, short-selling programs, foreign exchange or foreign exchange contracts, swaps and other derivative investments;
- (c) deliver Securities in the Account if an Authorised Person advises the Custodian that the Client has entered into a separate securities lending agreement, provided that the Client executes such agreements as Custodian may require in connection with such arrangements; and
- (d) make any transfers of Cash from the Cash Account unless in connection with any of the actions referred to in paragraphs (a), (b) and (c) of this clause 3.13.

### 3.14 Foreign Exchange Transactions

Any foreign exchange transaction effected by the Custodian in connection with this Agreement may be entered into with the Custodian or a BNY Mellon Affiliate acting as a principal or otherwise through customary channels. The Client may issue standing Written Instructions with respect to foreign exchange transactions, but Custodian may establish rules or limitations concerning any foreign exchange facility made available to the Client.

### 3.15 Investment Accounting

The Custodian may, at the Client's express request, provide investment accounting services to the Client in accordance with the terms of schedule D. Where the Client has made such request, the Client acknowledges and agrees that this service shall be for information purposes only and is not to be relied upon by the Client. Where the Client has not made such request, the terms of this schedule D shall have no effect.

### 3.16 Appointment of Investment Manager

The Client may at any time appoint one or more investment managers ("**Investment Managers**"), to manage the Property in an Account, to vote Securities in a Securities Account, to purchase, sell or otherwise acquire or dispose of Property in an Account, and to engage in foreign exchange transactions on behalf of the Client. The Client must promptly notify the Custodian of the appointment of any Investment Manager from time to time by a notice in the form of schedule B. The Custodian shall rely upon and comply with, and shall have no liability for relying upon and complying with any Oral Instructions or Written Instructions received or deemed received from the Investment Manager (including Oral Instructions or Written Instructions with respect to the voting of Securities in a Securities Account, the purchase, sale or other acquisition or disposition of Property in an Account and



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the furnishing of information and records relating to an Account to the Investment Manager and Oral Instructions or Written Instructions communicated by any means or methods authorised herein for communicating with the Client) to the same extent as if such Oral Instructions or Written Instructions were given by the Client, and the Custodian shall have no duty or obligation to determine the propriety or appropriateness of such Oral Instructions or Written Instruction. Any such appointment shall remain in full force and effect unless and until the Custodian actually receives written notice from the Client to the contrary and the Custodian shall incur no liability for relying upon the existing authorisations.

### 4. CORPORATE ACTIONS

#### 4.1 Custodian Notification

The Custodian shall notify the Client or its designee of rights or discretionary actions as promptly as practicable under the circumstances, provided that the Custodian has actually received notice of such right or discretionary action from the relevant Subcustodian or Depository. Absent actual receipt of such notice, the Custodian shall have no liability for failing to so notify the Client. Unless the Client requests otherwise, the Custodian may notify the Client or its designee of class action information of which the Custodian becomes aware, and may file claims in accordance with the terms and conditions for the class action service. The current version of terms and conditions is attached as schedule C and they may be terminated and/or amended by the Custodian at any time.

#### 4.2 Client Notification

Whenever there are voluntary rights that may be exercised or alternate courses of action that may be taken by reason of the Client's ownership of Securities, the Client or its designee shall be responsible for making any decisions relating thereto and for directing the Custodian to act. In order for the Custodian to act, it must receive Authorised Instructions using the Custodian generated form or clearly marked as instructions for the decision at the Custodian's offices, addressed as the Custodian may from time to time request, by such time as the Custodian shall advise the Client or its designee. Absent the Custodian's receipt of such Authorised Instructions by such deadline, the Custodian shall not be liable for failure to take any action relating to or to exercise any rights conferred by such Securities.

#### 4.3 Partial Redemptions, Payments, Etc

The Custodian shall promptly advise the Client or its designee upon its notification of a partial redemption, partial payment or other action with respect to a Security affecting fewer than all such Securities held within the Account. If the Custodian, any Subcustodian or Depository holds any Securities affected by one of the events described, the Custodian, the Subcustodian or Depository may select the Securities to participate in such partial redemption, partial payment or other action in any non-discriminatory manner that it customarily uses to make such selection.

### 5. SETTLEMENT OF TRADES

#### 5.1 Payment

Promptly after each purchase or sale of Securities by the Client, an Authorised Person shall deliver to the Custodian Written Instructions specifying all information necessary for the Custodian to settle such purchase or sale. For the purpose of settling purchases of Securities, the Client shall provide the Custodian with sufficient immediately available funds for all such transactions by such time and date as conditions in the relevant market dictate.

#### 5.2 Contractual Settlement and Income



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The Custodian may, as a matter of bookkeeping convenience, credit the Account with the proceeds from the sale, redemption or other disposition of Securities or payable Distributions prior to its actual receipt of final payment therefor. All such credits shall be conditional until the Custodian's actual receipt of final payment and may be reversed by the Custodian to the extent that final payment is not received. Payment with respect to a transaction will not be "final" until the Custodian shall have received immediately available funds that under applicable local law, rule or practice are irreversible and not subject to any security interest, levy or other encumbrance, and that are specifically applicable to such transaction.

### 5.3 Trade Settlement

Transactions will be settled using practices customary in the jurisdiction or market where the transaction occurs. The Client understands that when the Custodian is instructed to deliver Securities against payment, delivery of such Securities and receipt of payment related to such Securities may not be completed simultaneously. The Client assumes full responsibility for all risks involved in connection with the Custodian's delivery of Securities pursuant to Authorised Instructions in accordance with local market practice.

## 6. DEPOSITS, OVERDRAFTS AND DRAWINGS

### 6.1 Deposits

The Custodian may hold Cash in Cash Accounts or, where required under applicable local law, rule or practices, arrange to have Cash directly held by a BNY Mellon Affiliate, Subcustodian, or with a Depository. Where Cash is on deposit with the Custodian or a BNY Mellon Affiliate, it will be subject to the terms of this Agreement and such deposit terms and conditions as may be issued by the Custodian or a BNY Mellon Affiliate from time to time, including rates of interest and deposit account access.

### 6.2 Credits, Advances and Overdrafts

- (a) The Client understands that when the Custodian receives an Authorised Instruction to deliver Securities against payment or in exchange for Cash (for example in connection with the settlement of a Securities transaction or a redemption, exchange, tender offer or similar corporate action) such payment or exchange of Cash may not occur simultaneously with the delivery of Securities and that the Custodian may deliver such Securities before actually receiving final payment for such delivery of Securities. Consequently, as a matter of bookkeeping convenience, the Custodian may credit the Client's Cash Account with Cash equal to the amount the Custodian anticipates will be received by it, a Subcustodian or a Depository prior to actual receipt by the Custodian, a Subcustodian or Depository of the Cash by way of final payment for such delivery of Securities.
- (b) The Custodian may also credit the Client's Cash Account with Cash equal to the amount the Custodian anticipates will be received by the Custodian, a Subcustodian or a Depository in relation to a Distribution prior to actual receipt by the Custodian, a Subcustodian or Depository of the Distribution by way of final payment of the Distribution. The Client assumes full responsibility for all risks involved in connection with the Custodian's delivery of Cash pursuant to Authorised Instructions in accordance with local market practice.
- (c) All credits to a Cash Account in anticipation of receipt of final payment of sales and redemptions of, and similar corporate actions in respect of, Securities and Distributions shall be extensions of credit which are conditional upon receipt by the Custodian of final payment and may be reversed to the extent that final payment is not received.



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- (d) The Custodian, and the Client expressly agrees that the Custodian, may also extend credit or otherwise advance cash to the Client for facilitating settlement of securities transactions (including, for the avoidance of doubt, purchases), or any other transfers. Notwithstanding the foregoing, the Custodian shall have no obligation whatsoever to extend any credit or to make advance of any cash to the Client to facilitate the settlement of any transaction or transfer of any Property. In the event that the Custodian in its discretion advances funds to the Client to facilitate the settlement of any transaction, or elects to permit the Client to use funds credited to a Cash Account in anticipation of final payment, or if the Client otherwise becomes indebted to the Custodian (including, without limitation, overdrafts incurred in connection with the settlement of securities transactions, funds, transfers or foreign exchange transactions), the Client shall, upon demand or upon becoming aware of the amount of the advance, overdraft or indebtedness, whichever is the earlier, immediately reimburse the Custodian for such amounts in the same currency if legally available plus accrued interest at a rate then charged by the Custodian to its institutional asset servicing customers.
- (e) For the purposes of this Agreement, payment will not be "final" until the Custodian has received immediately available funds which, under applicable local laws, regulations, rules, customs or practices, are not reversible and not subject to any security interest, levy or other encumbrance, and that are specifically applicable to such transaction.

### 6.3 Single Cash Account

There is only one cash account relationship between the Client and the Custodian. Even if several Cash Accounts are attributed to the Client - accounts in various currencies, time accounts and current accounts, creditor and debtor accounts, accounts paying different interest - all these constitute subdivisions for bookkeeping purposes of the same. In addition to any rights which the Custodian may have under applicable law or pursuant to other agreements, the Custodian shall have the right to, and may, without notice to the Client, combine, consolidate or merge all or any of the Client's Cash Accounts with, and liabilities to, the Custodian and may setoff from or transfer any Cash in any currency held for the Client or standing to the credit of any such Accounts in or towards the satisfaction of any liability of the Client to the Custodian whether arising from or as a result of a foreign exchange transaction, a Securities transaction, this Agreement or otherwise, and may do so notwithstanding that Cash held for the Client or the balances of such Accounts may be held or deposited at different branches of the Custodian or held by the Custodian with any Subcustodian and may not be expressed in the same currency as the currency of the Client's liability to the Custodian and the Custodian may effect any necessary conversions at the Custodian's own rate of exchange then prevailing.

### 6.4 Provision on Cash

Cash may be swept to investment vehicles offered by the Custodian or to other investment vehicles as agreed between the Client or its Investment Manager and the Custodian. Cash may be uninvested when it is received in or reconciled with an Account after the deadline to be swept into a target vehicle, or when held for short periods of time related to transaction settlements. The Client acknowledges that, as part of the Custodian's compensation, the Custodian will earn interest on cash balances held by the Custodian, including disbursement balances and balances arising from purchase and sale transactions.

### 6.5 Securing Repayment

To secure any payment of any of the Client's obligations under this Agreement (including, for the avoidance of doubt, any obligations arising in connection with clause 8.6 (Fees) and any extensions of any advances, credit or loans of moneys or other assets granted to the Client in



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connection with this Agreement), the Custodian shall, in addition to any charge, preference, lien or other rights and security interest to which the Custodian may be entitled including the statutory lien of Article 31 of the Belgian Law of 2 August 2002 on the supervision of the financial markets and financial instruments and under any other applicable laws, have, and the Client hereby grants to the Custodian and the Custodian shall have:

- (a) a first ranking charge on all the Client's Property held (or otherwise being under the direct or indirect possession of the Custodian) in those Accounts which are not Client Customer Accounts, and on any and all rights for the recovery of any such Property or for any other reason, whether actual and contingent, whether present and future, that the Client has or may have under or in connection with this Agreement, or otherwise in connection with the Property;
- (b) the right to withhold redelivery to, or to the order of the Client, the Securities, including without limitation, a general right of retention on all Property in any Accounts, to the extent only of the amount of such obligations for which the Client is from time to time liable to the Custodian under or in connection with this Agreement or otherwise; and
- (c) the right, in accordance with, and subject to applicable laws, to sell, transfer or assign, set off or otherwise realise the value of any such Property and to apply the proceeds in satisfaction of such obligations.

The Client shall take any additional steps required to assure the Custodian of such priority security interest, including notifying third parties or obtaining their consent. Where the Client is depositing Securities belonging to its underlying customers in a Client Customer Account and where the FSA Rules require that (a) through (c) above shall not apply, then with respect to such Client Customer Account the Custodian shall instead have a lien and right of sale and right of setoff that is confined to an individual underlying customer's Property and extends only to the Custodian's properly incurred charges and liabilities arising from the provision of custody services to that underlying customer.

### 6.6 Acknowledgement of Security Interests

The Client acknowledges and agrees that Depositories and Subcustodians may have a lien, pledge or other security interest (statutory or otherwise) over, or right of setoff or retention and sale in respect of, Securities credited to the Client's Securities Accounts or Cash credited to the Client's Cash Account in relation to claims for payment of obligations owed to them (including administration and safe custody charges) as provided in the applicable Depository agreement or Subcustodian Agreement.

### 6.7 Client's Customers' Accounts

Where the Client is depositing Securities belonging to its underlying customers in a Securities Account, the Client must immediately notify the Custodian thereof and keep the relevant Securities in a separate Securities Account (a "**Client Customer Account**"). At no time shall the Client hold proprietary Securities in a Client Customer Account. Further to clause 10.2(f)(v), the Client shall further keep any Securities belonging to its customers who have not agreed that their Securities held by the Client with the Custodian can be subject to liens and other security interests securing the payment of the safe custody fees, and any advances or credit extensions made by the Custodian to the Client for the benefit of, the deposit or the settlement of any transactions in the Client Customer Accounts, in a separate Client Customer Account (the "**Unsecured Client Customer Account**"). The Client shall notify the Custodian in writing upon the opening of an Account that such Account is a Client Customer Account or an Unsecured Client Customer Account as the case may be.

### 6.8 Negative Covenant





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The Client shall not take any action in relation to the Securities which is inconsistent with the rights granted to the Custodian by law and under this Agreement and shall at any time and from time to time (whether before or after the security hereby created shall have become enforceable) execute such further charges, pledges or assignments and do all such transfers, assurances, acts and things as the Custodian may require to assure the superiority or priority of the preference, lien, pledge or other rights and security interest granted by law and hereunder in favour of the Custodian.

### 6.9 Conversion

The Custodian is hereby authorised to effect any necessary currency conversions pursuant to this Agreement at the Custodian's own rate of exchange then prevailing.

### 6.10 Other Security Interests

Unless required by law, neither the Custodian nor its nominees shall be bound by or recognise any lien, pledge, security interest or similar entitlement to any Securities or Cash held for the Client for the benefit of any person, other than the Client's entitlement under this Agreement.

### 6.11 Drawings

In accordance with clause 3.5, the Client's Securities may be held in a commingled client securities account with securities of other Clients of the Custodian (or the relevant Subcustodian or Depository) and shall be treated as fungible. The Client hereby further agrees and consents to the Custodian using the Client's Securities (including Securities belonging to the Client's underlying customers) for the account of another client of the Custodian and vice versa. However, the Custodian may only do so (or permit a Subcustodian or Depository to do so) in connection with facilitating timely settlement of Securities trades, and the Custodian may not and shall not use the Client's Securities for its own account or for account of a Subcustodian or Depository and no Securities Account on the books of the Custodian or a Subcustodian shall hold Securities which are beneficially owned by the Custodian or such Subcustodian, as the case may be.

### 6.12 Set Off

The Custodian has the right to debit any Cash in the Accounts for any amount payable by the Client in connection with any and all obligations of the Client to Custodian or to a BNY Mellon Affiliate whether or not relating to or arising under this Agreement. In addition to the rights of the Custodian under applicable law and other agreements, at any time when the Client shall not have honoured any and all of its obligations to the Custodian, the Custodian shall have the right without notice to the Client to retain or setoff against such obligations of the Client any Cash the Custodian or a BNY Mellon Affiliate may directly or indirectly hold for the Client, and any obligations (whether or not matured) that the Custodian or a BNY Mellon Affiliate may have to the Client in any currency. Any such asset of, or obligation to, the Client may be transferred to the Custodian and any BNY Mellon Affiliate in order to effect the above rights.

## 7. TAXES, REPORTS, RECORDS AND DISCLOSURES

### 7.1 Tax Obligations

The Client shall be liable for all taxes, assessments, duties and other governmental charges, including interest and penalties, with respect to any cash and Securities held on behalf of the Client and any transaction related thereto. To the extent that the Custodian has received relevant and necessary information with respect to the Account, the Custodian shall perform the following services with respect to Tax Obligations:



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- (a) The Custodian shall, upon receipt of sufficient information, file claims for exemptions or refunds with respect to withheld taxes in instances in which such claims are appropriate;
- (b) The Custodian shall withhold appropriate amounts, as required by applicable tax laws, with respect to amounts received upon receipt of Written Instructions; and
- (c) The Custodian shall provide to the Client such information received by the Custodian that could, in the Custodian's reasonable belief, assist the Client or its designee in the submission of any reports or returns with respect to Tax Obligations. An Authorised Person shall inform the Custodian in writing as to which Party or Parties shall receive information from the Custodian.

The Custodian shall not be responsible for determining whether Tax Obligations exist in respect of the Client and the assets held in the Account.

### 7.2 Pricing and Other Data

In providing Market Data related to the Client's Account in connection with this Agreement, the Custodian is authorised to use Data Providers. The Custodian may follow Authorised Instructions in providing pricing or other Market Data, even if such Authorised Instructions direct the Custodian to override its usual procedures and Market Data sources. The Custodian shall be entitled to rely without inquiry on all Market Data (and all Authorised Instructions related to Market Data) provided to it, and the Custodian shall not be liable for any Losses incurred as a result of errors or omissions with respect to any Market Data (including but not limited to the accuracy or completeness of such Market Data) utilised by the Custodian or the Client hereunder. The Client acknowledges that certain pricing or valuation information may be based on calculated amounts rather than actual market transactions and may not reflect actual market values, and that the variance between such calculated amounts and actual market values may be material. Market Data may be the intellectual property of the Data Providers, which may impose additional terms and conditions upon the Client's use of the Market Data. The additional terms and conditions can be found within the Data Licensor Terms and the Client agrees to those terms. Certain Data Providers may not permit a Client's directed price to be used. Performance and risk analytic services including, but not limited to certain analytic, accounting, compliance, reconciliation, asset pricing and other services with respect to the Accounts are available provided that the Client enters into the appropriate separate agreement with the relevant BNY Mellon Affiliate. Performance measurement and analytic services (where subscribed to by the Client) may use different data sources than those used by the Custodian to provide Market Data for the Account, with the result that different prices and other Market Data may apply.

### 7.3 Statements and Reports

The Custodian shall make available to the Client, on a periodic basis as agreed from time to time between the Parties but not less than annually reports of all transfers to or from the Accounts and statements of all holdings in the Accounts as of the last Business Day of each month. The Client may elect to receive certain information electronically through the internet to an email address specified by it for such purpose. By electing to use the Internet for this purpose, the Client acknowledges that such transmissions are not encrypted and therefore are insecure. The Client further acknowledges that there are other risks inherent in communicating through the internet such as the possibility of virus contamination and disruptions in service, and agrees that the Custodian shall not be responsible for any loss, damage or expense suffered or incurred by the Client or any person claiming by or through the Client as a result of the use of such methods.

### 7.4 Review of Reports



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If, within ninety (90) days after the Custodian makes available to the Client a statement with respect to the Accounts, the Client has not given the Custodian written notice of any exception or objection thereto, the statement shall be deemed to have been approved. In case of an exception or objection being raised, the Custodian shall address with reasonable efforts such exception or objection.

### 7.5 Inspection of Books and Records

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

### 7.6 Disclosures made to Issuers of Securities and Other Parties

- (a) With respect to Securities that are registered under the United States Securities Exchange Act of 1934 ("Exchange Act") or that are issued by an issuer registered under the United States Investment Company Act of 1940, section 14(b) of the Exchange Act and rule 14b-2 promulgated thereunder require the Custodian to disclose to issuers of such Securities, upon their request, the name, address and securities position of the Custodian's clients who are "beneficial owners" (as defined in the Exchange Act) of the issuer's securities, unless the beneficial owner objects to such disclosure. The Exchange Act generally defines a "beneficial owner" as any person who has or shares the power to vote a security (pursuant to an agreement or otherwise) or who directs the voting of a security.
- (b) Notwithstanding the disclosures under clause 7.6(a), the Custodian shall disclose information required by any Depository or the laws and/or regulations of the relevant jurisdiction, rules of the relevant stock exchange or the organisational documents of an issuer. The Custodian is also authorised to supply any information regarding the Accounts that is required by any law, regulation or rules now or hereafter in effect. The Client agrees to supply the Custodian with any required information if it is not otherwise reasonably available to the Custodian.

### 7.7 Other Disclosures

- (a) In the course of administering the Property and providing services under this Agreement, the Custodian may, and is authorised to, disclose information concerning the Client, the Accounts, the Property or this Agreement to its offices, BNY Mellon Affiliates, associates, Subcustodians, Depositories and other providers of services (including, without limitation, lawyers and accountants for the Custodian) worldwide, and may disclose to third parties that it is providing to the Client the services contemplated by this Agreement. The Custodian shall not be held responsible for information held by such persons or of which the Custodian is not aware by virtue of restricted access or "Chinese wall" arrangements.
- (b) If the Custodian becomes aware of confidential information which prevents it from effecting a particular transaction under this Agreement, then the Custodian may refrain from effecting that transaction.
- (c) The Client acknowledges that the Custodian may be obliged to provide information concerning the Client, the Accounts, the Property or this Agreement to market or regulatory authorities, courts and government agencies, including but not limited to the NBB and the FSMA, the FSA and the Brussels and other stock exchanges (and their successors), and to law enforcement authorities. The Client hereby authorises the Custodian 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



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where the Custodian and BNY Mellon Affiliates do business, and in particular to disclose the identity of the Client or, if the Client is acting on behalf of others, the identity of such others (to the extent known by the Custodian).

### 7.8 Data Protection

- (a) In the course of administering the Property and providing the services under this Agreement, the Custodian may receive, collect and process personal data (including, but not limited, to recording telephone communications) relating to individuals employed by or associated with the Client and with any third party acting for the benefit or on behalf of the Client. Such personal data may be used by the Custodian to provide services contemplated by this Agreement, to administer the Custodian's relationship with the Client, to handle claims, litigation and other proceedings, whether in the United Kingdom, Belgium or abroad and any other related purposes, as well as to protect the Client, the Custodian or third parties against fraud or other improper conduct, and to comply with laws, rules, regulations, court or administrative orders applicable to the Client or to the Custodian, BNY Mellon Affiliates and associates. In order to achieve such purposes, the Client consents to such personal data being shared with, and transferred to, BNY Mellon Affiliates, Subcustodians, Depositories and the Custodian's other service providers which may be located in jurisdictions outside of the European Economic Area ("EEA"), including the United States of America, and other jurisdictions that have not been deemed to offer adequate protection. Data subjects have the right to access and to rectify their personal data maintained by the Custodian. Requests for such access or rectification should be submitted to the Client, and Client shall forward them to the Custodian. The Client shall reimburse the Custodian's reasonable costs and expenses incurred in connection with giving a data subject access to his or her personal data.
- (b) By execution of this Agreement, the Client confirms its acknowledgement of the processing of personal data by the Custodian, its BNY Mellon Affiliates and other Persons as set out in this clause 7.8, and represents and warrants to properly inform and/or obtain consent of (as required by applicable law) the data subjects whose personal data may be processed by the Custodian and other Persons in the context of this Agreement of the collection, processing and transfer of their personal data by the Custodian and other Persons for the purposes set out in this Agreement.
- (c) To the extent permitted by applicable law, each of the Custodian and the Client may record telephone communications with the other Party or their agents with or without previous notice or signal for the purpose of constituting evidence of the transactions and communications between the Parties and of any instructions, facts and events relied upon by the Custodian, and refer to the recording of such telephone communications as fully admissible evidence in the event of any dispute, action or proceedings. The Custodian may keep such telephone communication records for a period of one year.

### 7.9 Transactions with BNY Mellon Affiliates

Subject to and in accordance with Authorised Instructions, the Custodian as the Client's agent and for the account of the Client, may place or negotiate orders to buy or sell Securities and other transactions. Such orders and transactions may be placed or negotiated through BNY Mellon Affiliates. The Custodian or any of the BNY Mellon Affiliates, acting as principal, may sell such Securities to, or buy such Securities from, the Client.

### 7.10 Unrelated Services

The Custodian or any of the BNY Mellon Affiliates may act as agent for, provide banking, investment advisory, investment management and other services to, and generally engage in



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any kind of business with, others (including without limitation issuers of Securities, money market instruments or other Property purchased for and on behalf of the Client) to the same extent as if the Custodian was not a custodian under this Agreement. Nothing in this Agreement shall be deemed to restrict the right of the Custodian or the BNY Mellon Affiliates to perform such services for any other person or entity, and the performance of such services for others will not be deemed to violate or give rise to any duty or obligation to the Client not specifically undertaken by the Custodian under this Agreement.

### 7.11 Other Compensation

If the Custodian, or any of the BNY Mellon Affiliates, provides services which are ancillary to the Custodian's functions of custodian and banker and/or carry out other business and activities including but not limited to the matters contemplated by clauses 7.9 and 7.10, the Custodian or any of the BNY Mellon Affiliates as appropriate, may receive and retain any fee, commissions, spreads or other compensation in relation to such service, business or activity.

### 7.12 Client Relationships

The Bank of New York Mellon Corporation has adopted an incentive compensation scheme designed (i) to facilitate clients gaining access to and being provided with explanations about the full range of products and services offered by BNY Mellon Affiliates and (ii) to expand and develop client relationships. This program may lead to the payment of referral fees and/or bonuses to employees of BNY Mellon Affiliates who may have been involved in a referral that resulted in the obtaining of products or services by the Client covered by this Agreement or which may be ancillary or supplemental to such products or services. Any such referral fees or bonuses are funded solely out of fees and commissions paid by the Client under this Agreement or paid by the Customer with respect to such ancillary or supplemental products or paid by a third party on behalf of the Customer. Further details of the payment of referral fees will be provided to the extent required by applicable laws or regulations and only in accordance with applicable laws, regulations and other legal requirements and limitations. Should the Customer desire such further details, please contact your BNYM Relationship Manager.

## 8. PROVISIONS REGARDING CUSTODIAN

### 8.1 Standard of Care

In performing its duties under this Agreement, the Custodian shall exercise the standard of care and diligence that a professional custodian would observe in these affairs.

### 8.2 Limitation of Duties and Liability

Notwithstanding anything contained elsewhere in this Agreement, the Custodian's liability hereunder is limited as follows:

- (a) The duties of the Custodian shall only be those specifically undertaken pursuant to this Agreement and shall be subject to such other limits on liability as are set out herein;
- (b) The Custodian shall not be liable for any Losses incurred by or asserted against the Custodian or the Client, except those Losses arising out of the Custodian's fraud, negligence or wilful misconduct, but only to the extent such Losses constitute direct money damages;
- (c) The Custodian shall not be responsible for the title, validity or genuineness of any Securities or evidence of title thereto received by it or delivered by it pursuant to this



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Agreement or for Securities held hereunder being freely transferable or deliverable without encumbrance in any relevant market;

- (d) The Custodian shall not be responsible for the failure to receive payment of, or the late payment of, income or other payments due to the Account;
- (e) The Custodian shall have no duty to take any action to collect any amount payable on Securities in default or if payment is refused after due demand and presentment;
- (f) The Custodian may obtain the advice of counsel and shall be fully protected with respect to anything done or omitted by it in good faith in conformity with such advice;
- (g) The Custodian shall have no duty or responsibility to inquire into, make recommendations, supervise, or determine the suitability of any transactions affecting any Account, and shall have no liability with respect to the Client's or an Authorised Person's decision to invest in Securities or to hold Cash in any currency;
- (h) The Custodian shall have no liability with respect to any Losses arising from the use by the Client (or any person authorised or acting on its behalf) of any method of transmission such as facsimile, email or other electronic method of transmission or communication which are deemed not to be secure; and
- (i) The Custodian shall have no liability with respect to any Losses arising from a delay by the Custodian, a Subcustodian or Depository to act subject to and in accordance with an Oral Instruction or Written Instruction when such delay is due to any procedure or process to be performed by the Custodian, a Subcustodian or Depository and required in accordance with local laws and regulations, court or regulatory order;
- (j) The Custodian shall have no liability with respect to any Losses arising from the use of any third party appointed or selected by the Client or by the Custodian at the express request of the Client;
- (k) The Custodian shall have no responsibility if the rules or procedures imposed by Subcustodians, Depositories, exchange controls, asset freezes or other laws, rules, regulations or orders at any time prohibit or impose burdens or costs on the transfer to, by or for the account of the Client of Securities or Cash;
- (l) The Custodian shall have no responsibility for the accuracy of any information provided to the Client which has been obtained from or provided to the Custodian by any other entity;
- (m) The Custodian shall have no liability for any Losses incurred by or asserted against the Client arising from the default or insolvency of any Person, including but not limited to a Subcustodian, Depository, broker, bank, and a counterparty to the settlement of a transaction or to a foreign exchange transaction, except to the extent that the Custodian is negligent in its selection or continued retention of such Subcustodian; and
- (n) The Custodian's liability in connection with this Agreement in respect of any loss of, or failure to acquire any asset will be limited to the market value or, in the absence of a relevant market, the fair value of that asset, as determined by the Custodian as at the date when notice of that loss or failure is given by the Custodian to the Client, plus interest on that amount at the Custodian's prevailing deposit rate for that amount from the date the notice is given until the amount is paid to the Client.



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### 8.3 Losses

Under no circumstances shall the Custodian be liable to, or be required to indemnify, the Client or any Person for indirect, consequential or special damages or for loss of business opportunity or loss of profit arising in connection with this Agreement and whether or not such liability is foreseeable and even if the Custodian has been advised or was aware of the possibility of such losses.

### 8.4 Gains

Where an error or omission has occurred under this Agreement, the Custodian may take such remedial action as it considers appropriate under the circumstances and, provided that the Client is put in the same or equivalent position as it would have been in if the error or omission had not occurred, any favourable consequences of the Custodian's remedial action shall be solely for the account of the Custodian, without any duty to report to the Client any loss assumed or benefit received by it as a result of taking such action.

### 8.5 Force Majeure

Notwithstanding anything in this Agreement to the contrary, the Custodian shall not be responsible or liable for any delay or failure to perform under this Agreement or for any Losses to the Account resulting, in whole or in part, from or caused by any event beyond the reasonable control of the Custodian, any Subcustodian or any Depository. In no event shall the Custodian be liable for any Losses arising out of the holding of any Securities or Cash in any particular country, including but not limited to, Losses resulting from nationalisation, expropriation or other governmental actions; regulation of the banking or securities industry; exchange or currency controls or restrictions, devaluations or fluctuations; availability of Securities or Cash or market conditions which prevent the transfer of Property or the execution of Securities transactions or affect the value of Property.

### 8.6 Fees

The Client shall pay to the Custodian the fees and charges in accordance with the Fee schedule set out in schedule A as may be amended by the Custodian from time to time upon thirty (30) calendar days' prior written notice, and such other fees and charges at the Custodian's standard rates for such services as may be applicable. The Custodian may debit the Cash Account for such fees and charges. The Client shall also reimburse the Custodian for out-of-pocket expenses that are a normal incident of the services provided hereunder.

### 8.7 Indemnification

The Client shall indemnify and hold harmless the Custodian and BNY Mellon Affiliates from and against all Losses, including, but not limited to, penalties, taxes, judgments and awards, legal fees (reasonably incurred) and expenses in third party suits and in a successful defense of claims asserted by the Client, relating to or arising out of the performance of the Custodian's or BNY Mellon Affiliates' obligations under this Agreement, except to the extent resulting from the Custodian's negligence, wilful misconduct or fraud. This provision shall survive the termination of this Agreement.

## 9. PROFESSIONAL CLIENT STATUS

### 9.1 Professional Client



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The Custodian will treat the Client as a "professional client" in accordance with Article 9 of the Belgian Royal Decree of 3 June 2007 further implementing the Markets in Financial Instruments Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004.

### 9.2 No Suitability Test

The Custodian is not required to evaluate the suitability of the services or instruments it may offer to the Client and hence, the Client shall in that respect not be protected by the applicable rules of conduct.

## 10. REPRESENTATIONS AND WARRANTIES

### 10.1 Representations of the Custodian

The Custodian represents and warrants that:

- (a) it is a corporation duly organised and validly existing under the laws of Belgium; and
- (b) it has all necessary power, authorities and consents to enter into this Agreement upon the terms and conditions hereof, to perform the services which are to be performed by it under this Agreement and that the individual executing the Agreement on its behalf has the requisite authority to bind it to this Agreement, and that this Agreement constitutes its binding obligations enforceable in accordance with its terms.

### 10.2 Representations of the Client

The Client represents, warrants and undertakes that:

- (a) it is a company duly incorporated and registered under the laws of its jurisdiction of incorporation;
- (b) the Agreement has been duly authorised, executed and delivered on its behalf and constitutes the legal, valid and binding obligations of the Client and the execution, delivery and performance of this Agreement by the Client does not and will not violate or conflict with any law or regulation applicable to it, its constitutional documents, or any document binding upon it or any of its respective assets and does not require the consent of any governmental or regulatory body except for such consents and approvals as have been obtained and which are, and shall remain, in full force and effect;
- (c) it has all necessary power, authority and consent to enter into this Agreement and to appoint the Custodian as custodian under this Agreement and to the extent the Client is acting on behalf of the owners of the Securities, the Client has obtained the authorisation from all such owners to deposit their Securities with the Custodian;
- (d) the Securities (whether owned by the Client or by others on whose behalf the Client is acting) and Cash are and will remain during the term of this Agreement free and clear of all liens, pledges, charges, security interests and encumbrances (except for those granted in accordance with this Agreement);
- (e) in relation to data disclosed to the Custodian in connection with this Agreement, or any previous custody arrangements, the Client has complied with, and shall continue to comply with the provisions of all relevant data protection laws and regulations and





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shall not do anything, or permit anything to be done which might lead to a breach of such laws or regulations by the Custodian;

- (f) the Client:
- (i) is fully authorised and empowered and has the capacity to engage in the transactions contemplated by this Agreement (including for the avoidance of doubt foreign exchange transactions and the lien, charge and security interest and rights of setoff set out in this Agreement); and
  - (ii) has established and maintains policies and procedures (a copy of which will be provided to the Custodian on request) which require the Client to obtain, verify and record identification information about the persons on whose behalf the Client is acting and which are reasonably designed to ensure that the Client is not being used by any such other person as a conduit for money laundering or other illegal or illicit purposes; and
  - (iii) has obtained, verified and recorded identification information about each person or underlying client of the Client on whose behalf the Client is acting, in accordance with EU Directives and Financial Action Task Force standards concerning Know Your Client ("KYC") and the prevention of money laundering and the financing of terrorism, and where required (and to the extent permitted) by any legal or regulatory authority, shall upon request furnish the Money Laundering Reporting Officer of the Custodian with all relevant identification information about each such person or underlying client of the Client. To the best of the Client's knowledge, no transaction undertaken in respect of the Transactions is prohibited by applicable law, regulation or rule and no Property held in the Account is derived from any activity prohibited by applicable law, regulation or rule; and
  - (iv) if acting for the account of others and not itself being a credit institution or a financial institution as defined under EU Directives concerning KYC and the prevention of money laundering and the financing of terrorism, shall provide the Custodian with satisfactory identification information about the Persons or underlying clients of the Client for whose account the Client is acting;
  - (v) confirms that, further to clauses 6.5 and 6.7, and with the exception of the customers of Client whose Securities are held in an Unsecured Client Customer Account, all customers of Client have agreed that their Securities held by the Client with the Custodian can be subject to liens and other security interests securing the payment of the safe custody fees incurred in connection with, and any advances or credit extensions made by the Custodian to the Client for the benefit of, the deposit or the settlement of any transactions in the Client Customer Accounts; and
  - (vi) shall not complete any application or subscription form for any Security, nor submit such form to an issuer of a Security in order that the Security may be registered in the name of the Custodian or its nominee company, as the legal owner of the Security.

### 11. AMENDMENT; TERMINATION; ASSIGNMENT

#### 11.1 Amendment

This Agreement may be amended only by written agreement between the Client and the Custodian.



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## 11.2 Termination

- (a) Either Party may terminate this Agreement by giving to the other Party a notice in writing specifying the date of such termination, which shall be not less than ninety (90) days after the date of such notice. Upon termination hereof, the Client shall pay to the Custodian such compensation as may be due to Custodian, and shall likewise reimburse the Custodian for other amounts payable or reimbursable to the Custodian hereunder. Custodian shall follow such reasonable Written Instructions concerning the transfer of custody of records, Securities and other items as the Client shall give; provided that (i) the Custodian shall have no liability for shipping and insurance costs associated therewith, and (ii) full payment shall have been made to the Custodian of its compensation, costs, expenses and other amounts to which it is entitled hereunder. If any Securities or Cash remain in any Account after termination, the Custodian may deliver to the Client such Securities and Cash. Except as otherwise provided herein, all obligations of the Parties to each other hereunder shall cease upon termination of this Agreement.
- (b) Either Party may further terminate this Agreement immediately upon notice to the other Party upon the dissolution of that other Party if such other Party is a body corporate or partnership or upon the commencement of any action or proceedings seeking liquidation, winding-up, insolvency, reorganisation or other similar relief in respect of said other Party or its debts under any insolvency or analogous proceedings in any jurisdiction.
- (c) The provisions of clauses 6.2, 8.2 through 8.7 (inclusive), 11 and 12.11 of this Agreement shall survive its termination.

## 11.3 Successors and Assigns

Neither the Client nor the Custodian may assign this Agreement without the prior written consent of the other, except that the Custodian may assign this Agreement to any BNY Mellon Affiliate. Any entity, that shall by merger, consolidation, purchase, or otherwise, succeed to substantially all the institutional custody business of the Custodian shall, upon such succession and without any appointment or other action by the Client, be and become successor custodian hereunder. The Custodian agrees to provide notice of such successor custodian to the Client. This Agreement shall be binding upon, and inure to the benefit of, the Client and the Custodian and their respective successors and permitted assigns.

## 11.4 Preservation of Security

In the event of (a) an assignment, transfer or novation by the Custodian, of all or any part of its rights and obligations under this Agreement or (b) an amendment (however fundamental), supplement or novation of any of this Agreement, all rights and obligations under this Agreement will be preserved so that the pledge, security and liens granted on the Securities and Cash under this Agreement will be automatically transferred to and be exercisable by the assignee, transferee or new obligee, or secure automatically the obligations of the Client under this Agreement, as amended, supplemented or novated.

## 12. ADDITIONAL PROVISIONS

### 12.1 Non-Custody Assets



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As an accommodation to the Client, the Custodian may provide consolidated recordkeeping services pursuant to which the Custodian reflects on statements securities and other assets not held by, or under the control of, the Custodian ("**Non-Custody Assets**"). Non-Custody Assets shall be designated on Custodian's books as "shares not held" or by other similar characterisation. The Client acknowledges and agrees that it shall have no security entitlement against the Custodian with respect to Non-Custody Assets, that the Custodian shall rely, without independent verification, on information provided by the Client or its designee regarding Non-Custody Assets (including but not limited to positions and market valuations), and that the Custodian shall have no responsibility whatsoever with respect to Non-Custody Assets or the accuracy of any information maintained on the Custodian's books or set forth on account statements concerning Non-Custody Assets.

### 12.2 **Appropriate Action**

The Custodian is hereby authorised and empowered, in its sole discretion, to take any action with respect to an Account that it deems necessary or appropriate in carrying out the purposes of this Agreement.

### 12.3 **Main Establishment of Custodian**

The Client hereby acknowledges and agrees that the Custodian's main establishment is located at its registered office in Brussels.

### 12.4 **Governing Law**

This Agreement and all matters arising from or related to it (whether contractual or non-contractual in nature) shall be governed by and construed in accordance with English law. The English courts shall have exclusive jurisdiction over any actions or proceedings arising directly or indirectly from this Agreement, and the Client hereby submits to the exclusive jurisdiction of such courts. The parties agree, each for the benefit of the other, that the English courts are the most appropriate and convenient courts to deal with any such actions or proceedings and, accordingly, they shall not argue to the contrary.

### 12.5 **Sovereign Immunity**

To the extent that in any jurisdiction the Client may now or hereafter be entitled to claim, for itself or its assets, immunity from suit, execution, attachment (before or after judgment) or other legal process, the Client irrevocably agrees not to claim, and it hereby waives, such immunity.

### 12.6 **Notices**

Notices shall be in writing and shall be addressed to the Custodian or the Client at the address set forth on the signature page or such other address as either Party may designate in writing to the other. All notices shall be effective upon receipt.

### 12.7 **Entire Agreement**

This Agreement and any related fee agreement constitute the entire agreement with respect to the matters dealt with herein, and supersede all previous agreements, whether oral or written, and documents with respect to such matters.

### 12.8 **Third Party Rights**



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A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

### 12.9 Conditions Precedent

In the event the Client has not provided to the Custodian all authorisations and documentation required by law or this Agreement, the Custodian may suspend the commencement of the performance of its obligations and the provisions of its services under this Agreement, and/or may elect to terminate this Agreement whereupon this Agreement shall have no further effect and all liabilities and obligations of the Custodian shall cease immediately.

### 12.10 Execution in Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and said counterparts when taken together shall constitute but one and the same instrument and may be sufficiently evidenced by one set of counterparts.

### 12.11 Confidentiality

Subject to clauses 7.6 and 7.7, the Parties will at all times respect the confidentiality of this Agreement and any arrangements or agreements made or entered into in connection with this Agreement and will not disclose to any other person any information acquired as a result of or pursuant to this Agreement unless required to do so by law (including the laws governing the issuers of, or governing, the Securities), a regulatory authority, revenue authority, governmental body or an order of a court or regulatory authority, a stock exchange or as otherwise agreed.

### 12.12 Complaints

Any complaints relating to the performance of the Custodian's obligations under this Agreement should be addressed to the Chief Executive Officer.

### 12.13 Waiver; Invalidity

The waiver of or failure or delay by either party in exercising any right or remedy hereunder shall not preclude or inhibit the subsequent exercise of such right or remedy. No single or partial exercise of a right or remedy provided by this Agreement or by law prevents further exercise of the right or remedy or the exercise of another right or remedy. The invalidity, illegality or unenforceability of any provision of this Agreement shall not affect the validity, legality or enforceability of any other provision; and if any provision is held to be unenforceable as a matter of law, the other provisions shall remain in full force and effect. The rights and remedies contained in this Agreement are cumulative and not exclusive of rights or remedies provided by law.

### 12.14 Deposit Protection

As required by law, the Custodian participates in the Belgian deposit and investor protection scheme via the Protection Fund for Deposits and Financial Instruments. Among the protection measures is the deposit reimbursement guarantee that is triggered in the event of a default of a member of the protection scheme. This guarantee covers deposits (in EEA currencies) placed by private individuals, associations and small and medium-sized enterprises, up to a maximum of €100,000. The protection scheme also provides for indemnification up to a maximum of €20,000 by way of cover for securities which the member of the protection



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scheme holds for the account of a customer and which it would be unable to return in the event of the member's default. Among those excluded from the protection scheme are governments and their institutions, financial establishments including credit institutions and investment firms, institutional investors, major corporations and persons associated with the institution or the defaulting enterprise in various capacities (directors, representatives, administrators, associated companies, etc.) or which have contributed to its default as a result of their own actions. Further details are available from the Protection Fund for Deposits and Financial Instruments (see [www.protectionfund.be](http://www.protectionfund.be)).



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## SCHEDULE A

### FEES

Refer to the Bank of New York Global Securities fee schedule for Capita Trust Company (Jersey) Ltd.



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## SCHEDULE B

### INVESTMENT MANAGERS

#### STANDARD NOTICE APPOINTMENT LETTER

*[to be typed on Client's headed paper]*

#### LETTER OF APPOINTMENT OF INVESTMENT MANAGER

We refer to the Global Custody Agreement between us dated \_\_\_\_\_ (the "Global Custody Agreement"). We hereby advise you that, for the account(s) listed below, we have duly authorised the indicated investment manager(s) (each, an "Investment Manager") to act as our agent for the purposes of the Global Custody Agreement, including:

- (a) delivering instructions to you under the terms of the Global Custody Agreement ("Instructions"); and
- (b) buying and selling foreign currency (on a spot and forward basis) and options to buy and sell foreign currency ("FX Transactions").

FX Transactions, and any other transactions carried out (or to be carried out) in accordance with Instructions, are referred to herein as "Transactions".

You are hereby instructed and authorised to accept and carry out Instructions received from an Investment Manager (who may act by its officers and employees) to the same extent as if such Instructions were given by us.

**Investment Manager**

**Account Title/Number**

...

...

We hereby confirm that all actions that you may take in reliance upon this Letter of Appointment (whether you are acting as custodian or counterparty) shall be binding upon us and upon any Beneficial Owner(s) (as hereinafter defined).

We represent to you that, where securities or rights to funds held in the accounts under the terms of the Global Custody Agreement are owned beneficially by any third-parties ("Beneficial Owners"), and not by us, we have taken any steps required by applicable law in order to give us legal authority (and that we have such authority) to engage in Transactions on behalf of Beneficial Owners. We also confirm that all Transactions entered into under the terms of this Letter of Appointment will be binding on us and, where relevant, upon Beneficial Owner(s).

We agree to accept responsibility (and we will procure that the Investment Manager accepts similar responsibility) for the safekeeping of any testkeys, identification codes or other security devices which you provide to us or to the Investment Manager.

We undertake to notify you if we revoke the authorisation of any Investment Manager, such notification to be effective on the business day following the day on which you receive it. We understand and accept that any Instruction you receive before any such revocation becomes effective will be processed in accordance with the terms of the Global Custody Agreement.



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The terms of this Letter of Appointment supersede any previous appointment of authorised agents which we may have issued to you.

This Letter of Appointment shall be governed by, and construed in accordance with, the governing law of the Global Custody Agreement.

In consideration of your continuing to provide services to us under the terms of the Global Custody Agreement (including carrying out Transactions) this Letter of Appointment is signed by an authorised signatory whose name appears on the latest list of authorised signatories which we have provided to you.

---

*Authorised Signatory*

*Date:*





# BNY MELLON

## SCHEDULE C

### CLASS ACTION SERVICE

#### Global Class Actions

#### Terms and Conditions 2009

BNY Mellon Asset Servicing\* ("BNY Mellon") provides global (both US and non US) class action services for its custody and trust clients. These terms and conditions govern such services. Refer to the Class Action Product Guide for a definition of class action services.

#### 1. SETTLEMENT INFORMATION

BNY Mellon will provide class action settlement information to a client or its designee, as advised by the client, upon confirmation of an approved class action settlement or similar litigation event. Clients will be informed if BNY Mellon has received notification and confirmed the approved settlement with a claims administrator or similar entity. Information will be sent by a method agreed upon with the client using one of BNY Mellon's communication methods.

Settlement information will be generated based solely on historic transaction and position information relating to securities custodied with BNY Mellon and recorded electronically within BNY Mellon's custody records. Information will not be generated on transactions or positions in BNY Mellon's records that reflect assets held outside BNY Mellon. In the event that the electronic information is older than seven years at the date of the settlement notice, BNY Mellon may in its discretion endeavor to recover the information.

BNY Mellon may also provide additional class action case information for informational purposes only.

#### 2. CLAIM FILING

BNY Mellon will file claims if securities are identified by CUSIP, ISIN, SEDOL, or other industry identifiers in a class action settlement notice, claim form or other formal documentation received. If securities are not identified by a specific security identifier, BNY Mellon will use commercially reasonable efforts to identify securities in its records and to file claims for such securities during the class period. BNY Mellon will not provide global class action services on securities recorded in its records using non-industry-recognized securities identifiers.

Unless otherwise directed in writing by a client, BNY Mellon will file a claim as set forth herein where BNY Mellon is permitted under the terms of the claim settlement to sign and submit the claim form on behalf of the client. Claims filed by BNY Mellon will be based solely on available historic transaction and position information recorded electronically within BNY Mellon's custody records.

An incomplete record of positions or transactions may result in insufficient information to file a proper claim, rejection of a claim or less than a full recovery. If the client desires BNY Mellon to include information from other sources, it is the client's responsibility to obtain the information from its records or third parties and to request in writing that BNY Mellon include such information in the claim filing. If a client requests that BNY Mellon file based on information provided by the client or a third party, BNY Mellon will not be responsible for the accuracy of the information.

BNY Mellon may determine in its sole discretion not to file a claim where fees or out of pocket expenses are required to be paid in advance of the claim filing, or where BNY Mellon



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determines that there is a legal risk to BNY Mellon or the client, or where the claim purports to create a conflict of interest between BNY Mellon and its client, or where BNY Mellon determines that it is unable to file on the client's behalf. BNY Mellon will give the client notice that it is not filing a claim.

### 3. SETTLEMENT PROCEEDS

Settlement proceeds received from a claim will be credited to the client's account for which the claim was filed in the same currency as received.

### 4. REPORTING

Status reporting on pending claims and claims paid for a client will be made available through BNY Mellon's proprietary reporting tool. BNY Mellon may also provide additional reporting for informational purposes.

Where BNY Mellon provides recognized loss calculations or pre-settlement proceeds collection calculations, this is provided for informational purposes only. It is not a forecast or indicative of actual loss, and a client should not take action or fail to take action based on such informational reporting.

### 5. FEES

BNY Mellon will charge a claim filing fee as agreed between BNY Mellon and the client. The fee will be charged at the same time the settlement proceeds are credited to the client account with BNY Mellon and will be charged in the same currency as the settlement proceeds.

### 6. CHANGES TO SERVICES

BNY Mellon in its sole discretion may change or terminate the provision of class action services at any time. Class action terms and conditions will be made available as requested, and changes will be communicated to clients.

### 7. EXCLUSIONS

BNY Mellon offers class actions processing as a separate service to its clients. There may be active class actions for which BNY Mellon does not receive information, and BNY Mellon has no obligation to investigate class actions for which it does not receive actual notice. BNY Mellon will not be responsible for any special, consequential or incidental damages in connection with this service, including any action a client, its agents or other third party may or may not take based on information received from BNY Mellon. In no event will BNY Mellon be responsible for any damages that exceed the class action fees actually received by BNY Mellon from the client in the most recent twelve-month period. A client is responsible for ensuring that there is no duplication of claims where BNY Mellon is filing a claim on behalf of the client. If a third party is filing a claim on behalf of a client, the client must instruct BNY Mellon in writing not to participate in such class action on the client's behalf. A duplication of claims could result in both claims being rejected, and BNY Mellon is not responsible if a duplication of claims occurs.

*Former Clients:* If a client terminates BNY Mellon as its custodian or trustee prior to the claim settlement date, BNY Mellon will inform the former client of the settlement using the last known client contact details. It is the former client's responsibility to keep its contact information current. BNY Mellon will file a claim as detailed in Section 2 above unless instructed otherwise in writing by the former client. Upon receipt of settlement proceeds, BNY Mellon will use commercially reasonable efforts to contact the former client for direction as to where to remit the funds. BNY Mellon will deduct a claim filing fee as detailed in Section 5



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above and a remittance processing fee prior to delivering the funds as directed. Former clients are responsible for contacting BNY Mellon to ascertain any changes in BNY Mellon's class action services.

*\*BNY Mellon Asset Servicing provides services through The Bank of New York Mellon and other related companies.  
September 2009*



# BNY MELLON

## SCHEDULE D

### INVESTMENT ACCOUNTING SERVICES

#### 1. APPLICATION AND INTERPRETATION

- (a) In addition to the terms of the Agreement (excluding this schedule D), the following terms shall apply to the investment accounting services that are expressly requested to be provided by the Custodian under the Client's express request in accordance with clause 3.15.
- (b) Unless explicitly indicated otherwise in this schedule D, all defined terms used in this schedule D shall have the same meaning as given to such terms in the Agreement.
- (c) In this schedule, "clause" refers to a clause within the Agreement and "paragraph" refers to a paragraph within this schedule;
- (d) In case of a conflict between the terms of the Agreement (excluding this schedule D) and the terms of this schedule D, the terms of this schedule D shall prevail.

#### 2. SCOPE OF SERVICES TO BE PROVIDED BY THE CUSTODIAN

Subject to paragraph 1, the Custodian agrees to provide to the Client the following investment accounting services:

##### (a) Valuations

- (i) Calculate the value of assets by obtaining securities prices and readily available market quotations from independent pricing sources, subject to any adjustments by the fair valuation information vendors
- (ii) Assist in resolving pricing discrepancies.

##### (b) Securities transactions

Based on information that is provided to the Custodian by or on behalf of the Client, the Custodian will perform the following functions:

- (i) Maintain records of investment.
- (ii) Book corporate action activity upon timely receipt of information and Authorised Instructions in connection with such corporate actions.

##### (c) Reconciliation and cash management

- (i) Reconcile the cash and portfolio investments of the Client with the records of the Client's investment managers
- (ii) Assist in resolving any custody discrepancies

##### (d) Relationship management

- (i) Provide client service support to the Client, including access to day-to-day points of contact and to points of escalation as necessary.



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- (ii) At a minimum, conduct semi-annual meetings with the Client's management to discuss trends, technology and strategic direction.
- (iii) Conduct an annual meeting with the Client's management to discuss the investment accounting services, system functionality and documentation of policies and procedures.

(e) **Books and records**

Maintain accounts, books and financial records of the Client's funds in connection with the investment accounting services.

### 3. OTHER PROVISIONS RELATING TO THE INVESTMENT ACCOUNTING SERVICES

- 3.1 The Client may use the investment accounting services and the data provided to the Client in connection therewith as a trigger for decisions to review a particular investment strategy, but the investment accounting services and the data provided in connection therewith do not constitute in any way investment advice.
- 3.2 The Parties agree that third party information providers will not be deemed to be subcontractors for the purposes of this schedule.
- 3.3 The Client shall, in each case as soon as reasonably practical, provide the Client with all information and assistance as the Custodian may reasonably require for the performance by the Custodian of its obligations to the Client in respect of the investment accounting services.
- 3.4 Each Party shall:
  - (a) notify the other Party as soon as reasonably practicable after it becomes aware of any failure or likely failure to perform any of its obligations in connection with the Custodian providing the investment accounting services; and
  - (b) where permitted to do so, provide the relevant details of any services that a third party provides to it that would impact on the other Party's ability to perform its obligations in connection with the Custodian providing the investment accounting services.
- 3.5 The Custodian shall not be responsible for the accuracy of prices, quotes, data, and information provided to it by any third party whether or not transmitted to the Client. In particular, the Custodian shall not be liable to the Client for any Loss arising as a result of the Custodian placing reliance on, or any error or discrepancy in, and utilising, any price or valuation of any financial instrument provided to the Custodian.

### 4. INTELLECTUAL PROPERTY

- 4.1 All intellectual property rights belonging to a Party prior to the date of this Agreement shall remain vested in that Party. For the avoidance of doubt, any intellectual property rights pertaining to data processed by the Custodian on behalf of the Client in connection with the Custodian performing the investment accounting services shall remain vested in the Client.
- 4.2 As agreed between the Custodian and the Client, the Custodian shall own all intellectual property rights created by the Custodian or BNY Mellon Affiliates and subcontractors in the course of performing its obligations in connection with the Custodian providing the investment accounting services. The Client acknowledges that this Agreement shall not operate to transfer any intellectual property rights to the Client, including any intellectual property rights in relation to the computer systems, computer software or administration processes of the



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Custodian, the BNY Mellon Affiliates or subcontractors, whether or not the Client has contributed, in whole or in part, to the cost of creation of those intellectual property rights.

- 4.3 The Custodian grants to the Client (or, after written consent from the Custodian, its authorised representative) a royalty-free, non-exclusive, irrevocable, non-transferable, licence to use the Custodian's intellectual property rights to the extent necessary to receive the investment accounting services and to perform its obligations in connection with the Custodian providing the investment accounting services.
- 4.4 The Client grants to the Custodian a royalty-free, non-exclusive, irrevocable, non transferable licence to use the Client's intellectual property rights and the Client's client data to the extent necessary to provide the investment accounting services and to perform its obligations in connection with the Custodian providing the investment accounting services. The Custodian may sub-license its rights under this paragraph to BNY Mellon Affiliates and its subcontractors to the extent necessary for the provision of the investment accounting services.
- 4.5 The Parties agree not to use and not to cause the use of the name and of the logo of the other Party in any document, publication or publicity material, without the prior written consent of the other Party, which consent may be given generally in respect of agreed wording to be included in an agreed list of documents and which consent shall not be unreasonably withheld or delayed.

### 5. EMPLOYEES

#### 5.1 DEFINITIONS

In this paragraph 5, unless the context otherwise requires:

**"Additional Services"** means any services that the Custodian may agree to provide to the Client after the Service Commencement Date that are in addition to the Services;

**"Acquired Rights Directive"** means Directive 2001/23/EC of 12 March 2001 of the Council of the European Union;

**"ARD Legislation"** means any legislation in any jurisdiction outside the United Kingdom that implements the Acquired Rights Directive or is otherwise equivalent to the Transfer Regulations;

**"Affiliate"** means a company's subsidiary or holding company or any subsidiary of any such holding company (as such terms are defined in the Companies Act 2006) and in the case of the Custodian, includes any BNY Mellon Affiliate;

**"Client Employee"** means any Employee of the Client or any of its Affiliates;

**"Client Transfer Notification"** has the meaning specified in paragraph 5.2(a)(i);

**"Custodian Transfer Notification"** has the meaning specified in paragraph 5.1(b)(i);

**"Custodian Employee"** means any Employee of the Custodian or any of its Affiliates;

**"Employee"** means each employee and officer;

**"End Date"** has the meaning specified in paragraph 5.3(a);

**"Previous Provider"** means, the previous provider(s) of the Services (including any of its Affiliates or subcontractors) other than the Custodian or its Affiliates;



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**"Previous Provider Employee"** means any Employee of a Previous Provider;

**"Service Commencement Date"** means \_\_\_\_\_, being the day on which the investment accounting services will first commence to be provided by the Custodian;

**"Services"** means all the investment accounting services as set out in this schedule D that will be provided by the Custodian;

**"Services Employee"** means a Custodian Employee who is assigned to the Services;

**"Subcontractor"** means any subcontractor to the Client or a Previous Provider;

**"Subcontractor Employee"** means Employees of any Subcontractor;

**"Successor Provider"** means a Third Party (other than an Affiliate of the Custodian) who is appointed by the Client to provide all or some of the Services in place of the Custodian;

**"Third Party"** means any person or entity which is not a Party; and

**"Transfer Regulations"** means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

### 5.1 Application of the Transfer Regulations on the Service Commencement Date or upon commencement of Additional Services

- (a) If the Custodian or another BNY Mellon Affiliate was not providing to the Client the Services immediately prior to the Service Commencement Date, the Client hereby warrants and represents that there are no Client Employees, Previous Provider Employees or Subcontractor Employees who are or who will be assigned to the provision of the Services immediately prior to the Service Commencement Date. If the Custodian or another BNY Mellon Affiliate was providing to the Client the Services immediately prior to the Service Commencement Date, the Parties agree that the only persons who will be assigned to the Services immediately prior to the Service Commencement Date are Services Employees.
- (b) If any contract of employment (including any rights, powers, duties and liabilities under or in connection with any such contract) of any person is found or alleged to have effect pursuant to the Transfer Regulations or any ARD Legislation on or after the Service Commencement Date (including, but not limited to, in relation to the commencement of any Additional Services) as if it was a contract of employment originally made with the Custodian or one of its Affiliates:
  - (i) the Custodian will notify the Client in writing as soon as reasonably practicable of such finding or allegation (the "**Custodian Transfer Notification**");
  - (ii) the Client (in consultation with the Custodian) will, within 10 Business Days of the date of the Custodian Transfer Notification, make or procure that the relevant Affiliate of the Client, Previous Provider or Subcontractor will make to that person an offer in writing to employ him or her under a new contract of employment with the Client (or the Affiliate of the Client, Previous Provider or Subcontractor which employed the person immediately before the Service Commencement Date), to take effect on the termination referred to below; and



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- (iii) that offer of employment will be on terms and conditions which, when taken as a whole, do not materially differ from the terms and conditions of employment of that person immediately before the Service Commencement Date.

Upon that offer being made, or (if earlier) at any time after the expiry of 10 Business Days from the date of the Custodian Transfer Notification, the Custodian or the Affiliate of the Custodian that is deemed to be the person's employer shall terminate the employment of the person concerned and (subject to such termination being effected within 6 months of the Service Commencement Date or the commencement of the Additional Services (whichever may be applicable) in accordance with the applicable contractual terms) the Client will indemnify the Custodian and/or its Affiliate against any Losses from time to time made, suffered or incurred by it as a direct or indirect result of (1) the employment of such person from the Service Commencement Date or the date of commencement of the Additional Services (whichever may be applicable) until such termination, (2) the termination of such employment, and (3) any act or omission of the Client, any of its Affiliates, a Previous Provider or a Subcontractor prior to the Service Commencement Date or the date of commencement of the Additional Services (whichever may be applicable) arising out of or relating to the employment of such person.

- (c) The Client will indemnify the Custodian and its Affiliates and keep them indemnified against any Losses from time to time made, suffered or incurred by any of them as a result of any allegation or finding that the commencement of the provision of any of the Services or any Additional Services by the Custodian and/or its Affiliates constitutes a relevant transfer for the purposes of the Transfer Regulations or any ARD Legislation and such Losses are not covered in paragraph 5.2(b).

### 5.2 Termination of any of the Services or of the Agreement

- (a) If any contract of employment (including any rights, powers, duties and liabilities under or in connection with any such contract) of any Custodian Employee is found or alleged to have effect pursuant to the Transfer Regulations or any ARD Legislation on or after the termination of this Agreement or termination of any of the Services under this Agreement (such termination being the "End Date" for the purposes of this paragraph 5) as if it was a contract of employment originally made with the Client, one of its Affiliates or a Successor Provider:
  - (i) the Client will notify the Custodian in writing as soon as reasonably practicable of such finding or allegation (the "Client Transfer Notification");
  - (ii) the Custodian (in consultation with the Client) will, within 10 Business Days of the date of the Client Transfer Notification, make (or procure that one of its Affiliates makes) to that person an offer in writing to employ him or her under a new contract of employment with the Custodian (or its Affiliate which employed the person immediately before the End Date), to take effect on the termination referred to below; and
  - (iii) that offer of employment will be on terms and conditions which, when taken as a whole, do not materially differ from the terms and conditions of employment of that person immediately before the End Date.

Upon that offer being made, or (if earlier) at any time after the expiry of 10 Business Days from the Client Transfer Notification, the Client, its Affiliate or the Successor Provider shall terminate the employment of the person concerned and (subject to such termination being effected in accordance with the applicable contractual terms within 6 months of the End Date) the Custodian will indemnify the Client against any





## BNY MELLON

Losses from time to time made, suffered or incurred by it as a direct or indirect result of (1) the employment of such person from the End Date until such termination, (2) the termination of such employment, and (3) any act or omission of the Custodian or any of its Affiliates prior to the End Date arising out of or relating to the employment of such person.

- (b) The Custodian will indemnify the Client, its Affiliates and any Successor Provider and keep them indemnified against any Losses from time to time made, suffered or incurred by any of them as a result of any allegation or finding that the termination of the provision of any of the Services or any Additional Services by the Custodian and/or its Affiliates constitutes a relevant transfer for the purposes of the Transfer Regulations or any ARD Legislation and such Losses are not covered in paragraph 5.3(a).

### 5.3 **Non-solicitation of Services Employees**

Without prejudice to the obligations contained in paragraph 5.3(a) above, the Client undertakes that (other than with the prior written consent of the Custodian) it will not and will procure that its Affiliates will not during the course of this Agreement and for 6 months after its termination, directly or indirectly solicit, entice, induce or encourage (whether directly or through a Third Party) a Services Employee to leave or seek to leave his or her position with the Custodian or any of its Affiliates for the purpose of being involved in or concerned with the supply of services that are the same as or similar to the Services, regardless of whether or not that Services Employee acts in breach of his or her contract of employment with the Custodian or its Affiliate by so doing.



# BNY MELLON

## EXECUTION:

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

**CAPITA TRUST COMPANY (JERSEY)  
LIMITED**

**THE BANK OF NEW YORK MELLON SA/NV,  
LONDON BRANCH**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Address for notices:

Address for notices:

Capita Trust Company (Jersey) Limited

The Bank of New York Mellon SA/NV, London  
Branch

Attention: \_\_\_\_\_  
12 Castle Street,  
St Helier,  
Jersey,  
JE2 3RT

Attention: \_\_\_\_\_  
The Bank of New York Mellon Centre  
160 Queen Victoria Street  
London EC4V 4LA  
United Kingdom



# BNY MELLON

## SIGNATURE CERTIFICATE

I hereby certify to The Bank of New York Mellon SA/NV, London Branch that I am the \_\_\_\_\_ of \_\_\_\_\_ (the "Company"), \_\_\_\_\_, and that, as such, I am duly authorised to execute this Certificate on behalf of the Company, and further certify that each of the following persons, as of the date hereof, is a duly elected, qualified and acting officer of the Company, holding the office of the Company set opposite his name below and that the signature of each such person appearing opposite such person's name below is such person's own true signature:

| Name | Office      | Signature |
|------|-------------|-----------|
|      | Director    |           |
|      | [Secretary] |           |

Signed this \_\_\_\_\_, 201

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Capacity:



# BNY MELLON

## CORPORATE RESOLUTION *(where applicable or required)*

I hereby certify to The Bank of New York Mellon SA/NV, London Branch that the Board of Directors of \_\_\_\_\_, a company registered under the laws of \_\_\_\_\_, duly adopted the following resolutions on the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_ and that such resolutions are in full force and effect:

RESOLVED that any \_\_\_\_\_ of the following officers, employees or agents of this company, acting (alone)(jointly), be and hereby (is)(are) authorised and empowered to enter into a global custody agreement with The Bank of New York Mellon SA/NV, London Branch substantially in the form attached hereto with such changes thereto as the person executing the same shall deem necessary or desirable, the execution of such agreement by such person to be conclusive evidence of such approval.

Name Title

and RESOLVED that any \_\_\_\_\_ of the following persons, acting (alone)(jointly), be and (is)(are) hereby authorised from time to time to designate in writing to The Bank of New York Mellon SA/NV, London Branch those officers, employees and other agents of this company authorised to issue instructions under such agreement, including, without limitation, in relation to the deposit or withdrawal of cash and the deposit, withdrawal, purchase or sale of securities and other property without limitation as to price, items or conditions and otherwise to deal therewith, all pursuant to the provisions of such global custody agreement:

Name Title

and RESOLVED that notice of any change in these resolutions be communicated in writing to The Bank of New York Mellon SA/NV, London Branch and, until The Bank of New York Mellon SA/NV, London Branch has actually received such notice, it is authorised to act pursuant to these resolutions.

IN WITNESS WHEREOF, I have hereunto set my hand as secretary of said corporation and affixed the corporate seal this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_

(CORPORATE SEAL)

\_\_\_\_\_  
Secretary