

DATED 2 JULY 2019

APSLEY FUND ICAV

AND

OPTIMA FUND MANAGEMENT LLC

AND

FWM ACQUISTION, LLC

AMENDED AND RESTATED INVESTMENT MANAGEMENT AGREEMENT

in respect of

APSLEY FUND ICAV

INDEX

SECTION	PAGE
1. INTERPRETATION.....	3
2. RELEASE AND NOVATION OF OBLIGATIONS AND ASSUMPTION OF BENEFITS.....	9
3. APPOINTMENT AND AUTHORITY OF THE INVESTMENT MANAGER	10
4. INVESTMENT MANAGEMENT SERVICES.....	11
5. REMUNERATION OF THE INVESTMENT MANAGER.....	15
6. PROPER INSTRUCTIONS.....	16
7. LIABILITY OF THE INVESTMENT MANAGER.....	17
8. REPRESENTATIONS AND WARRANTIES.....	18
9. CONFLICTS OF INTEREST.....	19
10. DURATION AND TERMINATION.....	21
11. FORCE MAJEURE	23
12. CONFIDENTIALITY	23
13. CYBER SECURITY	23
14. RIGHT TO USE DATA PROCESSING RECORDS.....	24
15. GENERAL PROVISIONS	26
STANDARD CONTRACTUAL CLAUSES	32
ANNEX I TO THE STANDARD CONTRACTUAL CLAUSES	39
APPENDIX C APPLICATION OF THE EMIR REGULATIONS	41

THIS AMENDED AND RESTATED AGREEMENT is made on 2 July 2019.

BETWEEN

- (1) **APSLEY FUND ICAV**, an umbrella fund with segregated liability between sub-funds registered in Ireland under registration number C145294 and having its registered office at The Exchange, George's Dock, IFSC, Dublin 1, Ireland (the "**ICAV**");

AND

- (2) **OPTIMA FUND MANAGEMENT LLC**, a Delaware limited liability company whose offices are located at 10 East 53rd Street, New York, NY 10022, United States of America (the "**Outgoing Investment Manager**");

AND

- (3) **FWM ACQUISITION, LLC**, a Delaware limited liability company whose offices are located at 767 Fifth Avenue, New York, New York 10153, the United States of America (the "**Investment Manager**").

WHEREAS

- A. The Investment Manager is an SEC registered investment advisor.
- B. The ICAV is an open-ended umbrella Irish collective asset-management vehicle with segregated liability between sub-funds registered in Ireland under the Irish Collective Asset-management Vehicles Act 2015 and for which an application has been made for authorisation by the Central Bank of Ireland pursuant to the Regulations.
- C. The ICAV appointed Optima to provide the ICAV with discretionary investment management and advisory services in an investment management agreement dated 12 April 2016 (the "**Original Agreement**").
- D. The ICAV, the Outgoing Investment Manager and the Investment Manager wish to amend and restate the Original Agreement to remove the Outgoing Investment Manager as a party to the Amended and Restated Agreement and to appoint the Investment Manager to provide discretionary investment management and advisory services to the sub funds of the ICAV listed on Appendix A (each, a "**Fund**"), as may be amended from time to time, through this Amended and Restated Agreement.
- E. The Investment Manager wishes to agree to such appointment as investment manager of the ICAV, on the terms and subject to the conditions set out herein.
- F. The Outgoing Investment Manager desires to transfer by novation to the Investment Manager all of its rights, duties, liabilities and obligations under the Original Agreement with effect from 3.00pm Irish time on 1 July 2019, or such other time and date as may be agreed in writing between the Parties (the "**Effective Time**") and the Investment Manager wishes to be substituted as a party to the Original Agreement in place of the Outgoing Investment Manager and has agreed to accept such transfer by novation of such rights duties, liabilities and obligations and to perform all obligations under the Original Agreement as amended by this Agreement subject to the terms and conditions set out herein with effect from the Effective Time.

NOW IT IS HEREBY AGREED by and between the parties as follows:

1. INTERPRETATION

1.1 Definitions

In this Agreement including the Recitals except where the context otherwise requires the following terms have the meaning assigned to them:

"Administrator"	means Northern Trust International Fund Administration Services (Ireland) Limited or such other company as may from time to time be appointed in accordance with the requirements of the Central Bank to provide administration and related services to the ICAV in Ireland;
"Administration Agreement"	the administration agreement between the ICAV and the Administrator dated on or about this date whereby the Administrator was appointed to provide administration, accounting, registration and transfer agency services to the ICAV, as may be amended from time to time;
"Auditors"	such firm of registered auditors as may from time to time be appointed as auditors to the ICAV;
"Board"	the board of directors of the ICAV as constituted from time to time and any duly appointed and constituted committee thereof;
"Business Day"	each Monday, Tuesday, Wednesday, Thursday and Friday that is not a day on which banking institutions located in New York City, New York, United States are authorized or obligated by law or executed order to close;
"CCP"	a central counterparty that has been approved to act in such capacity by a relevant authority under the EMIR Regulations;
"Central Bank"	the Central Bank of Ireland or any successor regulatory authority with responsibility for authorising and supervising the ICAV;
"Central Bank Regulations"	the Central Bank (Supervision and Enforcement) Act 2013 (section 48(1)) (Undertakings for Collective Investment in Transferable Securities) Regulation 2019 as amended, supplemented, consolidated or otherwise modified from time to time;
"Class"	means a particular class of Shares in a Fund;
"Commencement Date"	the date of this Agreement;
"Common Data"	the data provided to a Trade Repository in respect of the ICAV in order to complete the data entry fields listed at table 2 of the EMIR Reporting Regulations;
"Confidential Information"	any information relating to the organisation, finances, business, transactions, portfolios or affairs of the ICAV, the Fund or any of the parties hereto or any of their affiliates as the case may be;
"Counterparty Data"	the data provided to a Trade Repository in respect of the ICAV in order to complete the data entry fields listed at table 1 of the EMIR Reporting Regulations;
"Data Controller"	has the meaning given to this term in the Data Protection

	Legislation;
"Data Breach"	any failure to meet the requirements of the Data Protection Legislation, including any unlawful disclosure or misuse of Personal Data.
"Data Processor"	has the meaning given to this term in the Data Protection Legislation;
"Data Protection Act"	the Irish Data Protection Acts 1988 to 2018 as amended, modified, or otherwise consolidated from time to time;
"Data Protection Legislation"	means the Irish Data Protection Act, 1988 as amended by the Data Protection (Amendment) Act, 2003 (as may be amended or re-enacted) from time to time, the EU General Data Protection Regulation, Regulation (EU) 2016/679, the effective date of which is 25th May 2018, the European Union Electronic Communications Data Protection Directives (2002/58/EC and 2009/136/EC), the European Union (Electronic Communications Networks Services) (Privacy and Electronic Communications) Regulations 2011 (SI 336/2011) and all other applicable laws and regulations of any country from time to time relating to processing of personal data and data privacy or analogous laws or regulations under other relevant jurisdiction including any jurisdiction in or from which the ICAV receives any services;
"Data Subject"	has the meaning given to that term in the Data Protection Act;
"Delete"	for the purposes of this Agreement means removing all Personal Data which is electronically held in such a way that it can never be retrieved from the device on which it is held.
"Depository"	Northern Trust Fiduciary Services (Ireland) Limited or such other company in Ireland as may from time to time be appointed as Depository of all the assets of the ICAV with the prior approval of the Central Bank;
"Derivative"	a "derivative contract" as defined in Article 2(5) of EMIR;
"EMIR"	means Regulation (EU) No. 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, as amended or supplemented from time to time;
"EMIR Regulations"	EMIR, each Commission Delegated Regulation supplementing the EMIR and each Commission Implementing Regulation implementing technical standards according to EMIR, including any such regulations that are not yet in force on the date of this Agreement, and all as may be amended from time to time;
"EMIR Reporting Regulation"	the Commission Delegated Regulation (EU) No 148/2013;
"ESMA"	the European Securities and Markets Authority;
"ESMA Remuneration"	any applicable guidelines issued by ESMA on sound

Guidelines"	remuneration policies as amended, supplemented, consolidated or otherwise modified from time to time;
"Fund"	means the sub-funds listed on Appendix A, each a separate portfolio of assets established by the ICAV with the approval of the Central Bank and invested in accordance with the Investment Policy applicable to such sub-fund;
"GDPR"	the EU General Data Protection Regulation, Regulation (EU) 2016/679, the effective date of which is 25th May 2018;
"ICAV"	Apsley Fund ICAV;
"Instrument of Incorporation"	the instrument of incorporation for the time being in force and as may be modified from time to time;
"Investment Advisers Act"	means the US Investment Advisers Act of 1940, as amended;
"Investment Management Fee"	the investment management and/or performance fees payable to the Investment Manager in accordance with Clause 4 hereof;
"Investment Policy"	the investment objective and policies of the Fund as described in the Prospectus;
"Investment"	any investment or other asset of any description in which the ICAV or any Fund is entitled to trade or invest in accordance with the provisions of the Instrument of Incorporation and/or the Prospectus;
"Investment Research"	<p>means research material or services:</p> <ul style="list-style-type: none"> (i) concerning one or several financial instruments or other assets; or (ii) concerning the issuers or potential issuers of financial instruments; or (iii) closely related to a specific industry or market such that it informs views on financial instruments, assets or issuers within that sector, <p>and which explicitly or implicitly recommends or suggests an investment strategy and provides a substantiated opinion as to the present or future value or price of such instruments or assets, or otherwise contains analysis and original insights and reaches conclusions based on new or existing information that could be used to inform an investment strategy or be capable of adding value to a firm's decisions on behalf of clients;</p>
"Laws"	means the laws of Ireland, including the Regulations, the Central Bank Regulations, the Act, and any other applicable laws and regulations for the time being in force including where relevant MiFID any applicable implementing laws or regulations, the applicable notices, codes of conduct and client asset requirements issued by

the Central Bank or any other applicable regulatory authority from time to time;

"MiFID"

means:

- (i) the revised Markets in Financial Instruments Directive (Directive 2014/65/EU),
- (ii) the Markets in Financial Instruments Regulation (Regulation (EU) No 600/2014), and
- (iii) any secondary legislation, rules, regulations and procedures made pursuant thereto,

as may be amended, supplemented, consolidated or otherwise modified from time to time;

"NAV" or "Net Asset Value"

the net asset value of each of the Shares or attributable to a Class (as appropriate) calculated as described in the Prospectus;

"Personal Data"

has the meaning given to that term in the Data Protection Act;

"Proper Instructions"

instructions given in accordance with the provisions of Clause 5 hereof;

"Prospectus"

the prospectus of the ICAV and the supplement relating to the relevant Fund issued in relation to the offer for sale of Shares and, where the context so admits or requires, as same may be amended or supplemented from time to time in accordance with the requirements of the Central Bank;

"Regulations"

means the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 2011 transposing the UCITS Directive into Irish law, and any additional regulations or statutory instrument transposing the UCITS V Directive into Irish law, each as amended, supplemented, consolidated or otherwise modified from time to time;

"SEC"

means The Securities Exchange Commission of the United States of America;

"Securities Financing Transactions Regulations"

means Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012;

"Securitisation Regulation"

means Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012, as may be amended, consolidated or replaced from time

		to time;
"Share" or "Shares"		a share or shares of any class in the capital of the ICAV issued in respect of a Fund;
"Shareholders"		the holders of Shares;
"Standard Contractual Clauses"		means the contractual clauses set out in Annex 1, amended as indicated (in square brackets and italics) in that Annex;
"Trade Repository"		a trade repository that has been registered by the European Securities and Markets Authority in accordance with the EMIR Regulations;
"Trading Counterparties"		any one of the various prime brokers, futures commission merchants, OTC counterparties, repurchase counterparties or any other counterparty with whom the ICAV, the Investment Manager or the Investment Manager acting on behalf of the ICAV may enter into transactions;
"Trading Venue"		shall have the meaning given to it in MiFID;
"UCITS Directive"		means Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009, as amended, supplemented, consolidated or otherwise modified from time to time;
"UCITS V Directive"		means Directive 2014/91/EU, amending the UCITS Directive as amended, supplemented, consolidated or otherwise modified from time to time;
"US"		the United States of America and its territories and possessions, including the States and the District of Columbia;
"US Dollars"		US Dollars, being the lawful currency of the US.
"Valuation Point"		shall have the meaning specified in the Prospectus.

1.2 Further Definitions

In this Agreement:

- (a) any reference to the singular includes reference to the plural and vice versa and reference to the masculine gender includes reference to the feminine and neuter genders and vice versa;
- (b) unless otherwise expressly stated to the contrary herein, any reference to any clause, sub-clause, paragraph or sub-paragraph (as the case may be) shall be deemed to be a reference to the relevant clause, sub-clause, paragraph or sub-paragraph (as the case may be) of or to this Agreement;
- (c) any reference to persons includes, as the context may require, reference to any legal person and to any body corporate, unincorporated association, partnership, limited partnership, trust, unit trust, mutual fund or other collective investment scheme and the manager or trustee of any such collective investment scheme;

- (d) the headings are inserted for convenience of reference only and shall not in any way form part of or affect or be taken into account in the construction or interpretation of any provision of this Agreement or the Appendices hereto; and
- (e) words such as "hereunder", "hereto", "hereof" and "herein" and other words commencing with "here" and shall, unless otherwise expressly stated to the contrary herein, refer to the particular clause, sub-clause, paragraph, sub-paragraph or Appendix of or to this Agreement or, as the context may require, to the whole of this Agreement.

2. RELEASE AND NOVATION OF OBLIGATIONS AND ASSUMPTION OF BENEFITS

2.1 As and with effect from the Effective Time and subject to the terms and conditions contained herein, the Outgoing Investment Manager shall retire and the Investment Manager shall take its place and accordingly each of the following shall simultaneously occur:

- (a) subject to Clause 2.3 hereof, the ICAV releases and discharges the Outgoing Investment Manager from each of its obligations, duties and liabilities (express or implied) to the ICAV, respectively, under the Original Agreement, arising on or after the Effective Time, provided that such release and discharge shall not affect any obligations, duties or liabilities that are outstanding or due to be performed by the Outgoing Investment Manager pursuant to the Original Agreement, before the Effective Time. All such obligations, duties and liabilities shall be performed by the Outgoing Investment Manager in accordance with the terms of the Original Agreement until they have been finally, unconditionally and irrevocably discharged;
- (b) subject to Clause 2.3 hereof, the Outgoing Investment Manager releases and discharges the ICAV, respectively, from their obligations, duties and liabilities (express or implied) to the Outgoing Investment Manager under the Original Agreement, arising on or after the Effective Time, provided that such release and discharge shall not affect any obligations, duties or liabilities that are outstanding or due to be performed by the ICAV pursuant to the Original Agreement, before the Effective Time. All such obligations, duties and liabilities shall be performed by the ICAV in accordance with the terms of the Original Agreement until they have been finally, unconditionally and irrevocably discharged;
- (c) the Investment Manager shall become a party to the Original Agreement as amended by this Agreement in place of the Outgoing Investment Manager and agrees with the Outgoing Investment Manager and the ICAV, respectively, to assume the rights, obligations and duties of the Outgoing Investment Manager arising on or after the Effective Time under this Amended and Restated Agreement and, subject to Clause 2.3, to assume all liabilities (express or implied) of the Outgoing Investment Manager, arising on or after the Effective Time, under this Amended and Restated Agreement;
- (d) the Outgoing Investment Manager and the ICAV consent to and accept the assumption by the Investment Manager of the Outgoing Investment Manager's rights, obligations, duties and liabilities (express or implied) under the Amended and Restated Agreement arising on or after the Effective Time; and
- (e) the Investment Manager agrees to perform its obligations, duties and liabilities (express or implied) under the Amended and Restated Agreement and to be bound by all the terms and conditions of the Amended and Restated Agreement in every way as if the Investment Manager were named as a party in the Original Agreement as amended by this Agreement in place of the Outgoing Investment Manager with effect from the Effective Time.

2.2 Subject to the provisions of Clause 2.1, each of the Outgoing Investment Manager, the ICAV and the Investment Manager agree that, as and with effect from the Effective Time, the Original Agreement is novated and amended and constitutes an agreement between the Investment Manager and the ICAV in the form of the Amended and Restated Agreement.

- 2.3 Without prejudice to the rights and remedies of the Investment Manager and the ICAV under the Amended and Restated Agreement, the Outgoing Investment Manager and the ICAV agree that each shall have the same rights and remedies against each other pursuant to this Clause 2.3 as each had under the Original Agreement prior to this Amended and Restated Agreement being entered into in respect of any claims, costs, liabilities, damages or expenses arising, suffered or incurred or payments due to each other in respect of or attributable to the period prior to the Effective Time.

3. APPOINTMENT AND AUTHORITY OF THE INVESTMENT MANAGER

- 3.1 The Investment Manager is authorised and regulated as an investment adviser by the SEC.
- 3.2 The ICAV hereby appoints the Investment Manager and the Investment Manager hereby agrees with effect from the Commencement Date to act as an Investment Manager to the Funds listed on Appendix A, with responsibility to the investment, management and realisation of the cash and other assets of each Fund and to act as agent for and on behalf of the ICAV in identifying, selecting, purchasing, acquiring, managing, exchanging and disposing of Investments on behalf of the ICAV and the Fund in accordance with, and in furtherance of, the Investment Policy of the ICAV and each of its Funds on the terms and subject to the provisions hereof.
- 3.3 The appointment of the Investment Manager hereunder shall not be exclusive and the ICAV shall be entitled, with the approval and subject to the requirements of the Central Bank, to appoint such other person or persons as the ICAV deems fit to manage the assets of any other sub funds of the ICAV not listed on Appendix A, or to provide investment advice to the ICAV generally, and the Investment Manager shall co-operate with and perform its duties in conjunction with any such other adviser.
- 3.4 The Investment Manager may perform any of its duties, obligations and responsibilities under this Agreement by or through its directors, officers, servants, employees or agents and shall be entitled to delegate or sub-contract all or any of its functions, powers, discretions, duties and obligations hereunder to any person approved by the ICAV and the Central Bank on such terms and conditions as the Investment Manager, with the consent of the ICAV (which consent shall not be unreasonably withheld), thinks fit, provided that any such delegation or sub-contract shall terminate automatically on termination of this Agreement and provided further that the Investment Manager shall remain responsible and liable for any acts or omissions of any such delegate prior to termination of their appointment as if such acts or omissions were those of the Investment Manager.
- 3.5 All Investments, documents of title or certificates evidencing title to Investments or other assets acquired for the account of each Fund and all cash shall be vested in or deposited with the Depositary or its nominees or otherwise as the Depositary shall direct subject to the applicable provisions of the Regulations. The Investment Manager may arrange for the settlement of transactions through the Depositary but shall otherwise not hold client money or assets on behalf of the Investment Manager.
- 3.6 In accordance with the requirements of the Regulations, the Investment Manager shall ensure that an appropriate remuneration policy will be put in place which is consistent with and promotes sound and effective risk management and does not encourage risk-taking which is inconsistent with the risk profile of the Fund, in a manner that is appropriate and proportionate to the Investment Manager's size, internal organisation and the nature, scope and complexity of its activities (including, without limitation, the size of each Fund relative to the other accounts managed by, and other business activities of, the Investment Manager). This policy will detail identified staff members of the Investment Manager involved in the management of the Fund whose professional activities have a material impact on the risk profile of the Fund.
- 3.7 The remuneration policy of the Investment Manager will provide that where it pays its staff variable remuneration within the meaning of the ESMA Remuneration Guidelines with respect to the management of the Fund, the following requirements will be applied (unless expressly disappplied to the extent permitted under the ESMA Remuneration Guidelines):

- (a) where remuneration relating to the management of the Fund is performance related, the total amount of remuneration is based on a combination of the assessment of the performance of the individual and of the business unit or the Fund and of the overall results of the Investment Manager, and when assessing individual performance, financial as well as non-financial criteria are taken into account;
 - (b) if appropriate, the assessment of performance is set in a multi-year framework appropriate to the life-cycle of the Fund in order to ensure that the assessment process is based on longer term performance and that the actual payment of performance-based components of remuneration is spread over a period which takes account of the Fund's redemption policy and its investment risks (as set out in the Prospectus);
 - (c) the Investment Manager does not pay guaranteed variable remuneration to the staff responsible for managing the assets of the Fund except in an exceptional case in the context of hiring new staff and is limited to the first year;
 - (d) payments related to the early termination of a contract reflect performance achieved over time and are designed in a way that does not reward failure; and
 - (e) the measurement of performance used to calculate variable remuneration components or pools of variable remuneration components relating to the management of the Fund includes a comprehensive adjustment mechanism to integrate all relevant types of current and future risks.
- 3.8 In accordance with the requirements of the Regulations, the Investment Manager represents and warrants to the ICAV on a continuing basis:
- (a) that its remuneration practices relating to employees involved in the management of the Fund are not structured so as to circumvent the requirements outlined at Clause 3.6 above;
 - (b) that its remuneration policy is to pay all staff involved in the management of the Fund a fixed component representing a sufficiently high proportion of the total remuneration of the individual to allow the Investment Manager to operate a fully flexible policy, with the possibility of not paying any variable component; and
 - (c) that its remuneration policy is in line with the business strategy, objectives, values and long-term interests of the Investment Manager and its clients.
- 3.9 The Investment Manager shall provide a copy of its written remuneration policy, if any, to the ICAV upon request. The Investment Manager shall provide in a timely manner all necessary information to the Investment Manager as is reasonably required and requested by the Investment Manager to comply with its obligations pursuant to the Regulations, the Central Bank Regulations and the ESMA Remuneration Guidelines.
- 4. INVESTMENT MANAGEMENT SERVICES**
- 4.1 Subject to the Investment Manager's assessment of suitability the Investment Manager shall provide such discretionary investment management and investment advisory services to the ICAV in respect of each of its Funds as the ICAV may from time to time require in connection with the investment of the cash and other assets of each Fund and the purchase, acquisition, holding, exchange, variation, transfer, sale or disposal thereof and in particular, but without limiting the generality of the foregoing, the Investment Manager, taking all reasonable steps to obtain best execution, shall:
- (i) have full power and discretionary authority on behalf and for the account of each Fund to manage and invest cash and other assets of each Fund pursuant to and in accordance with the Investment Policy of such Fund as outlined in the Prospectus. The Investment Manager shall assume that information about the particular financial

circumstances of the ICAV and each Fund are accurate and will have no responsibility to the ICAV if such information changes or becomes inaccurate, unless the ICAV has informed the Investment Manager of such changes, or the Investment Manager ought reasonably to be aware that the information is manifestly out of date, inaccurate or incomplete;

- (ii) enter into any agreement, contract, transaction or arrangement in relation to the purchase, acquisition, holding, exchange, variation, transfer, sale or disposal of any Investments, be it on, or outside of, a regulated market or multilateral trading facility, on behalf of the ICAV and shall have full authority to bind the ICAV or each Fund in connection therewith and to delegate such authority pursuant to Clause 4.4 hereof;
- (iii) commit the ICAV to supplement the funds in the Fund, including borrowing on the ICAV's behalf, subject to any limits set out in the Prospectus;
- (iv) carry out reviews of the investment portfolio of the Fund, quarterly or as the ICAV may from time to time reasonably require;
- (v) prepare such material and provide such information (other than accounts) for inclusion in annual or other reports of the ICAV as the ICAV may from time to time reasonably require including, without limitation, the preparation and submission to the ICAV, at the end of each calendar quarter during the term of this Agreement, of a report detailing the activities and performance of the Investment Manager during the preceding calendar quarter;
- (vi) subject to Clause 4.4 hereof, purchase Investments from or through and sell Investments to or through such persons, brokers or dealers as the Investment Manager shall deem appropriate in order to carry out the Investment Policy;
- (vii) promptly give full and adequate instructions to the Depositary as to deliveries of securities and payments of cash for the account of the Fund provided that such instructions shall reflect the prevailing market practice in relation to delivery of securities and payments of cash;
- (viii) if so required by the ICAV, assist in the valuation of Investments which are not listed, quoted or dealt in on a recognised stock exchange or market;
- (ix) advise the ICAV upon the availability and appropriate source of funds to be utilised in making distributions to Shareholders;
- (x) monitor the Investment Policy and propose to the ICAV any changes thereto which it considers necessary or desirable;
- (xi) determine whether to exercise any and all rights attaching to Investments acquired on behalf of the Fund and advise the ICAV, and the Depositary in relation thereto;
- (xii) advise the ICAV and the Depositary of the manner in which to exercise all rights or discretionary actions in relation to the Fund's Investments including, without limitation, voting rights;
- (xiii) make any necessary market notifications as are required to in relation to the Fund;
- (xiv) act in a manner which the Investment Manager in good faith considers fair and equitable in allocating investment opportunities to the Fund; and
- (xv) shall provide, or make available, to the extent reasonably required by law or legal process, such disclosures, information or reports to regulatory authorities and any Trade Repository or Trading Counterparty (or head office, branch or affiliate thereof) or any entity appointed by the ICAV or the Investment Manager:

- a) as the Investment Manager undertakes to provide or make available in Appendix C in connection with the ICAV's obligations under the EMIR Regulations;
 - b) as the Investment Manager may agree to provide in connection with the ICAV's obligations under the Securities Financing Transactions Regulations;
 - c) as the Investment Manager may agree to provide in connection with the ICAV's obligations under the Securitisation Regulation; and
 - d) as may otherwise be reasonably requested from the Investment Manager by or on behalf of the ICAV.
- 4.2 In carrying out its duties hereunder, the Investment Manager shall comply with all reasonable Proper Instructions and shall have due regard to and comply with:
 - (i) the primary objective of the Investment Policy;
 - (ii) any restrictions for the time being contained in any statements of Investment Policy;
 - (iii) any investment restrictions specified in the Prospectus or from time to time imposed by the Central Bank and notified by or on behalf of the ICAV to the Investment Manager;
 - (iv) the terms of the Prospectus and any other offering circular or other similar document issued by or on behalf of the ICAV but only the extent that such Prospectus, circular or other similar document relates to the Funds;
 - (v) the provisions of the Regulations and any other applicable Laws, regulations and rules in any country in which the Investment Manager invests on behalf of the ICAV; and
 - (vi) the terms of any exchange control consent and any other present or future government or regulatory consents of any relevant jurisdiction in relation to the ICAV and its assets.
- 4.3 The Investment Manager may, subject to compliance with the Prospectus, undertake transactions with or for the ICAV in units or shares in other collective investment undertakings (including unregulated collective investment schemes) the sole object of which is the collective investment in transferable securities of capital raised from the public and which operate on the principle of risk spreading and the units or shares of which are, at the request of the holders, repurchased, redeemed, directly or indirectly, out of the assets of those collective investment undertakings.
- 4.4 In selecting brokers to make purchases and sales for the Fund, the Investment Manager shall select those brokers who provide best execution to the ICAV and the Fund in accordance with the Laws as applicable to the Investment Manager, including as interpreted under Section 28(e) of the US Securities Act of 1934, as amended, and in accordance with the requirements of the Central Bank Regulations. Where the Investment Manager delegates its execution services under a trading agreement, it will be the responsibility of this third party entity to ensure best execution to the ICAV.
- 4.5 The Investment Manager will carry out risk management functions as prescribed in the Central Bank Regulations as detailed in the ICAV's risk management process as approved by the Central Bank.
- 4.6 The Investment Manager shall at any time during business hours permit any duly authorised representative or agent of the ICAV to inspect any and all systems, procedures, records and documents of the Investment Manager insofar as they relate to the provision of investment management services to the ICAV in respect of the Fund hereunder and shall give any such representative or agent all information, explanations or assistance as such representative or

agent may reasonably require and shall procure that any person to whom the Investment Manager has delegated any or all of its functions, powers, discretions, duties and obligations under Clause 3.4 hereof shall also allow such inspections and provide such information, explanations or assistance provided that the reasonable and pre-agreed costs of any such inspections of, or assistance by the Investment Manager or any delegee of the Investment Manager shall be borne by the ICAV and not by the Investment Manager or the Fund and the ICAV shall provide the Investment Manager with reasonable advance notice of any desired inspection or assistance.

- 4.7 In carrying out its duties hereunder, the Investment Manager may with the prior approval of the ICAV, and at the reasonable expense of the ICAV or Fund, obtain and pay for such expert or professional advice or services as may be necessary or desirable for the performance of its duties under this Agreement and in particular, but without prejudice to the generality of the foregoing, the Investment Manager may (with the prior approval of the ICAV) refer any legal question to the ICAV's legal advisers, and may rely and act on any expert or professional opinion or advice, including any legal opinion or advice given by the ICAV's legal advisers, and in the absence of negligence, wilful default, fraud or bad faith, the Investment Manager shall not be responsible for any loss or damage occasioned by its so acting.
- 4.8 Except as set out in the Prospectus, the Investment Policy and in clause 4.2 hereof, there will be no restrictions on the type of investments in which the Fund wishes to invest, or the markets on which it wishes transactions to be executed, or the types of transaction it wishes to undertake provided that it acts at all times in accordance with the requirements of the Central Bank. Except as set out in the Prospectus, and the Investment Policy, there are no restrictions on the value of any one investment or the proportion of the Fund which any one investment or particular type of investment may constitute.
- 4.9 The Investment Manager hereby agrees and represents that it has read and understood the Nature and Risks of Investments Notice in Appendix C, which provides important information and disclosures as to the nature of the risks relative to certain investments.
- 4.10 The ICAV hereby acknowledges that, in granting discretionary management authority over the ICAV and each Fund to the Investment Manager or specifying any restrictions or limits, the Investment Manager is not deemed or imputed and does not purport to be responsible for the ICAV's respective legal or tax position.
- 4.11 The Investment Manager agrees that it will promptly notify the ICAV of any threatened or actual regulatory action that may be taken against it (and its directors, officers, employees and agents) in any jurisdiction, but only to the extent that such action is reasonably likely to have a material adverse impact on the Investment Manager's ability to advise the Fund.
- 4.12 On each day that the Investment Manager effects a purchase or sale of Investments or concludes any transaction which in any way affects the assets or liabilities of each Fund, either directly or indirectly, the Investment Manager shall:
- (a) advise the Administrator, any other relevant agent of each Fund and/or the ICAV by facsimile or computer transmission no later than close of business on the following day, giving details as follows:
 - (i) the name and address of the broker, dealer or agent through whom each transaction is carried out;
 - (ii) the date of each transaction;
 - (iii) the name of the security, asset or liability;
 - (iv) the price or rate at which each transaction is effected;
 - (v) the number of securities or other assets traded; and

- (vi) any other details necessary in order to facilitate the proper recording and valuation of each transaction.
 - (b) in respect of each transaction organise settlement and immediately advise the person responsible for settlement (the "Settlement Agent") by facsimile or computer transmission of all details of the transaction, or confirm the accuracy of such details if such details are provided to the Investment Manager by the Settlement Agent, specifically:
 - (i) the settlement date;
 - (ii) price or rate at which the deal is effected;
 - (iii) commission and stamp duty or other charges incurred;
 - (iv) the total cost of or net receipt from the transaction; and
 - (v) the number of securities or other assets traded.
 - (c) if appropriate, instruct the broker, dealer or other agent to send copies of the relevant confirmation, contract note or other formal documentation to the Settlement Agent, together with any instructions or information necessary to facilitate the settlement of the transaction.
 - (d) instruct the Settlement Agent to make payment against delivery of the securities or other assets and to send copies of the relevant confirmation, contract note or other formal documentation to the Administrator and/or any other relevant agent of the Fund, as appropriate.
 - (e) instruct the broker, dealer or agent effecting such transaction immediately to advise the Administrator, the Actuary and/or any other relevant agent of the Fund, as appropriate, by telex or facsimile or computer transmission of all details of each transaction, specifically:
 - (i) the settlement date;
 - (ii) the price or rate at which the deal is effected;
 - (iii) commission and stamp duty or other charges incurred; and
 - (iv) the total cost of or net receipt from the transaction.
- 4.13 The Investment Manager agrees to maintain all records which are necessary for compliance with MiFID for at least five years from the date of creation of such record (or, where requested by any competent regulatory authority, for a period of up to seven years). All records created pursuant to this Agreement shall be made available on reasonable request to the Investment Manager, the ICAV, and any other person specified by the foregoing including any court or competent regulatory authority.

5. REMUNERATION OF THE INVESTMENT MANAGER

5.1 The parties hereby agree as follows:

- (a) The Investment Manager shall be entitled to the Investment Management Fees as set out in the Prospectus from time to time. The Investment Management Fee shall accrue and be calculated as at each Valuation Point (as defined in the Prospectus) and shall be payable monthly in arrears or as otherwise as set out in the Prospectus.

- (b) The Investment Manager shall pay the fees of any person to whom it has delegated any or all of its functions, powers, discretions, duties and obligations under Clause 3.4 hereof out of its Investment Management Fee.
- 5.2 The Investment Management Fees shall be payable proportionately for any portion of a year and month in which this Agreement terminates or is terminated.
- 5.3 If the determination of the Net Asset Value of the ICAV or any Fund shall be suspended pursuant to the Instrument of Incorporation or to a resolution of the Board, the Investment Management Fee shall be calculated by reference to the Net Asset Value of the ICAV or any Fund on any substitute valuation day agreed between the ICAV and the Investment Manager or, if no such valuation day is agreed, by reference to the Net Asset Value of the ICAV or any Fund on the valuation day immediately preceding such suspension.
- 5.4 In the event of any dispute arising as to the calculation of the Investment Management Fees, the matter shall be referred to the Auditors for determination and their decision shall be that of an expert and not an arbitrator and shall be final and binding upon the parties in the absence of manifest error.
- 5.5 In addition to payment of the Investment Management Fees to the Investment Manager, the ICAV shall be responsible for and shall discharge or reimburse the Investment Manager from the assets of the Fund for all the out-of-pocket costs and expenses suffered or incurred by the Investment Manager (or by any person on its behalf and charged to it) in the performance of its duties hereunder including any expenses incurred by the Investment Manager in relation to the establishment of the ICAV and the obtaining of any regulatory approvals or consents.
- 5.6 Any value added tax applicable to any fees or other amounts payable to the Investment Manager hereunder shall be borne by the ICAV.
- 5.7 The ICAV agrees that any changes made to the Prospectus or any other agreements with any investor in the Fund or the ICAV adversely affecting the Investment Manager or affecting the fees payable to the Investment Manager in accordance with the terms of this Agreement, shall be subject to pre-agreement by the Investment Manager.

6. PROPER INSTRUCTIONS

Any instruction to be given hereunder by the Investment Manager in respect of any of the matters referred to in this Agreement shall be written instructions and signed or purported to be signed by such one or more person or persons as the Investment Manager shall from time to time have authorised to give the particular class of instructions in question and may be provided by such one or more person or persons by email and/or fax. In instances indicated in advance by the Investment Manager, the Investment Manager may also act pursuant to telephonic instructions given by designated persons and such telephonic instructions shall be deemed to be "Proper Instructions" within the meaning of this Clause. Different persons may be authorised to give instructions for different purposes and such persons may also include officers of corporations other than the Investment Manager as so authorised. A certified copy of a resolution of the directors of the Investment Manager may be received and accepted by the Investment Manager 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. The Investment Manager shall have the right to, and shall be fully protected from, accepting and acting upon Proper Instructions that, on their face, appear, without any due diligence, to be provided by authorised person of the Investment Manager. Subject to Clause 7.3, the Fund agrees to assume all risks arising out of the use of electronic or telephonic means to submit Proper Instructions, including without limitation the risk of the Investment Manager acting on unauthorized instructions which appear on their face to be Proper Instructions, and the risk of interception and misuse by third parties.

7. LIABILITY OF THE INVESTMENT MANAGER

- 7.1 The Investment Manager (and its directors, officers, employees and agents) (each, an "Indemnified Person") shall not be liable for any loss or damage arising directly or indirectly out of any act or omission done or suffered by the Indemnified Person in the performance of its duties hereunder unless such loss or damage arose out of or in connection with the negligence, wilful default, bad faith or fraud of or by the Indemnified Person in the performance of its duties hereunder and the ICAV shall from the assets of the relevant Fund indemnify and keep indemnified and hold harmless the Indemnified Person from and against any and all claims, actions, proceedings, damages, losses, liabilities, costs and expenses (including legal fees, professional fees and expenses arising therefrom or incidental thereto) directly or indirectly suffered or incurred by the Indemnified Person in connection with the performance of its duties and/or the exercise of its powers hereunder, in the absence of any such negligence, wilful default, bad faith or fraud.
- 7.2 The Investment Manager shall exercise the due care of a prudent professional investment manager in the performance of its duties hereunder and shall use its best efforts, skill and judgment and all due care in performing its duties and obligations and exercising its rights and authorities hereunder.
- 7.3 Subject and without prejudice to Clause 7.1 the Investment Manager shall be entitled to rely absolutely upon and shall not incur any liability in respect of any action taken or thing suffered in good faith in reliance upon any paper or document believed to be genuine and to have been sealed or signed by the proper parties or be in any way liable for any forged or unauthorised signature or seal affixed to any document and in discharging its duties hereunder the Investment Manager may, in the absence of manifest error, rely without enquiry upon all information supplied to it by or on behalf of the from the assets of the relevant Fund (or any directors, officers, employees or agents). The Investment Manager may accept as sufficient evidence of any instruction, notice or other communication given to it by or on behalf of the ICAV (or any directors, officers, employees or agents) any document or paper signed or purporting to be signed on behalf of the ICAV by such person or persons whose signature the Investment Manager is for the time being authorised to accept.
- 7.4 The Investment Manager shall send to the ICAV and the Board as soon as possible all notices of claims, summonses or writs which it receives from third parties in relation to the affairs of the ICAV and any Fund and no liability of any kind shall be admitted, and no undertaking given, by the Investment Manager nor shall any offer, promise or payment be made or legal expenses incurred by the Investment Manager in relation to any such claim, summons or writ without the written consent of the ICAV which shall be entitled, if it so desires, to take over or nominate another party to take over and conduct the defence of any action or to prosecute any claim for indemnity or damages or otherwise against any third party.
- 7.5 The Investment Manager shall not be required or entitled to take any legal action on behalf of the ICAV or otherwise in respect of its services hereunder other than on such terms as the Investment Manager may in its absolute discretion agree and unless fully indemnified to its reasonable satisfaction for all costs and liabilities in connection therewith.
- 7.6 Subject and without prejudice to Clause 7.1 notwithstanding any other provision of this Agreement, in no circumstances shall the Investment Manager be liable for special, indirect or consequential damages, or for lost profits or loss of business, arising out of or in connection with the performance or non-performance of its duties, or the exercise of its powers, under this Agreement.
- 7.7 For the avoidance of doubt it is hereby agreed and declared that all references in this clause to the Investment Manager shall be deemed to include the directors, officers, employees and agents of the Investment Manager and that any indemnity expressly given to the Investment Manager under this Agreement is given also to each such director, officer, employee and agent and is in addition to and without prejudice to any indemnity allowed by the laws of Ireland.

- 7.8 The Investment Manager shall not be responsible for any acts or omissions of any broker or third party selected to provide services to it in respect of each Fund or the Investments, provided that the Investment Manager shall have acted in good faith and with due care and diligence in its selection, use and monitoring of such broker or third party.

8. REPRESENTATIONS AND WARRANTIES

- 8.1 The Investment Manager hereby represents and warrants to the ICAV that:

- (a) it was formed in and is duly organised and validly existing in Delaware and has full capacity and authority to enter into this Agreement and to perform its obligations and duties and provide the services
- (b) it and has full capacity and authority to enter into this Agreement and to perform its obligations and duties and provide the services required of it under this Agreement;
- (c) this Agreement has been duly and validly authorised, executed and delivered on behalf of the Investment Manager and is a valid and binding Agreement of the Investment Manager enforceable in accordance with its terms;
- (d) the information contained in Recital (A) to this Agreement is true and accurate.
- (e) the Investment Manager acknowledges that (i) this Investment Management Agreement constitutes an arm's length agreement between the Investment Manager and the ICAV; (ii) acknowledges receipt at least 48 hours prior to entering into this Agreement of a copy of the Investment Manager's Form ADV Part II, and (iii) that all information required under Rule 204-3 under the U.S. Investment Advisers Act has been provided to it; and
- (f) any personal recommendation or decision to trade made by the Investment Manager in accordance with the Investment Policy and with the provisions of Clause 4.2 hereof is suitable for the ICAV.

- 8.2 The ICAV hereby represents and warrants to the Investment Manager that:

- (a) it was formed in and is duly organised and validly existing in Ireland and has full capacity and authority to enter into this Agreement and to perform its obligations and duties and provide the services required of it under this Agreement;
- (b) this Agreement has been duly and validly authorised, executed and delivered on behalf of the ICAV and is a valid and binding Agreement of the ICAV enforceable in accordance with its terms
- (c) all information which the ICAV provides or has provided to the Investment Manager, including information relating to the ICAV's identity, domicile, financial position and investment objectives, is accurate, complete and not misleading in any respect and the ICAV has notified the Investment Manager of all such information which is reasonably relevant to the performance of the Investment Manager's duties under this Agreement;
- (d) the ICAV will not allow without the consent of the Investment Manager create another Fund, that is not managed by the Investment Manager, if that newly created sub fund wishes to make a "check-the-box" election pursuant to the Internal Revenue Code of the United States to be treated as a partnership for U.S. federal income taxation purposes;
- (e) the ICAV acknowledges that (i) this Agreement constitutes an arm's length agreement between the Investment Manager and the ICAV; (ii) acknowledges receipt at least 48 hours prior to entering into this Agreement of a copy of the Investment Manager's

Form ADV Part II, and (iii) that all information required under Rule 204-3 under the U.S. Investment Advisers Act has been provided to it;

- (f) the ICAV acknowledges the Investment Manager's Brokerage Commissions and Execution of Trades Policy set forth in Appendix B; and
 - (g) the ICAV has all necessary authority, power, consents, licences, and authorisation, and the ICAV has taken all necessary action to enable it to lawfully enter into and perform this Agreement.
- 8.3 Representations and warranties in Clause 8.1 and Clause 8.2 of this Agreement shall be continuing during the term of this Agreement and if at any time during the term of this Agreement any event occurs which would make any of such representations and warranties untrue or inaccurate in any material respect, the Investment Manager or the ICAV, as the case shall be, shall promptly notify the other of such event and the facts related thereto.

9. CONFLICTS OF INTEREST

- 9.1 Nothing in this Agreement shall prevent the Investment Manager or any of its affiliated whether as principal or agent or otherwise from acting as manager, or investment manager, administrative manager, registrar, depositary, trustee, investment adviser or in any other capacity whatsoever for any other person on such terms as the Investment Manager or such affiliate may arrange so long as its services to the ICAV hereunder are not materially impaired thereby and neither the Investment Manager nor any such affiliate shall be liable to account for any profit earned or other benefit arising there from. Neither the Investment Manager nor such affiliate shall be deemed to be affected with notice of or to be under any duty to disclose to the ICAV any fact or thing which may come to the notice of the Investment Manager or any such affiliate, or to any director, officer, servant, employee or agent of the Investment Manager or such affiliate, in the course of or in connection with the Investment Manager or such affiliate rendering such services to any other person or in any manner whatsoever otherwise than in the course of carrying out its duties hereunder. The Investment Manager will manage any such conflict in accordance with its policy on conflict management to ensure with reasonable confidence, that risks of damage to the ICAV's interests will be mitigated.
- 9.2 Nothing in this Agreement shall prevent the Investment Manager or any of its affiliates whether as principal or agent or otherwise and whether on its own account or on the account of any other person from:
- (a) acquiring, holding, disposing of or otherwise dealing with Shares or warrants to subscribe for Shares;
 - (b) selling or disposing of Investments to, purchasing or acquiring Investments from or vesting Investments in the ICAV or the Depositary or its nominee for the account of the Fund;
 - (c) receiving any fees or commissions or brokerage fees which it may negotiate in relation to any purchase, acquisition, financing, sale or disposal of any Investments effected by it for the account of the ICAV or the Fund;
 - (d) entering into any transaction whatsoever with the ICAV or with any Shareholders or with any other person any of whose securities are held by, or for the account of, or otherwise connected with the ICAV;
 - (e) directly or indirectly investing or participating in any Investments or in any project or enterprise or providing finance to any person in which the ICAV may from time to time invest or provide finance to;
 - (f) purchasing, acquiring, financing, holding, selling, disposing of or dealing in any Investments notwithstanding that the same or similar Investments may be held by or for the account of or otherwise connected with the ICAV; and

- (g) entering into any transaction or contract of whatsoever nature with the ICAV, the Depositary or its nominee for the account of the ICAV or the Fund or with the Shareholders or the Administrator or any of its shareholders or any company or other person or body of persons any of whose securities are held by or for the account of or otherwise connected with the ICAV, the Depositary or the Administrator or from being interested in any such transaction;
- 9.3 The Investment Manager must prepare a report of any such transactions entered into by the Investment Manager in respect of each Fund for inclusion in the ICAV's semi-annual and annual report. This report must include a list of all transactions, by type, the name of the related party and where relevant, fees paid to that party in connection with the transaction. Transactions by the Investment Manager with parties other than the ICAV, the Fund, the Investment Manager, the Depositary, the Shareholders, the Administrator or any of its shareholders shall not be considered "in respect of the Fund" and accordingly shall not require reporting as provided above. Further, transactions between the Investment Manager and the Depositary where the Depositary is not acting on behalf of the Fund or the ICAV shall not be considered "in respect of the Fund" and thus shall not require reporting as provided above.
- 9.4 Where a certified valuation of the relevant transaction by a person approved by the Depositary as independent and competent is obtained, or the transaction is executed on best execution terms on organised investment exchanges under their rules or, where the foregoing are impracticable, the transaction is executed on terms which the Depositary is (or in the case of a transaction involving the Depositary, the Board are) satisfied are equivalent to normal commercial terms negotiated at arm's length such transaction will for the purposes of this Clause 9.2 be deemed to be a transaction carried on normal commercial terms negotiated at arm's length.
- 9.5 The Investment Manager and any of its Associates shall be entitled to charge and retain for its own benefit all such fees, commissions, profit or other benefit arising out of or in connection with any of the above transactions and shall not be obliged to account to the ICAV or to any Shareholders or to any other person in respect thereof provided that in the case of any transaction permitted by paragraphs (b) and (c) above such fees, commissions, profits or other benefits are determined at an arm's length basis.
- 9.6 It is hereby acknowledged and agreed that directors, officers, servants, employees and agents of and shareholders in the Investment Manager or in any Associate are or may be from time to time interested in the ICAV as directors, officers, servants, employees, agents, shareholders or otherwise and that directors, officers, servants, employees and agents of or shareholders in the ICAV are or may from time to time be interested in the Investment Manager or any of its Associates as directors, officers, servants, employees, agents or shareholders or otherwise and it is hereby agreed and acknowledged that no person so interested shall be liable to account to any other person for any profit or benefit arising out of or in connection with any such interest.
- 9.7 The amount or basis of any fee, commission or other benefit received by the Investment Manager from a third party or paid by the Investment Manager to a third party in connection with a transaction with or for the ICAV, and the amount or basis of any charges shared with a third party (other than employees of the Investment Manager) will be disclosed to the ICAV and such disclosure may be in summary form only, with further details available upon request, provided however that where the Investment Manager or any of its delegates, successfully negotiates the recapture of a portion of the commissions charged by brokers or dealers in connection with the purchase and/or sale of securities or investments for the Fund, the rebated commission shall be paid to the Fund.
- 9.8 In accordance with applicable Law, in the course of providing services to the ICAV, the Investment Manager and/or any delegate will not pay or provide to or accept or receive from any party (other than the ICAV or a person on behalf of the ICAV) any fee or commission or non-monetary benefit unless such fee, commission or non-monetary benefit (including minor non-monetary benefits from another person) is designed to enhance the quality of the Investment Manager's services to the ICAV and it does not impair compliance with the

Investment Manager's duty to act honestly, fairly and professionally in the best interests of the ICAV.

- 9.9 Notwithstanding Clause 9.8 above, the Investment Manager may, in accordance with applicable Law, pay or provide a payment or benefit which enables or is necessary for the provision of an investment service by the Investment Manager, such as custody costs, settlement and exchange fees, regulatory levies or legal fees and which, by its nature, cannot give rise to conflicts with the Investment Manager's duty to act in good faith and in accordance with the terms of this Agreement.
- 9.10 In accordance with applicable Law, the Investment Manager may only receive Investment Research from third parties in circumstances where either the Investment Manager pays for such Investment Research itself or otherwise where payment is made from a research payment account funded by transactions made on behalf of clients, including the Fund. The Investment Manager shall pay for all such third party Investment Research itself or pay for third party Investment Research from a research payment account operated by the Investment Manager and funded by the ICAV in accordance with applicable Law.
- 9.11 When the Investment Manager deems the purchase or sale of securities to be in the best interests of the Fund and of other Related Funds, the Investment Manager may aggregate the Securities to be purchased or sold. In such event, each entity generally will pay its *pro rata* share of the total commission and pay or receive its *pro rata* share of the total cost or sales proceeds, in each case based on the respective amounts of such Securities purchased or sold. Where there is a limited supply of an investment opportunity (including, for this purpose, a limited ability to realize upon an investment under favourable circumstances), the Investment Manager shall allocate or rotate investment opportunities among the Fund and other Related Funds in a manner which is believed to be appropriate and in the best interests of the Fund and such other Related Funds, to the extent permitted by applicable U.S. securities laws.
- 9.12 Where the Investment Manager operates directed brokerage programmes in respect of each Fund, the Investment Manager may be paid/reimbursed out of the assets of the relevant Fund for fees charged to the Investment Manager and reasonable properly vouched costs and expenses directly incurred by the Investment Manager attributable to the relevant Fund provided that full details of the arrangements (including the services provided) have been clearly disclosed in the Prospectus and the relevant Fund must be invoiced for these fees and expenses by the Investment Manager.
- 9.13 Where the Investment Manager is acting as agent of the ICAV in connection with the sale/purchase of Investments for the account of the relevant Fund, the Investment Manager may charge the relevant Fund commission or fees and is not obliged to account to the relevant Fund for any brokerage commissions or fees charged to the relevant Fund in connection with, or profits derived by it, from any such transaction.
- 9.14 Where the Investment Manager is acting as agent for a counterparty in connection with the sale to or purchase from the relevant Fund by such counterparty of Investments, the Investment Manager may charge the counterparty commissions or fees and is not obliged to account to the relevant Fund for any brokerage commissions or fees charged to the counterparty in connection with, profits derived by it, from any such transaction

10. DURATION AND TERMINATION

- 10.1 This Agreement shall continue in full force and effect unless and until terminated by either party giving to the other not less than 90 (ninety) days' written notice, unless otherwise terminated pursuant to this Clause 10, provided that such termination shall not take effect until the appointment of a successor investment manager is approved by the Central Bank.
- 10.2 Either party to this Agreement may terminate this Agreement at any time forthwith by notice in writing to the other party hereto if such other party (a "**Defaulting Party**") shall at any time during the continuance of this Agreement:

- (a) commit any material breach of this Agreement or commit persistent breaches of this Agreement which is or are either incapable of remedy or have not been remedied within thirty (30) days of the other party serving notice upon the Defaulting Party requiring it to remedy the same; or
 - (b) be incapable of performing its duties or obligations under the Agreement; or
 - (c) be unable to pay its debts as they fall due or otherwise become insolvent or enter into any composition or arrangement with or for the benefit of its creditors or any class thereof; or
 - (d) be the subject of any petition for the appointment of an examiner, administrator, trustee, official assignee or similar officer to it or in respect of its affairs or assets; or
 - (e) have a receiver appointed over all or any substantial part of its undertaking, assets or revenues; or
 - (f) be the subject of an effective resolution for its winding up except in relation to a voluntary winding up for the purposes of reconstruction or amalgamation upon terms previously approved in writing by the other party; or
 - (g) be the subject of a court order for its winding up or liquidation.
- 10.3 Notwithstanding the provisions of Clauses 10.1 and 10.2, the ICAV may terminate this Agreement immediately upon notice in writing to the Investment Manager in the event that Investment Manager ceases to be authorised by the SEC or is subject to regulatory sanction, censure or investigation by the SEC or any other relevant authority in circumstances where the ICAV reasonably concludes that such sanction, censure or investigation could materially prejudice the reputation of the ICAV.
- 10.4 On the termination of this Agreement:
- (a) the Investment Manager shall be entitled to receive all fees and other moneys accrued and due up to the date of such termination payable pursuant to the Agreement if applicable but shall not be entitled to compensation in respect of such termination; and
 - (b) the Investment Manager shall forthwith deliver to the ICAV or as it shall direct all correspondence and records of all and every description relating to the affairs of the ICAV which are in the Investment Manager's possession or under the Investment Manager's control and shall not be entitled to any lien in respect of any of the foregoing. This provision is subject to the Investment Manager's duty to retain records as may be required by the SEC or other regulatory body, in which case the Investment Manager shall provide copies of such records and other reasonable assistance to the ICAV so that the information can be provided consistent with the Investment Manager's compliance requirements.
- 10.5 The termination of this Agreement shall be without prejudice to any rights that may have accrued hereunder to either party hereto against the other party hereto before such termination.
- 10.6 Termination shall be without prejudice to the completion of transactions already initiated by the Investment Manager and shall not affect the rights and obligations of the parties hereto which came into existence prior to the termination which shall remain in full force and effect until discharged. Such transactions will be completed by the Investment Manager as soon as practicable.
- 10.7 If required by the rules of the Central Bank, the Investment Manager and/or the ICAV shall notify the Central Bank of the termination of this Agreement as soon as it receives, or sends, notice of termination of this Agreement.

- 10.8 The Investment Manager will complete expeditiously all transactions in progress at termination and the Investment Manager shall be under no obligation to recommend any further action with regard to the Fund and it shall be the ICAV's exclusive responsibility to issue instructions in writing regarding any assets held in the ICAV.

11. FORCE MAJEURE

The Investment Manager shall not be responsible for any loss of or damage to any property, securities, instruments or other assets of the ICAV for any failure to fulfil any of its duties hereunder if such loss, damage or failure is directly or indirectly caused by or due to any act of God, storm, tempest, accident, fire, water damage, riot, civil commotion, rebellion, strike, lock-out, government or military action or any other cause or circumstance beyond the control of the Investment Manager, provided that the Investment Manager shall use all reasonable efforts to minimise the effects thereof.

12. CONFIDENTIALITY

- 12.1 Save as may be required by law or by any regulatory authority or agency or as may otherwise be contemplated by this Agreement, each of the parties hereto hereby covenants and undertakes with the other party hereto to keep secret and confidential and not to disclose to any person any Confidential Information **PROVIDED HOWEVER** that neither party shall be required to keep secret and confidential any Confidential Information which has properly entered the public domain otherwise than through the default of such party.
- 12.2 No public announcement shall be made or circular, notice or advertisement issued in connection with the subject matter of this Agreement by either of the parties hereto without the prior written approval of the other party hereto.
- 12.3 The Investment Manager will, in connection with this Agreement, comply (where applicable) with the Data Protection Legislation.

13. CYBER SECURITY

- 13.1 The Investment Manager shall each do all commercially reasonable things to ensure that all information and data relating to the ICAV (including shareholders of the ICAV) is protected at all times from unauthorised access or use by a third party or misuse, damage or destruction by any person.
- 13.2 If the Investment Manager becomes aware of any actual: (i) action taken through the use of computer networks that result in an actual or adverse effect on its information system and/or data residing on that system which could reasonably have an adverse impact on the Fund (a "**Cyber Incident**"); or (ii) any other unauthorised access or use by a third party or misuse, damage or destruction by any person which could reasonably have an adverse impact on the Fund (the "**Other Incident**"), the Investment Manager (as applicable) shall take reasonable steps to:
- 12.2.1 notify the other party and the Board in writing immediately (and no longer than 3 Business Days) after becoming aware of the Cyber Incident or Other Incident); and
- 12.2.2 consider and if thought reasonable and appropriate comply with any reasonable directions issued by the Board in connection with the Cyber Incident or Other Incident, including in relation to:
- (a) obtaining evidence about how, when and by whom the Investment Manager's information system and/or data relating to the ICAV (including Shareholders) has or may have been compromised, providing it to the Board on request;
- (b) implementing any mitigation strategies to reduce the impact of the Cyber Incident or Other Incident or the likelihood or impact of any future similar incident; and

- (c) preserving and protecting data relating to the ICAV (including Shareholders) (including as necessary reverting to any backup or alternative site or taking other action to recover such data).

14. RIGHT TO USE DATA PROCESSING RECORDS

14.1 The parties acknowledge and agree that the ICAV is subject to the provisions of the Data Protection Legislation. For the purposes hereof:

- (a) any Personal Data processed by the Investment Manager pursuant to the Agreement shall be subject to the terms of the Agreement; and
- (b) the Investment Manager is a Data Processor and the ICAV is a Data Controller within the meaning of the Data Protection Legislation.

14.2 Subject to the provisions of the Data Protection Legislation, the Investment Manager is authorised by the ICAV to maintain all accounts, registers, corporate books and other documents relating to the ICAV or its affairs on computer records and to produce at any time during the course of legal proceedings, copies or reproductions of these documents made by photographic, photostatic or data processing procedures or judicial proof thereof. The Investment Manager shall maintain all such records for a minimum period of six (6) years.

14.3 The Investment Manager represents and warrants that at all times it shall:

- (a) only process the Personal Data obtained or required by it in accordance with, and for the purposes set out in this Agreement, or otherwise in accordance with any written instructions received from the Data Controller from time to time;
- (b) take all appropriate security and technical security measures, that are reasonable, against unauthorised access to, or unauthorised alteration, disclosure or destruction of the Personal Data, in particular where the processing involves the transmission of data over a network, against the accidental loss or destruction of Personal Data and against all other unlawful forms of processing;
- (c) take all reasonable steps to ensure that applicable persons employed by it and other persons at its place of work are aware of, and comply with, the relevant data protection measures as set out in this Clause 14;
- (d) not disclose Personal Data to any of its employees, agents, subsidiaries or sub-contractors unless and only to the extent that such persons need to have access to the Personal Data for the purposes of providing the services as envisaged under this Agreement, and provided that such persons have been made aware of, and comply with, the restrictions in this Agreement on the disclosure of the Personal Data;
- (e) not sub-contract to any third party any of its obligations to process Personal Data on behalf of the Data Controller unless both of the following provisions of this clause have first been complied with:-
 - (i) it enters into a written agreement with the sub-Processor which imposes the same obligations on the sub-Processor as are imposed on it under the Agreement; and
 - (ii) it has obtained the prior consent of the Data Controller.
- (f) not transfer and shall take all appropriate measures that are reasonable to prevent the transfer of Personal Data to a third country which does not ensure an adequate level of protection for the rights and freedoms of Data Subjects without the prior written consent of the ICAV;

- (g) process the Personal Data lawfully and in a form which permits identification of Data Subjects for no longer than is necessary for the purposes for which the data were collected (and not in any way incompatible with the purpose of the services to be provided by it in respect of the Funds);
- (h) not carry out data processing otherwise than for the purpose of providing the services as contemplated under and in accordance with the provisions of this Agreement or the proper instructions of the ICAV and such proper instructions shall not require it to breach the Data Protection Legislation;
- (i) ensure, upon termination or the completion of this Agreement, that all Personal Data which has been disclosed by the Data Controller shall at the written request and election of the Data Controller, be returned to the Data Controller or securely Deleted;
- (j) provide all necessary assistance to the Data Controller in ensuring compliance with the provisions of Articles 32 to 36 of the GDPR and/or any legislative requirements of the Data Protection Legislation or any guidance issued by the Irish Data Protection Commissioner regarding data breaches, and in particular to notify the Data Controller as soon as is practical, but no later than 24 hours after it becomes aware of any actual or suspected breach in its security which could give rise to the actual or potential loss, theft, unauthorised release or disclosure of Personal Data or any part thereof. In such an event it will immediately supply the Data Controller with all the relevant facts surrounding the actual or suspected breach and will provide all necessary assistance to the Data Controller to investigate, report upon, ameliorate, correct and end the breach and to ensure that no such breach (or any similar breach) occurs in future;
- (k) ensure that all appropriate and necessary technical and organisational measures are in place to enable the Data Controller to fulfil its obligation to respond to requests from Data Subjects exercising their rights relating to their Personal Data under Chapter III of the GDPR, (including the rights of access, to rectification, to erasure, to restrict processing and any notification requirements thereof, to data portability, right to object and rights of data subjects in respect of automated decision making including profiling), and shall promptly comply with any request from the Data Controller to amend, transfer or Delete such Personal Data;
- (l) provide the ICAV with full co-operation and assistance in relation to any complaint or request made in respect of any Personal Data, including by:
 - (i) providing the ICAV with full details of the complaint or request;
 - (ii) complying with a data access request within the relevant timescales set out in the Data Protection Legislation but strictly in accordance with the ICAV's instructions; and
 - (iii) providing the ICAV with any Personal Data it holds in relation to a Data Subject making a complaint or request within the reasonable timescales required by the ICAV.
- (m) make available all information necessary to demonstrate compliance with the obligations laid down in Article 28 of the GDPR in respect of the duties of a Data Processor and in particular, if so requested by the Data Controller, it shall:
 - i. permit the Data Controller or its representatives (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit its data processing facilities and activities (and/or those of its agents, subsidiaries and sub-contractors) and comply with all reasonable requests or directions by the Data Controller to enable the Data Controller to verify and/or procure that it is in full compliance with its obligations under this Agreement;

- ii. make available for audit by the Data Controller or its representatives, (subject to reasonable and appropriate confidentiality undertakings), all staff procedures, processes and instructions that it employs for the management of Personal Data;
 - iii. permit the Data Controller or its representatives, (subject to reasonable and appropriate confidentiality undertakings), to inspect the contractual arrangements that it has in place, governing the transfer of any Personal Data from it to legal entities located outside the European Economic Area.
 - (n) ensure that the manner in which it processes Personal Data shall be done in a manner consistent with the Data Protection Legislation.
- 14.4 The Investment Manager represents and warrants that it shall notify the ICAV within 5 Business Days if it:
- (a) receives a request from a Data Subject to have access to that person's personal data contained in the Personal Data;
 - (b) receives a complaint or request relating to the obligations of the ICAV or its delegates under the Data Protection Legislation; or
 - (c) receives any other communication relating directly or indirectly to the processing of any Personal Data in connection with this Agreement.
- 14.5 The Investment Manager shall ensure that, pursuant to Proper Instructions, any arrangement regarding the transfer of Personal Data by the Investment Manager to a third country which does not ensure an adequate level of protection for the rights and freedoms of Data Subjects is in accordance with the Data Protection Legislation.
- 14.6 If, under the Data Protection Legislation, the Investment Manager is required to provide information to a Data Subject in relation to his or her Personal Data in the possession or under the control of the Investment Manager or the ICAV and the Investment Manager informs the Board and the Manager in writing that this is the case, then the Board shall provide reasonable co-operation to the Investment Manager in meeting that requirement.
- 14.7 Each party shall provide to the other party, as soon as reasonably practicable, such information available to it in relation to the possession and processing of the Personal Data, as well as its obligations hereunder with respect thereto as the other party may reasonably request in writing in order for the requesting party to comply with its obligations under the Data Protection Legislation and to assess whether the storage and processing of that Personal Data in connection with this Agreement is breaching or may breach the Data Protection Legislation.
- 14.8 The ICAV (as "data exporter") and the Investment Manager (as "data importer") hereby enter into the Standard Contractual Clauses in respect of the transfer of the Personal Data. In the event of any conflict or inconsistency between this Agreement and the Standard Contractual Clauses, the Standard Contractual Clauses shall prevail.

15. GENERAL PROVISIONS

15.1 Waiver

A waiver by any party of any breach of any of the terms provisions or conditions of this Agreement or the acquiescence of such party in any act (whether commission or omission) which but for such acquiescence would be a breach as aforesaid shall not constitute a general waiver of such term provision or condition or of any subsequent act contrary thereto.

15.2 Counterparts

This Agreement may be executed in any number of counterparts by the parties hereto on separate counterparts each of which when executed and delivered shall constitute an original and all such counterparts together constituting but one and the same instrument.

15.3 Variation

This Agreement shall be capable of variation by agreement in writing between the ICAV and the Investment Manager in accordance with the requirements of the Central Bank.

15.4 Assignments

Neither party may assign or novate its right and/or obligations hereunder or any of them without the prior consent in writing of the other party (which consent shall not be unreasonably withheld) and subject to complying with the requirements of the Central Bank.

15.5 No Partnership

This Agreement shall not be deemed to create any partnership between the parties hereto in relation to the ICAV or otherwise.

15.6 Notices

Every notice to be given hereunder shall be in writing and shall be expressed to be a notice given hereunder and shall be deemed duly given:

- (a) upon being left on a business day at the address set out in this Agreement of the party to whom it is being given or at such other address as such party shall have previously communicated by notice to the party giving such first mentioned notice, or
- (b) three (3) business days after posting, if posted by prepaid registered post to the address set out in this Agreement of the party to whom it is being posted, or such other address as such party shall have previously communicated by notice to the party giving such first mentioned notice, or
- (c) at the time of transmission if transmitted on a business day by email or facsimile to the correct email address or facsimile number of the party to whom it is being transmitted;

Provided that: unless as otherwise agreed by the parties in writing where the notice has been transmitted by email or facsimile the party who has transmitted it shall (without prejudice to the validity of the notice given) send a copy of the notice by prepaid registered post to the party to whom it has been transmitted to that party's address set out in this Agreement or to such other address as such party shall have previously communicated by notice to the party giving such first mentioned notice.

The Investment Manager
FWM Acquisition, LLC
767 Fifth Avenue
New York
New York 10153

The ICAV
Apsley Fund ICAV
5th Floor, The Exchange
George's Dock
IFSC
Dublin 1
Ireland

15.7 Severability

Each of the provisions of this Agreement are separate and severable and enforceable accordingly and if at any time any provision is adjudged by any court of competent jurisdiction to be void or unenforceable the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

15.8 Governing Law and Jurisdiction

- (a) This Agreement shall in all respects (including the formation thereof and performance thereunder) be governed by and construed in accordance with the laws of Ireland.
- (b) The ICAV and the Investment Manager hereby irrevocably submit to the non-exclusive jurisdiction of the courts of Ireland provided always that any party shall be at liberty to take proceedings against any other party in any other relevant jurisdiction.

15.9 Valuations and confirmations

- (a) Each Fund will be valued in accordance with the principles set out in the Prospectus and Instrument of Incorporation on the Valuation Day.
- (b) The Investment Manager shall send all confirmations and valuations of each Fund in soft copy form to the address specified by the ICAV (provided such an address is not an address of an Associate) and to any delegate/service provider appointed by the ICAV in respect of each Fund. The ICAV may also elect to have confirmations or/and valuations sent electronically through the Internet to the email address provided by the Investment Manager. By electing to use the Internet for this purpose, the ICAV acknowledges that such electronic transmissions are not encrypted and therefore are insecure. In addition, there are other risks inherent in communicating through the Internet, such as the possibility of virus contamination and disruptions in service. The Investment Manager shall be held harmless in complying with a request to use the Internet as aforesaid and shall have no liability for any loss, expense, damage, liability or claim (including attorney's fees) incurred or sustained by the Investment Manager or any person claiming through the Investment Manager as a result of such electronic transmissions.
- (c) The ICAV hereby directs the Investment Manager that it does not wish to receive periodic statements.

15.10 Complaints

All formal complaints by the ICAV should be made in writing to the compliance officer of the Investment Manager.

15.11 Limited Recourse

The Investment Manager acknowledges and agrees that, notwithstanding any other provision of the Agreement, the Investment Manager shall not have recourse to the assets of the ICAV or any Fund in respect of any liabilities of the ICAV to the Investment Manager pursuant to this Agreement.

IN WITNESS whereof this Agreement has been entered by the parties hereto on the date first herein written.

Signed for and on behalf of

by **APSLEY FUND ICAV:**

Sign Name

Print Name


Position

In the Presence of
Witness Signature

Print Name


Address

Occupation



PETER BLESSING

DIRECTOR



SARAH STAPLETON

24 ST. STEPHEN'S GREEN

DUBLIN 2

ASSET MANAGER

Signed for and on behalf of

By **OPTIMA FUND MANAGEMENT LLC:**

Sign Name

Print Name

Position

In the Presence of
Witness Signature

Print Name

Address

Occupation

IN WITNESS whereof this Agreement has been entered by the parties hereto on the date first herein written.

Signed for and on behalf of

by APSLEY FUND ICAV:

Sign Name _____

Print Name _____

Position _____

In the Presence of
Witness Signature _____

Print Name _____

Address _____

Occupation _____

Signed for and on behalf of

By OPTIMA FUND MANAGEMENT LLC:

Sign Name _____

Print Name **Geoffrey M. Lewis**
Chief Financial Officer

Position _____

In the Presence of
Witness Signature _____

Print Name Angella Amisov

Address 10 East 53rd St
New York NY 10022 USA

Occupation Admin. Asst.

Signed for and on behalf of

By FWM ACQUISITION, LLC:

Sign Name



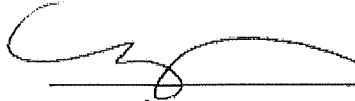
Print Name

Keith M. Bloomfield

Position

CEO

In the Presence of
Witness Signature



Print Name

Natalia T. Zager

Address

FFT 767 Fifth Ave. 6th Fl.

New York, NY 10153

Occupation

Financial Professional

APPENDIX A
LIST OF SUB FUNDS

The Optima Star Fund
The Optima Star Long Fund
The Optima Lloyd George Asia Fund

APPENDIX B
STANDARD CONTRACTUAL CLAUSES

Name of the data exporting organisation:

Apsley Fund ICAV

Address:

5th Floor, the Exchange, George's Dock, IFSC, Dublin 1

(the "data exporter")

And

Name of the data importing organisation:

FWM Acquisition, LLC

Address:

767 Fifth Avenue, New York, New York 10153, United State

(the "data importer")

each a "party"; together "the parties",

HAVE AGREED on the following Contractual Clauses (the Clauses) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in Annex I.

Background

The data exporter has entered into an Investment Management Agreement ("IMA") with the data importer. Pursuant to the terms of the IMA, it is contemplated that services provided by the data importer will involve the transfer of personal data to data importer. The data importer is located in a country not ensuring an adequate level of data protection. To ensure compliance with Directive 95/46/EC and applicable data protection law, the controller agrees to the provision of such services, including the processing of personal data incidental thereto, subject to the data importer's execution of, and compliance with, the terms of these Clauses.

Clause 1

Definitions

For the purposes of the Clauses:

- (a) 'personal data', 'special categories of data', 'process/processing', 'controller', 'processor', 'data subject' and 'supervisory authority' shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;
- (b) '*the data exporter*' means the controller who transfers the personal data;
- (c) '*the data importer*' means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance

with his instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;

- (d) *'the subprocessor'* means any processor engaged by the data importer or by any other subprocessor of the data importer who agrees to receive from the data importer or from any other subprocessor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;
- (e) *'the applicable data protection law'* means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;
- (f) *'technical and organisational security measures'* means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

Clause 2

Details of the transfer

The details of the transfer and in particular the special categories of personal data where applicable are specified in Annex I which forms an integral part of the Clauses.

Clause 3

Third-party beneficiary clause

1. The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.
2. The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.
3. The data subject can enforce against the subprocessor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.
4. The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

Clause 4

Obligations of the data exporter

The data exporter agrees and warrants:

- (a) that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;
- (b) that it has instructed and throughout the duration of the personal data processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;
- (c) that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in annex to this contract;
- (d) that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;
- (e) that it will ensure compliance with the security measures;
- (f) that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;
- (g) to forward any notification received from the data importer or any subprocessor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;
- (h) to make available to the data subjects upon request a copy of the Clauses, with the exception of Annex I, and a summary description of the security measures, as well as a copy of any contract for subprocessing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;
- (i) that, in the event of subprocessing, the processing activity is carried out in accordance with Clause 11 by a subprocessor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses; and
- (j) that it will ensure compliance with Clause 4(a) to (i).

Clause 5

Obligations of the data importer

The data importer agrees and warrants:

- (a) to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;

- (b) that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (c) that it has implemented the technical and organisational security measures specified in Annex I before processing the personal data transferred;
- (d) that it will promptly notify the data exporter about:
 - (i) any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation,
 - (ii) any accidental or unauthorised access, and
 - (iii) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;
- (e) to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;
- (f) at the request of the data exporter to submit its data processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;
- (g) to make available to the data subject upon request a copy of the Clauses, or any existing contract for subprocessing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Annex I which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;
- (h) that, in the event of subprocessing, it has previously informed the data exporter and obtained its prior written consent;
- (i) that the processing services by the subprocessor will be carried out in accordance with Clause 11;
- (j) to send promptly a copy of any subprocessor agreement it concludes under the Clauses to the data exporter.

Clause 6

Liability

- 5. The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or subprocessor is entitled to receive compensation from the data exporter for the damage suffered.
- 6. If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or his subprocessor of any of their obligations referred to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data

exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The data importer may not rely on a breach by a subprocessor of its obligations in order to avoid its own liabilities.

7. If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the subprocessor of any of their obligations referred to in Clause 3 or in Clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the subprocessor agrees that the data subject may issue a claim against the data subprocessor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the subprocessor shall be limited to its own processing operations under the Clauses.

Clause 7

Mediation and jurisdiction

8. The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject:
 - (a) to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;
 - (b) to refer the dispute to the courts in the Member State in which the data exporter is established.
9. The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

Clause 8

Cooperation with supervisory authorities

10. The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.
11. The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any subprocessor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.
12. The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any subprocessor preventing the conduct of an audit of the data importer, or any subprocessor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5 (b).

Clause 9

Governing Law

The Clauses shall be governed by the law of the Member State in which the data exporter is established.

Clause 10

Variation of the contract

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clause.

Clause 11

Subprocessing

13. The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the subprocessor which imposes the same obligations on the subprocessor as are imposed on the data importer under the Clauses. Where the subprocessor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the subprocessor's obligations under such agreement.
14. The prior written contract between the data importer and the subprocessor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.
15. The provisions relating to data protection aspects for subprocessing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established.
16. The data exporter shall keep a list of subprocessing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5 (j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

Clause 12

Obligation after the termination of personal data processing services

17. The parties agree that on the termination of the provision of data processing services, the data importer and the subprocessor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.
18. The data importer and the subprocessor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data processing facilities for an audit of the measures referred to in paragraph 1.

Dated:.....

FOR DATA IMPORTER

.....

.....

FOR DATA EXPORTER

.....

.....

ANNEX I TO THE STANDARD CONTRACTUAL CLAUSES

This Annex forms part of the Clauses and must be completed and signed by the parties

Data exporter

The data exporter is Apsley Fund ICAV.

Data importer

The data importer is FWM ACQUISITION, LLC.

Data subjects

The personal data transferred concern the following categories of data subjects:

- personal details of underlying investors;
- personal details of directors of Apsley Fund ICAV.

Categories of data

The personal data transferred concern the following categories of data:

- personal details of underlying investors;
- personal details of directors of Apsley Fund ICAV.

Processing operations

The personal data transferred will be subject to the following basic processing activities:

encryptions, access controls

FOR DATA IMPORTER

FWM Acquisition, LLC

.....

FOR DATA EXPORTER

Apsley Fund ICAV

.....

Annex I to the Standard Contractual Clauses

This Annex forms part of the Clauses and must be completed and signed by the parties.

Description of the technical and organisational security measures implemented by the data importer in accordance with Clauses 4(d) and 5(c):

encryption, access controls

APPENDIX C
APPLICATION OF THE EMIR REGULATIONS

OBLIGATIONS OF THE INVESTMENT MANAGER

The parties acknowledge and agree that the obligations arising under this Appendix C which are expressed to be carried out by the Investment Manager will only apply to Derivatives relating to the Fund, and not for the avoidance of doubt to Derivatives relating to any other sub-fund of the ICAV.

TIMELY CONFIRMATION

The ICAV shall, or shall procure that the Investment Manager or a delegate shall:

- (a) establish procedures and arrangements to facilitate the timely confirmation, where available, by electronic means, of the terms of any Derivative relating to the Fund executed by the Investment Manager acting in respect of the Fund that is not cleared by a CCP as soon as possible following execution and in any event within the timeframes specified under the EMIR Regulations; and
- (b) subject to the foregoing obligation, the Investment Manager will use reasonable efforts to effect the timely confirmation of such Derivatives and report to the Investment Manager on a monthly basis the number of Derivatives relating to the Fund entered into by the Investment Manager acting in respect of the Fund which have not been confirmed within five Business Days.

PORTFOLIO RECONCILIATION

The ICAV shall, or shall procure that the Investment Manager or a delegate shall agree in writing, or by other equivalent electronic means, with each of its Trading Counterparties, the procedures and arrangements under which Derivatives between the ICAV or the Investment Manager acting in respect of the Fund and the relevant Trading Counterparty shall be reconciled in accordance with the EMIR Regulations. Subject to the establishment of such procedures and arrangements, the Investment Manager acting on behalf of the Fund, or a third party appointed by it, shall monitor the Derivatives entered into for the Fund with each of the Trading Counterparties and use reasonable efforts to effect or procure the reconciliation of the Derivatives with each relevant Trading Counterparty in accordance with the EMIR Regulations.

The Investment Manager agrees to be appointed as the ICAV's agent under the terms of any such agreement with the ICAV's Trading Counterparties relating to the Fund. The following notice details/elections of the Investment Manager are to be used for the purposes of such appointment:

The Investment Manager elects to be a portfolio data receiving party or portfolio data sending party:

Local Business Day:	_____
Use of a Third Party Service Provider:	_____
Portfolio Reconciliation:	_____
Notice of Discrepancy:	_____
Dispute Resolution:	_____

PORTFOLIO COMPRESSION

The Investment Manager shall monitor the number of Derivatives it enters into on behalf of the Fund with each of its Trading Counterparties and shall, to the extent required of the ICAV pursuant to the EMIR Regulations, consider on a regular basis (and at least twice per year) whether it is appropriate to conduct a portfolio compression exercise.

Where it considers it appropriate, the Investment Manager shall use reasonable efforts to effect or procure such portfolio compression exercise on behalf of the ICAV. Where the Investment Manager considers that such portfolio compression exercise is not appropriate it shall notify the ICAV and shall document a reasonable and valid explanation in order that the ICAV may make same available to the Central Bank.

VALUATIONS

The Investment Manager shall use reasonable endeavours to procure mark-to-market valuations on a daily basis of the value of outstanding Derivatives relating to the Fund and to procure that such valuations are provided to the ICAV and/or the Investment Manager upon their request. Where market conditions prevent marking-to-market, a reliable and prudent marking-to-model shall be used.

REPORTING

The ICAV shall, or shall procure that the Investment Manager or a delegate shall report or procure the reporting of all data required to be so reported of each Derivative relating to the Fund (including exchange traded derivatives) to a Trade Repository selected, on behalf of the ICAV within one Business Day of conclusion, modification or termination, provided however that the fees of such Trade Repository shall be borne by the Fund.

In the event that the reporting of the Fund's Derivatives contracts to a Trade Repository has been delegated to a third party, the Investment Manager shall review the Counterparty Data and the Common Data submitted on behalf of the ICAV in respect of the Fund by the ICAV's delegate on a weekly basis to the extent that the Common Data is available to review on the applicable Trade Repository's website. The Investment Manager shall promptly notify the ICAV and the Investment Manager of any errors it finds in either the Counterparty Data fields or the Common Data fields. The ICAV shall, or shall procure that the Investment Manager or a delegate shall pay, from the assets of the Fund, any fees payable to a third party delegate who agrees to report in accordance with this paragraph.

DISPUTE RESOLUTION

The Investment Manager and the Investment Manager shall agree detailed procedures and processes in relation to the identification, recording, and monitoring of disputes relating to the recognition or valuation of Derivatives relating to the Fund and to the exchange of collateral between Trading Counterparties, and for the resolution of disputes in a timely manner with a specific process for those disputes that are not resolved within five Business Days.

Subject to the foregoing and where the ICAV is required to do so, the Investment Manager shall notify the ICAV of the requirement to report to the Central Bank any disputes relating to Derivatives relating to the Fund, their valuation or the exchange of collateral for an amount or value higher than €15,000,000 and outstanding for at least fifteen Business Days.

FUTURE REQUIREMENTS

While the parties acknowledge that compliance by the ICAV with the EMIR Regulations remains the responsibility of the ICAV, the Investment Manager undertakes to co-operate in good faith to consider the necessity for, and if appropriate to agree upon the terms of, any amendments to this Appendix C or the implementation of any additional operational arrangements, that are proposed by any party in response to any operational, legislative, regulatory or other development relating to the EMIR Regulations.

AUTHORITY

Without prejudice to the generality of the provisions of this Appendix C, the Investment Manager hereby authorises (but does not oblige) the Investment Manager to amend any existing ISDA master agreement or other document relating to Derivative contracts (including exchange-traded Derivatives) to which the ICAV is party, including by way of adherence to protocols, so as to facilitate the ICAV and/or the Investment Manager's compliance with the obligations under this Appendix C.

CLEARING

The Investment Manager will assist the ICAV in ensuring compliance with the EMIR Regulations in the case of any Derivative relating to the Fund which is notified by the European Securities and Markets Authority as requiring clearing through a CCP from time to time.

COLLATERAL EXCHANGE

In the case of any Derivative relating to the Fund that is not required to be cleared by a CCP under the EMIR Regulations:

- (a) the Investment Manager shall ensure that risk-management procedures are in place and maintained at all times for the timely and accurate exchange of collateral with the ICAV's Trading Counterparty; and
- (b) the Investment Manager and the Investment Manager (acting on behalf of the ICAV) shall ensure that any collateral received from such Trading Counterparty is appropriately segregated, in each case in accordance with the collateral exchange requirements of the EMIR Regulations.

RECORD KEEPING

The Investment Manager shall keep or procure the keeping of a record of:

- (a) any Derivative relating to the Fund concluded by or on behalf of the ICAV and any modification thereof for at least five years following the termination of the Derivative;
- (b) any dispute relating to the recognition or valuation of a contract or the exchange of collateral showing at least the length of time for which the dispute is outstanding, the Trading Counterparty and the amount disputed;
- (c) any Derivatives relating to the Fund which are unconfirmed for more than five Business Days; and
- (d) any other records which are necessary for compliance with the EMIR Regulations to the extent that these are reasonably within the control of the Investment Manager.