

DATED

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**OVERSEAS ASSET MANAGEMENT (CAYMAN) LTD**

- and -

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**NON-DISCRETIONARY INVESTMENT MANAGEMENT AGREEMENT**

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Edition: February 2016

**THIS AGREEMENT** is made the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_  
between Overseas Asset Management (Cayman) Ltd of the first part ("OAM") and [  
\_\_\_\_\_ ] of the second part ("Client").

[**WHEREAS** the parties wish to set out the terms in which OAM will provide advisory and non-discretionary management services to the Client.]

[**WHEREAS** the parties are party to a Discretionary Investment Management Agreement dated \_\_\_\_\_ and wish to set out the revised terms on which OAM will continue to provide advisory and non-discretionary management services to the Client on a non-discretionary basis with effect from the date hereof.]

### **Services to be Provided**

1. (a) The Client wishes to establish an account with OAM to hold cash and securities ("the Portfolio") to which, subject to acceptance by OAM, the Client may transfer funds from time to time to be held in accordance with the terms of this Agreement.
- (b) During term of this Agreement OAM shall from time to time as and when the Client may request advise the Client and recommend the manner in which any cash and securities in the Portfolio may be invested, and assist the Client in the implementation of such advice and recommendations consistent with the investment objectives of the Client as set out below;
- (c) Notwithstanding anything to the contrary herein contained, OAM shall not acquire or dispose of, or manage, securities within the Portfolio or for crediting thereto except with the prior consent of the Client [PROVIDED ALWAYS that no securities or positions shall be acquired or taken unless approved or recommended by OAM] and OAM shall not have discretionary authority to manage the Portfolio or the Client's assets (in whole or part).
- (d) For the avoidance of doubt, there may be included within the Portfolio, Participating Shares of OAM Asian Recovery Fund and OAM European Value Fund and other investment vehicles organised or advised by OAM or its affiliates ("OAM Funds"). Until such time as the value of the Portfolio shall reach US\$1,000,000 or its equivalent in other currencies, investments will only be made in OAM Funds except to the extent that OAM and the Client shall agree to the contrary.

### **Investment Objectives**

2. The investment objective which OAM will pursue in advising on and managing the Portfolio will be to achieve long-term capital growth. The investment objective will be pursued in relation to the Portfolio as a whole and will not necessarily be applied to each individual investment. There can be no guarantee that the investment objectives will be achieved.

### **Charges**

3. (a) On the last day of the months of March, June, September and December each and every year during the continuance of this Agreement, OAM will charge the Client the greater of either:-
- (i) a basic investment advisory fee of 1/4 of 1% of the market value of the Portfolio on that day as determined by the most recent bid prices thereof or otherwise as described in Clause 4; or
  - (ii) a performance fee equivalent to 10% of the amount by which the market value of the Portfolio on that day as determined in accordance with Clause 4 ("the closing value") exceeds the previous greatest quarterly valuation of such assets as so determined ('the previous peak'),
- whichever is higher.
- (b) In the event of the Client paying any monies into, or withdrawing any monies from, the account, the previous peak used in determining any such excess as aforesaid shall be adjusted in the same proportion as such monies bear to the closing value for the three month period in question.
- (c) Without prejudice to Clause 21, OAM may apply cash within the Portfolio to settle such fees, failing which it may redeem Participating Shares of OAM European Value Fund and OAM Asian Recovery Fund pro rata to the value of such holdings for this purpose.

### **Basis of Valuation**

4. For the purpose of the valuations of the Portfolio, investments quoted, listed or regularly dealt in on a recognised investment exchange will (subject as provided below) be valued by reference to the closing prices posted on Bloomberg on the date of the valuation. Unquoted investments will be valued at cost or at such other fair value as we may consider appropriate. Current exchange rates will be applied in valuing holdings in foreign currency. OAM will be free to adopt any other valuation in respect of any investment where OAM considers that such valuation more accurately reflects the fair value of the investment concerned.

### **Reports**

5. OAM shall provide the Client with quarterly valuations of the Portfolio as determined in accordance with Clause 4 as at the 31 March, 30 June, 30 September and 31 December every year. These valuations will provide the basis for the calculation of all investment advisory and management fees charged by OAM. In addition, OAM will provide the Client with an itemised cash statement every quarter accounting for acquisitions, disposals, dividends, interest and fees. Acquisitions and disposals of securities will be accounted for on the basis of the applicable trade dates. Dividends, interest and fees will be accounted for at the time they are credited/debited to the Client's account.

### **Nominee and Custody Arrangements**

6. Unless agreed otherwise, OAM will arrange for the Portfolio to be held in safe custody in its name or that of its nominees or agents. Securities within the Portfolio will normally be registered in the name of the Client or, where OAM deems it appropriate, in the name of a custodian or nominee.

### **Client Monies**

7. Client monies may be deposited with licensed banks in the Cayman Islands or the Channel Islands or elsewhere at the discretion of OAM in an account opened either in the name of the Client or in the name in which the Portfolio is held by the Client's custodian. Interest credited on such accounts, if any, will accrue to the benefit of the Client.

### **Transfer of Income and Capital**

8. OAM will arrange for any income or capital sums arising from the Portfolio to be transferred to the Client in accordance with instructions received, failing which it will be retained within the Portfolio and be available for reinvestment.

### **Insurance**

9. OAM agrees to carry professional indemnity insurance coverage as required by the Companies Management Law (2003 Revision) of the Cayman Islands, as amended from time to time.

### **Dealings**

10.
  - (a) All transactions executed in respect of the Portfolio shall be subject to the constitution, rules, regulations, customs and usages of the exchange or market and its clearing house, if any, on which such transactions are executed by OAM.
  - (b) In order to save brokerage and dealing commissions, OAM may, from time to time, transfer securities or cross currencies between client accounts at mid-market prices.
11. OAM shall have no obligation to provide services in connection with this Agreement when and to the extent OAM or any party that provides services or facilities to the agent in connection with this Agreement is prevented from doing so by government restrictions, exchange or market rulings, suspension of trading, electronic or telephone failures, labour dispute, war or any other cause not within OAM's reasonable control.

### **Aggregation of Bargains**

12. OAM may combine Client orders with orders of other clients or OAM's own orders for itself or OAM Funds for execution where OAM believes that it will be advantageous to its clients to do so. However, on some occasions such combination of orders may result in the Client obtaining a more or less favourable price than might have been achieved had the orders been executed separately.

### **Non-readily Realisable Investments**

13. Subject to Clause 1(c) above, OAM may effect or arrange transactions in grey market and other investments which may not be readily realisable. This authority applies notwithstanding that in many cases firm prices may not be quoted on a recognised or designated investment exchange, or may be quoted only by a small number of market-makers, and where there may also be a lack of published information on which to base a decision about the investment. Consequently, it may be difficult to sell, or to assess what would be a proper market price for, the investment. Where OAM has effected or arranged a transaction on a grey market or non-readily realisable investment on your behalf, the price and other terms of the transaction shall be fair and reasonable and OAM shall explain the basis for arriving at the price in the transaction if requested.

### **Voting Rights and Entitlements**

14. OAM will exercise voting rights attaching to securities over which it has control as it may deem fit. OAM may exercise other rights and entitlements attaching to securities including, but not limited to, rights and capitalisation issues and other capital reorganisations and tender offers. Mailings received in respect of securities held within the Portfolio will not, in the normal course of events, be mailed to the Client.

### **Illegality**

15. If any provisions of this Agreement are held to be invalid, illegal, void, or unenforceable by reason of any law, rule, administrative order or judicial decision, all other provisions of this Agreement shall, nevertheless, remain in full force and effect.

### **Representations**

16. (a) The Client represents that, save as disclosed to OAM in writing, no person except the Client has an interest in the Portfolio.
- (b) The Client hereby confirms and warrants that all information given to OAM in respect of the opening of its account is complete, correct and accurate.
- (c) If a natural person, the Client represents that the Client is of full age, is not an employee of an exchange, nor of any company of which any exchange owns a majority of the capital, nor of a member of any exchange, or a member firm or member company registered on any exchange, nor of a bank, trust company, insurance company or any other company, firm or individual engaged in the business of dealing either as agent or as principal in securities, bills of exchange, acceptances or other forms of commercial paper. If any of the foregoing representations is inaccurate or becomes inaccurate the Client will so advise in writing.
- (d) The Client confirms that it is, for the purposes of the Securities Investment Business Law (2011 Revision) either:-
- (i) a sophisticated person (as defined in the Schedule hereto); and/or
  - (ii) a high net worth person (as defined in the Schedule hereto); and/or

- (iii) a company, partnership or trust (whether or not regulated as a mutual fund) of which the shareholders, unit holders or limited partners or one or more persons falling within (i) or (ii).
- (e) The Client represents that it is not a U.S. Person as defined in the Schedule hereto.
- (f) The Client agrees to advise OAM forthwith of any change in the position of the Client as stated above.

**Communications**

17. Communications between OAM and the Client may be effected by post, facsimile or e-mail in accordance with the details given below or to such other addresses as may be duly notified from time to time:-

<p>To: Overseas Asset Management (Cayman) Ltd The Pavilion Cricket Square PO Box 597 Grand Cayman KY1-1107 Cayman Islands British West Indies</p>	<p>Fax Number: +1 (345) 949-7760  E-mail: admin@oam.com.ky</p>
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<p>To: The Client at:</p>	<p>Fax Number: .....  E-mail:</p>
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PROVIDED ALWAYS that OAM shall not take responsibility for any postal, facsimile, e-mail or other communication which has not been duly received and acknowledged by it or for acting in good faith on the basis of any signature which it believes to be genuine.

**Client's Signing Authority**

18. (a) In the case of a corporate client, OAM shall be entitled to rely upon the Secretary's Certificate received as being in full force and effect until such time as it shall be duly notified to the contrary and, in particular, without prejudice to the generality of the foregoing, OAM shall be entitled to rely upon the signature authorities as set forth in the Secretary's Certificate until such time as it shall be duly notified to the contrary by the corporate client concerned.

- (b) In the case of a joint account, OAM shall be entitled to act on the basis set forth in Clause 20 below.

### **Amendments and Entire Agreement**

- 19. Any amendment to this Agreement shall be in written form, signed by or on behalf of OAM and by the Client. This Agreement expresses the entire agreement between you and us and supersedes any negotiations and prior agreements on the subject matter hereof.

### **Joint Accounts**

- 20. (a) Where the Client consists of more than one person (each a “joint accountholder”), eg husband and wife, trustees, personal representatives etc:
  - (i) each joint accountholder shall be jointly and severally liable for the payment of sums owing to OAM and for the performance of all obligations to be undertaken by the Client pursuant to this Agreement;
  - (ii) unless instructed to the contrary, OAM will act upon instructions signed by any one of the joint accountholders and, unless and until OAM receives written notice signed by all joint Clients withdrawing or varying this authority, any action taken by OAM in complying with instructions given under such authority will be binding on all such joint accountholders;
  - (iii) in the event of the death of any of a joint accountholder, this Agreement will remain binding on the survivor(s) and upon the successors of the deceased party(ies);
  - (iv) documents and payments will only be sent by OAM to the first named joint accountholder at his/her/their address or to such other recipient as the joint accountholders may authorise;
  - (v) where the joint accountholders are trustees of a trust or personal representatives of an estate, they undertake to give OAM notice forthwith of any change in the trustees or personal representatives; and
  - (vi) where the joint accountholders are the beneficial owners of the Portfolio they hereby declare that they hold jointly with rights of survivorship.
- (b) This Clause 20 shall be without prejudice to the arrangements made between the joint accountholders (and any other person(s)) as to the beneficial ownership of the Portfolio into which OAM shall not be bound to enquire (save only as may be required from time to time pursuant to the Proceeds of Crime Law (2008) and any other applicable law) and OAM shall not be bound to enquire as to the proper application of funds returned from the Portfolio to any one or more joint accountholders in accordance with this Clause 20.

### **Indemnity and Lien**

21. In entering into this Agreement, the Client agrees to indemnify OAM and keep OAM indemnified from and against all actions, proceedings, costs, claims, losses, damages, demands and expenses which OAM or its Directors may incur or which may be instituted against OAM arising out of any matter which OAM may properly do or cause to be done pursuant to this Agreement and OAM shall have a lien over the Portfolio, including all documents of title, as security for this indemnity and for any fees or other liabilities of the Client to OAM and OAM may otherwise dispose of all or part of the Portfolio to satisfy all or any such liabilities.

### **Liabilities and Responsibilities**

22. (a) OAM will not be liable for any errors of fact or judgment or for any action lawfully taken or omitted to be taken under this Agreement. The Client must appreciate that the value of investments may go down as well as up. OAM will not be responsible for any loss of opportunity whereby the value of the Portfolio could have been increased or for any decline in the value of the Portfolio or for the loss of any cash deposited by us unless such decline or loss is the direct result of OAM's wilful default in complying with instructions properly given.
- (b) OAM shall not be responsible or liable for acting on any instruction or for relying on any document or communication or signature believed to be genuine.
- (c) In the event of default by or insolvency of a custodian, sub-custodian or nominee or any other agent engaged by OAM or by or of any bank in which Client monies are deposited, OAM will only be liable to the Client to the extent that it has wilfully failed to comply with instructions properly given.
- (d) OAM may refuse to comply with any instructions given by or on behalf of the Client if, for example, in OAM's opinion, the carrying out of these instructions would or might contravene any law or any rule of any regulatory authority or of any investment exchange legally or morally binding upon OAM.
- (e) OAM shall not be bound to enquire into compliance with any trust, will or other arrangement in respect of which the Client may hold the Portfolio and the benefit of this Agreement. It shall be the duty of the Client to ensure compliance with any such arrangements and the Client shall indemnify OAM of any costs, losses or legal expenses incurred by OAM as a result of any dispute concerning any such trust, will or other arrangement.

### **Termination**

23. The parties hereby agree that either party may at any time, and without giving any reason, terminate this Agreement on giving fourteen (14) days' notice in writing to the other, and at the end of the said fourteen (14) days, this Agreement shall terminate in all respects but without prejudice to the rights of either party in relation to any antecedent breach thereof.
24. On the termination of this Agreement pursuant to Clause 23 hereof, OAM will transfer the Portfolio in accordance with the instructions of the Client PROVIDED that the costs of such transfer shall be borne by the Client and OAM shall be entitled to payment out of the Portfolio of any sums due to OAM in accordance with the terms hereof.

## **Taxation**

25. (a) As at the date of this Agreement, no taxes on income or gains are levied in the Cayman Islands. There are no withholding taxes which could be applicable to this Agreement in respect of sums paid into or out of the Portfolio under Cayman Islands Law. However, OAM takes no responsibility whatever for the taxation consequences of the Client entering into this Agreement or in respect of any transaction entered into pursuant hereto. Clients are strongly recommended that they should seek independent taxation advice in all jurisdictions relevant to their citizenship, domicile and residence.
- (b) Clients should note that certain investments held within the Portfolio may be subject to withholding taxes at source levied in the jurisdictions of the residence or domicile of the relevant company or its paying agents.
- (c) The Client will be responsible for the completion of any forms and undertakings required to be lodged with any custodian or broker holding title to all or part of the Portfolio.

## **FATCA, CRS and Other Reporting Requirements**

26. (a) The Client will promptly provide to OAM such documents and other information as OAM may request in order for OAM to comply with all legal and tax information reporting obligations and requirements applicable to OAM and/or its shareholders (including, without limitation, under the Tax Information Authority Law (2013 Revision), including the Tax Information Authority (International Tax Compliance) (United States of America) Regulations, 2014, the Tax Information Authority (International Tax Compliance) (United Kingdom) Regulations, 2014, the Tax Information Authority (International Tax Compliance) (Common Reporting Standard) Regulations, 2015, as amended from time to time and any other applicable regulations implementing any other similar obligations applicable from time to time, or under any applicable anti-money laundering statutes), and to avoid any penalty or withholding or other adverse consequence resulting from OAM's failure to comply with such obligations and requirements. Without prejudice to the generality of the foregoing, the Client shall provide a tax residence and control self-certification as may be required from time to time by OAM. If the Client fails to provide promptly to OAM such documents and information, completely and accurately, and such failure results in OAM's inability to comply with any such obligation or requirement, the Client agrees that it (i) shall be liable for any penalty, withholding or other adverse consequence imposed on OAM, OAM Asian Recovery Fund, OAM European Value Fund or any other investment scheme advised or promoted by OAM, their shareholders and/or any of their respective directors, officers, employees, agents, managers, shareholders and/or partners as a result, and associated costs and expenses, (ii) shall promptly indemnify any such party in full for all such amounts, costs and expenses, and (iii) shall timely provide any such party with any and all information reasonably related to any proceeding involving the party in connection with the matters described in this paragraph. Failure to provide the required information may result in the termination of the Agreement without further notice.
- (b) Without prejudice to paragraph (a), the Client will, at the request of OAM, complete and deliver a Form W-8BEN, W-8BEN-E, self-certification forms and/or such other fiscal or regulatory forms or declarations of tax residency as may be required.

- (c) To the extent that other jurisdictions introduce similar legislation to that referred to above or otherwise require the filing of information relating to the Client or the Portfolio or persons with an interest therein or connected therewith for fiscal or other purposes, the provisions of paragraph (a) and (b) above shall apply to OAM and the Client *mutatis mutandis*.

### **Confidentiality**

27. OAM will at all times treat the business of each client of the firm as confidential. In advising on and managing the Portfolio, OAM shall not, and shall not be obliged to, make use of information available to us which we are under any legal or moral duty not to disclose. However, OAM may disclose information about the Client and/or the Portfolio to any government department or agency or regulatory authority when required by applicable law to do so and will not be liable in any way for so doing. Wherever practicable and permissible, OAM will inform the Client in advance of such disclosure.

### **Parallel Trading**

28. The Client undertakes that it will not (or cause or invite or advise any other person or persons to) purchase or enter into derivatives or other contracts in respect of securities within the Portfolio or the securities held by OAM Asian Recovery Fund, OAM European Value Fund or any other investment vehicle promoted by OAM and held within the Portfolio, except with the consent of OAM, PROVIDED ALWAYS that this prohibition shall not apply to dealings in such securities prior to notification from OAM to the Client that any such security has been included within the Portfolio or is held by the relevant investment vehicle, as the case may be.

### **Proceeds of Crime Law**

29. The opening of accounts and the maintenance of records thereof by OAM in the Cayman Islands is subject to the Proceeds of Crime Law (2014) as amended from time to time; in particular, client account opening records may be inspected by the Cayman Islands Monetary Authority.

### **Regulation**

30. OAM is regulated under the Companies Management Law (2003 Revision). OAM is exempted from regulation under Securities Investment Business Law (2011 Revision) and, accordingly, the Client will not have the benefit of the provisions of that Law.

### **Contract Notes**

31. The Client may inspect or request copies of contract notes, vouchers and copies of entries in books or electronic recording media relating to transactions undertaken in respect of the Portfolio and OAM undertakes to maintain such records for a minimum of five (5) years from the date of the transaction after which period such rights shall terminate.

### **Third Party Rights**

32. For the purposes of Clause 26, the Contracts (Rights of Third Parties) Law shall apply for the benefit of OAM European Value Fund and OAM Asian Recovery Fund and the other persons

named in Clause 26 and, further, the undertakings given in clause 26 shall be held by OAM on trust for the persons referred to therein as well as for its own benefit.

**Governing Law**

33. This Agreement and all matters relating hereto or connected herewith shall be governed by and construed in accordance with the laws of the Cayman Islands to the jurisdiction of the Courts of which the parties hereby irrevocably submit.

**IN WITNESS WHEREOF** this Agreement has been executed the            day of            20    .

For individual Clients

.....  
.....  
.....  
Witness to Client signature  
.....  
Client

For corporate Clients

Executed by

.....  
Director  
for and on behalf of

.....  
Director  
for and on behalf of

.....  
Witness to Client signature

.....  
Desmond Kinch, Director  
duly authorised for and on behalf of  
Overseas Asset Management  
(Cayman) Ltd

**THE SCHEDULE**

Securities Investment Business Law - definitions relevant to Clause 16(d)

"high net worth person"

means:

- (i) an individual whose net worth is at least \$800,000 or its equivalent in any other currency; or
- (ii) any person that has total assets of not less than \$4,000,000 or its equivalent in any other currency;

"sophisticated person"

means a person:

- (a) regulated by the Authority;
- (b) regulated by a recognised overseas regulatory authority;
- (c) any of whose securities are listed on recognised securities exchange; or
- (d) who:
  - (i) by virtue of knowledge and experience in financial and business matters is reasonably to be regarded as capable of evaluating the merits of a proposed transaction; and
  - (ii) participates in a transaction with a value or in monetary amounts of at least \$80,000 or its equivalent in any other currency, in the case of each single transaction;

"U.S. Person" definition relevant to Clause 16(e)

"U.S. Person"

Means:

- (a) a natural person who is a citizen or resident of the United States;
- (b) a partnership, limited liability company or corporation organized or incorporated under the laws of the United States, its territories or possessions, any U.S. state, or the District of Columbia;
- (c) a trust of which any trustee is a U.S. Person, unless no beneficiary of the trust (and no settlor if the trust is revocable) is a U.S. Person, the trustee who is a U.S. Person is a professional fiduciary and a trustee who is not a U.S. Person has sole or shared investment discretion with respect to the trust assets;
- (d) an estate of which any executor or administrator is a U.S. Person, unless such estate is governed by non-U.S. law, the U.S. Person who serves as an executor or administrator of such estate is a professional fiduciary and an executor or administrator of the estate who is not a U.S. Person has sole or shared investment discretion with respect to the estate's assets;
- (e) a non-discretionary account or similar account (other than an estate or trust) held by a dealer or other fiduciary for the benefit or account of a U.S. Person;
- (f) a discretionary or similar account (other than an estate or trust) held by a dealer or other fiduciary organized, incorporated, or (if an individual) resident in the United States;
- (g) an agency or branch of a foreign entity located in the United States; or
- (h) a partnership, limited liability company or corporation that is (i) organized or incorporated under the laws of a jurisdiction

other than the United States and (ii) formed by a U.S. Person principally for the purpose of investing in securities not registered under the U.S. Securities Act of 1933 as amended, unless it is organized or incorporated and owned by accredited investors (as defined in Rule 501(a) under the U.S. Securities Act of 1933 as amended) who are not natural persons, estates or trusts. Notwithstanding the foregoing, an employee benefit plan established and administered in accordance with the law of a country other than the United States and with customary practices and documentation of such country does not constitute a U.S. Person.