

- 14 -

**PROVIDED THAT:**

the Custodian shall not enter into any transaction unless such transaction is carried out as if effected on normal commercial terms negotiated at arms' length;

- (i) a person approved by the Custodian as independent and competent certifies that the price at which the transaction is effected is fair, or
- (ii) the execution of the transaction is on best terms on organised investment exchanges under their rules; or
- (iii) where the conditions set out in (i) and (ii) are not practical the transaction is executed on terms which the Custodian is satisfied conform with the principle set out in this proviso.

The Custodian shall be obliged to act on Proper Instructions notwithstanding that the Custodian or any of its divisions, branches or affiliates may be in possession of information showing or tending to show that the Proper Instructions may not be in the best interests of the Company and the Custodian shall not be under any duty to disclose any such information to the Company.

15. REMUNERATION OF THE CUSTODIAN

(A) The Custodian shall be paid by way of remuneration for its services pursuant to this Agreement fees, together with any value added tax applicable to such fees, at such rates and at such times as may be agreed from time to time between the Company and the Custodian. Such fees shall be paid in Ireland in United States Dollars.

(B) The Company shall reimburse the Custodian in addition to the fees referred to in sub-clause (A) of this Clause for all out-of-pocket expenses properly incurred by the Custodian in carrying out its duties hereunder.

(C) The Custodian is authorised to deduct its remuneration, expenses and disbursements on account of the Company from any one or more of the Company's accounts. The Company shall maintain or make available sufficient cleared funds in an account with the Custodian in order to cover the Custodian's fees, expenses and disbursements as aforesaid and to enable the Custodian to fulfil its duties under this Agreement.

(D) If at any time the Company shall not have honoured any or all obligations to the Custodian for any unpaid sum due to the Custodian for or in connection with services rendered pursuant to this

Agreement when those services have been previously authorised by Proper Instructions from the Company, the Custodian shall have the right without notice to the Company to retain or set off against such obligations of the Company, any Securities or cash which the Custodian may hold directly or indirectly for the account of the Company, in any currency, including time deposits and all Securities held hereunder. The rights set out in this paragraph shall be in addition to and without prejudice to any rights existing at common law, in equity, by statute or by custom.

16. CONCERNING THE CUSTODIAN

(A) The Custodian shall not be required to take any legal action unless fully indemnified to its reasonable satisfaction for costs and liabilities by the Company. If the Company requires the Custodian as custodian to take any action which in the opinion of the Custodian might make the Custodian liable for the payment of money or liable in any other way the Custodian shall be kept indemnified against such payments and liabilities by the Company in any reasonable form as a prerequisite to taking such action.

(B) In performing its duties hereunder the Custodian may appoint such agents, sub-custodians and delegates as it might think fit to perform in whole or in part any of its duties and discretions (including in such appointment powers of sub-delegation) provided that the Custodian shall not delegate any of its duties referred to in Clause 8. Notice of any such appointment shall promptly be given by the Custodian to the Company. The fees and other remuneration of any agent, sub-custodian or delegate appointed by the Custodian pursuant hereto shall be paid by the Company.

(C) The Custodian shall deliver to the Company from time to time at such reasonable intervals as the Company may require a full account of all receipts and payments made and other action taken by the Custodian pursuant to this Agreement since the date of the last preceding such account together with a list as at the date of such account of all Securities or other indebtedness or obligations held by the Custodian or its agent for or on behalf of each Sub-Fund or otherwise pursuant to the terms hereof PROVIDED THAT the Custodian shall not be obliged to maintain any records for a period of more than seven years. The Company agrees that any account shall be binding on the Company thirty (30) business days after (a) in the case of any statement sent by mail, it has been mailed by first class post, postage prepaid or (b) in the case of any statement delivered by hand or transmitted or made available electronically, it has been transmitted or made available electronically to the Company unless the Company has previously notified the Custodian in writing of any error or discrepancy in such statement and in the absence of such notification, the Custodian shall not be liable (in the absence of negligence or wilful default) for such error or discrepancy. The Custodian shall provide such other reports and other information to the Company as may be agreed from time to time.

(D) The Company as sole beneficial owner of all Securities delivered or to be delivered to the Custodian or its nominee pursuant to this Agreement hereby indemnifies and holds harmless the Custodian from and against all proper costs and expenses and liabilities resulting from the fact that such Securities are registered in the name of the Custodian or its nominee.

(E) The Custodian shall exercise reasonable care in performing its obligations under this Agreement and the Custodian will look after the assets of the Company with the same degree of care it exercises for its own assets of a similar type in the relevant market. The Custodian shall only be liable to the Company and its shareholders for any loss suffered by them as a result of its unjustifiable failure to perform its obligations or its improper performance of them or if it has been negligent or in wilful default of its duties as set out under this Agreement and the UCITS Regulations.

(F) The Custodian's liability shall not be affected by the fact that it has entrusted to a third party some or all of the assets in its safekeeping.

(G) The Custodian shall exercise reasonable care in the selection and appointment of professional advisers and subject thereto shall be entitled to rely on, and may act upon the advice of professional advisers in relation to matters of law, regulation or market practice (which may be the professional advisers of the Company) and shall not be liable to the Company for any action reasonably taken or omitted pursuant to such advice, save to the extent that the Custodian is able to recover from such professional advisers in respect of negligent advice given.

(H) The Custodian need not maintain any insurance cover for the benefit of the Company.

(I) Subject to Clause 16(E), the Custodian accepts no liability whatsoever for any loss which results from:

- (a) the general risks of investing; or
- (b) investing or holding assets in a particular country, including but not limited to, losses arising from nationalisation, expropriation or other governmental actions; regulations of the banking or securities industries, including changes in market rules; currency restrictions, devaluations or fluctuations; market conditions affecting the orderly execution of securities transactions or affecting the value of assets.

(J) The Custodian shall not be liable to the Company for any loss due to forces beyond its control including, but not limited to, strikes, work stoppages, acts of war or terrorism, insurrection, revolution, nuclear fusion, fission or radiation, acts of God or any other acts outside the control of the Custodian, provided that the Custodian shall use all reasonable efforts to minimise the effects of same.

(K) Subject to Clause 16(E), the Custodian shall not be liable for acting on what it in good faith believes to be Proper Instructions, or in relation to notices, requests, waivers, consents, receipts or other documents which the Custodian in good faith believes to be genuine and to have been given or signed by the appropriate parties.

(L) Subject to Clause 16(E), the Custodian shall not be liable to the Company for the collection, deposit or credit of invalid, fraudulent or forged Securities.

(M) Subject to Clause 16(E), the Custodian shall not be liable for losses arising out of effecting delivery or payment against an expectation of receipt, save where such delivery or payment was contrary to local market practice.

(N) Subject to Clause 16(E), the Company shall be solely responsible for compliance with any notification or other requirement of any jurisdiction relating to or affecting the Company's beneficial ownership of the Securities and the Custodian assumes no liability for non-compliance with such requirements.

(O) Neither the Custodian nor any sub-custodian is under any duty to provide the Company with investment advice or to supervise its investments.

(P) The Custodian may refuse to act upon Proper Instructions which it reasonably believes to be contrary to law, regulation or market practice and shall promptly notify the Company of any such refusal.

(Q) The Custodian shall be obliged to deliver Securities in accordance with Proper Instructions. The Custodian shall not be deemed to be affected with notice of or to be under any duty to disclose to the Company any fact or thing which may come to its knowledge or that of any of its servants or agents in the course of its rendering similar services to others in the course of its business or any other capacity or in any manner whatsoever otherwise than in the course of acting as custodian to the Company pursuant to this Agreement.

(R) The Company hereby undertakes to hold harmless and indemnify the Custodian against all actions, proceedings, losses, claims, costs, demands and expenses which may be brought against or suffered or incurred by the Custodian by reason of its performance or non-performance of its obligations or functions pursuant to this Agreement provided that this indemnity shall not extend to any fraud, negligence or wilful default of the Custodian or loss arising to shareholders as a result of the unjustifiable failure of the Custodian to perform its obligations or its improper performance of them under this Agreement.

17. REFUSAL TO ACT

Subject to notice having been given to the Company, the Custodian shall be entitled to refuse to effect any investment, realisation or other transaction required to be carried out by it on behalf of the Company pursuant to this Agreement if in the opinion of the Custodian:-

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

PROVIDED ALWAYS that the foregoing (save as aforesaid) shall not absolve the Custodian from performing the obligations expressly assumed by it under this Agreement.

18. APPROVAL OF PUBLICATIONS

The Company shall deliver to the Custodian for approval prior to issue thereof a copy of all statements, notices, circulars and advertisements to be issued on behalf of or relating to the Company in which the name or any reference to the Custodian may appear and any such publication not approved by the Custodian shall not be published by or on behalf of the Company and the Company hereby undertakes that no such statement, notice, circular or advertisement will be published and that no moneys shall be raised nor any shares of the Company issued unless and until all necessary consents and permissions of whatever jurisdiction have been obtained in connection therewith.

19. CONFIDENTIALITY

Neither party hereto shall unless compelled so to do by any court of competent jurisdiction or any relevant regulatory body either before or after the termination of this Agreement disclose to any

person not authorised by the relevant party to receive the same any information relating to such party or to the affairs of such party of which the party disclosing the same shall have become possessed during the period of this Agreement and each party shall use its best endeavours to prevent any such disclosure as aforesaid.

20. RIGHT TO USE DATA PROCESSING RECORDS

The Custodian is authorised to maintain all accounts, registers, corporate books and other documents relating to the Company 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 as juridical proof thereof.

21. TELEPHONE RECORDING

Each of the parties hereto agrees that the other party may record all telephone conversations between such party and the other party and any such tape recordings may be submitted in evidence in any proceedings relating to this Agreement.

22. TERMINATION

(A) This Agreement and the appointment of the Custodian hereunder shall continue in force until terminated by either the Company or the Custodian giving to the other not less than ninety days' notice in writing (or such shorter notice as such other party may agree to accept) expiring at any time provided that either the Company or the Custodian may forthwith terminate this Agreement by notice taking immediate or subsequent effect if any such other party ("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 same;
- (b) 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;
- (c) 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 asset;

- (d) have a receiver appointed over all or any substantial part of its undertaking, assets or revenues;
- (e) 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 parties.

(B) The Custodian may terminate this Agreement forthwith if the initial issue of Participating Share in the Thema High Yield Fixed Income Fund has not taken place on or before 1 September 1996, provided the Central Bank agrees to revoke its authorisation of the Company.

(C) The Company may terminate this Agreement if the Custodian's certificate issued pursuant to Section 39B of the Finance Act, 1980 (as amended) is revoked.

(D) Save as otherwise provided in this Agreement, the Company may not terminate the appointment of the Custodian and the Custodian may not retire from such appointment unless and until a successor custodian shall have been appointed in accordance with the Articles.

(E) If the Custodian shall have given to the Company notice of its desire to retire from its appointment and no successor shall have been appointed in accordance with the Articles within three months from the giving of such notice, the Custodian may require the Directors to convene a general meeting of the Company and propose at that meeting a resolution that the Company be wound up or upon receipt of written notice from the Custodian the Company shall forthwith redeem or repurchase all the Participating Shares and the Custodian's appointment hereunder shall terminate on the occurrence of such redemption or repurchase and on the revocation of Central Bank's authorisation of the Company.

(F) Upon the termination of this Agreement the Custodian shall deliver the Securities, cash and any other property of the Company in its custody hereunder to such person as the Company may nominate as successor custodian; provided, however, that the Custodian shall not be required to make any such delivery or payment until full payment shall have been made by the Company of all liabilities constituting a charge on or against the properties held by the Custodian or on or against the Custodian, and until full payment shall have been made to the Custodian of all its fees, compensation, costs and expenses due to it under the provisions of this Agreement provided always that the Custodian

can not charge any fees in respect of any period after the termination date save with the approval of the Company.

23. NOTICES

Any notice, instruction or other instrument required or permitted to be given hereunder may be delivered in person to the offices of the parties as set forth herein during normal business hours, or delivered prepaid registered mail or by telex or facsimile to the parties at the following addresses or such other address as may be notified by either party from time to time.

TO THE COMPANY:           THEMA INTERNATIONAL FUND plc  
First Floor  
Europa House  
Harcourt Centre  
Harcourt Street  
DUBLIN 2

Attention:       The Secretary

Telex:           3233BOBD E1

Facsimile:      353-1-475-2467

CC:               THEMA ASSET MANAGEMENT plc  
Citco Building  
Wickhams Cay  
Road Town  
Tortola  
British Virgin Island

Attention: The Secretary

Telex:

Facsimile:

TO THE CUSTODIAN:       BERMUDA TRUST (DUBLIN) LIMITED  
Europa House  
Harcourt Centre  
Harcourt Street  
Dublin 2  
Ireland

Attention: The Managing Director

Telex:           3233BOBD E1

Facsimile: 353-1-475-2467



Such notice, instruction or other instrument shall be deemed to have been served in the case of a registered letter at the expiration of five business days after posting and in the case of facsimile, immediately on despatch and if delivered outside normal business hours it shall be deemed to have been received at the next time after delivery when normal business hours commence and in the case of facsimile on the business day after the receipt thereof. Evidence that the notice was properly addressed, stamped and put into the post shall be conclusive evidence of posting.

24. ASSIGNMENT

This Agreement may not be assigned by the Custodian without the consent of the Company and the Central Bank.

25. AMENDMENT

No provision of this Agreement may be amended otherwise than by an instrument in writing signed by the parties hereto and with the approval of the Central Bank.

26. COUNTERPART

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

27. SEVERANCE

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.

28. CONTINUING OBLIGATIONS

Termination of this Agreement shall be without prejudice to any claims or rights which either of the parties hereto may have by reason of any breach of the other party's obligations occurring on or prior to termination of this Agreement and without prejudice to the generality of the foregoing any indemnity provisions or provisions limiting the liabilities of either party shall survive termination of this Agreement.

29. WAIVER

No provision of this Agreement may be waived otherwise than by an instrument in writing signed by the parties hereto.

30. PARTNERSHIP

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

31. PROPER LAW

This Agreement shall be governed by and construed in accordance with the laws of Ireland and the Company agrees that the courts of Ireland shall have jurisdiction to resolve any disputes relating to the terms of this Agreement. This clause shall not limit the right of either party to bring proceedings in any other jurisdiction.

In witness whereof this Agreement has been entered in to the day and year first above written.

SIGNED BY Daniel Morrissey  
for and on behalf of  
**THEMA INTERNATIONAL FUND plc**  
in the presence of:

Fergus Healey  
Signature of Witness

Fergus Healey  
Name of Witness

Solicitor  
Occupation of Witness

Dublin 2  
Address of Witness

[Signature]  
Director.

SIGNED BY Emer Clarke  
for and on behalf of **BERMUDA  
TRUST (DUBLIN) LIMITED**  
in the presence of:

Emer Clarke

David O'Donnell  
Signature of Witness

David O'Donnell  
Name of Witness

Solicitor  
Occupation of Witness

Europa House, Harcourt Street, Dublin 2  
Address of Witness

THEMA INTERNATIONAL FUND PLC

HSBC INSTITUTIONAL TRUST SERVICES (IRELAND) LIMITED

**SUPPLEMENTAL CUSTODIAN AGREEMENT**

William Fry  
Solicitors  
Fitzwilton House  
Wilton Place  
Dublin 2  
[www.williamfry.ie](http://www.williamfry.ie)

© William Fry 2006

013051.0002.TOR

THIS AGREEMENT is made on

21<sup>st</sup> August

2006

BETWEEN:

THEMA INTERNATIONAL FUND PLC  
a company incorporated under the  
laws of Ireland having its registered office at  
HSBC House, Harcourt Centre  
Harcourt Street, Dublin 2, Ireland  
(the "Company")

- and -

HSBC INSTITUTIONAL TRUST  
SERVICES (IRELAND) LIMITED  
(formerly known as Bermuda Trust  
(Dublin) Limited)  
a company incorporated under the laws of Ireland  
having its head office at  
HSBC House, Harcourt Centre  
Harcourt Street, Dublin 2, Ireland  
(the "Custodian")

WHEREAS:

- A. The Company is an investment company with variable capital structured as an umbrella fund with segregated liability between Sub-funds incorporated under the laws of Ireland on 9 May 1996 and was authorised by the Irish Financial Services Regulatory Authority as a UCITS on 31 May 1996.
- B. Pursuant to the terms of a custodian agreement between the Company and the Custodian dated 30 May 1996 (the "Original Agreement"), the Company appointed the Custodian and the Custodian agreed to act as custodian of all of the assets of the Company.
- C. The parties hereto wish to amend the Original Agreement to reflect the Company's conversion to segregated liability between Funds which took place on 16 June 2006.

IT IS HEREBY AGREED as follows:

**1. Interpretation**

Unless the context otherwise requires, words and expressions contained in this Agreement shall bear the same meanings as in the Original Agreement.

**2. Amendment to Original Agreement**

The parties hereto agree that the terms and conditions of the Original Agreement shall be amended by:

- 2.1 the addition of the words "and with segregated liability between Funds" after all references to the Company being an "investment company with variable capital";
- 2.2 the replacement of the first sentence of Clause 15(C) with the following sentence:
- "(c) The Custodian is authorised to deduct its remuneration, expenses and disbursements on account of a Sub-fund ("Fund") from any one or more of that Fund's accounts";
- 2.3 the re-numbering of the current Clause 15(D) as Clause 15(D)(i) and the insertion of the following Clause 15(D)(ii):
- "**15(D)(ii)** As the Company is structured as an umbrella fund with segregated liability between its Sub-funds, (the "Funds") the right to retain or set-off described in Clause 15(D)(i) may be exercised by the Custodian only against any Securities or cash the Custodian may hold directly or indirectly for the account of the Company, in any currency including time deposits and all Securities held hereunder, where such Security cash is the property of the Fund which defaulted on its obligations or liabilities."; and
- 2.4 the insertion of the following Clause 32:

**"32. SEGREGATED LIABILITY BETWEEN THE FUNDS**

The Company is an umbrella fund with segregated liability between Funds pursuant to the Companies Acts 1963 to 2005 and, notwithstanding any provision of this Agreement:

- (a) the Custodian shall not seek whether in any proceedings or by any other means whatsoever or wheresoever to have recourse to any assets of any Fund of the Company in the discharge in all or any part of the liability which was not incurred on behalf of that Fund;
- (b) if the Custodian shall succeed by any means whatsoever or wheresoever in having recourse to any assets of any Fund in the discharge in all or any part of a liability which was not incurred on behalf of that Fund, the Custodian shall be liable to the Company to a sum equal to the value of the benefit thereby obtained by the Custodian; and
- (c) if the Custodian shall succeed in siezing or attaching by any means, or otherwise levying execution against, any assets of a Fund in respect of a liability which was not incurred on behalf of that Fund, the Custodian shall hold those assets or the direct or indirect proceeds of the sale of such assets on trust for the Company and shall keep those assets or proceeds separately and identifiable as such property."

**3. Continuing Obligations**

Save as the same are expressly varied in accordance with the terms of this Agreement, the provisions of the Original Agreement shall continue in full force and

effect. This Agreement and the Original Agreement shall henceforth be read and construed together as one document.

**4. Governing Law**

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

**5. Counterparts**

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

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

SIGNED by  
duly authorised on behalf of  
THEMA INTERNATIONAL FUND PLC  
in the presence of:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness (Signature)

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Print address

SIGNED by *Ronnie Griffin*  
duly authorised on behalf of  
HSBC INSTITUTIONAL TRUST  
SERVICES (IRELAND) LIMITED  
in the presence of

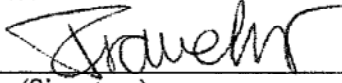
*RGriffin*  
\_\_\_\_\_  
Signature

*C. Hocke*  
\_\_\_\_\_  
Witness (Signature)

*Claudia Hocke*  
\_\_\_\_\_  
Print name

**HSBC House  
Harcourt Centre  
Harcourt Street  
Dublin 2  
Ireland**  
\_\_\_\_\_  
Print address

SIGNED by  
duly authorised on behalf of  
THEMA INTERNATIONAL FUND PLC  
in the presence of:



Witness (Signature)

Françoise Grawehr

Print name

GENEVALOR, Benbassat & Cie  
7, rue Versonnex  
1207 Genève

Print address

SIGNED by  
duly authorised on behalf of  
HSBC INSTITUTIONAL TRUST  
SERVICES (IRELAND) LIMITED  
in the presence of:

Witness (Signature)

Print name

Print address



Signature

Signature

WF-591753-v2