

DEPOSITARY AGREEMENT

BETWEEN AND AMONGST

Stichting Bewaarbedrijf Legends XL Fund

And

Theta Fund Management B.V.

And

Darwin Depositary Services B.V.

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This agreement (the "**Agreement**") is made on the date of September 2014

BETWEEN

1. **Theta Fund Management B.V.**, a limited liability company incorporated and existing under the laws of the Netherlands, having its registered office at Honthorststraat 19, 1071DC Amsterdam The Netherlands (hereinafter referred to as the "**Manager**");

and
2. **Stichting Bewaarbedrijf Legends XL Fund**, acting in its capacity as legal owner of the Assets (hereinafter referred to as the "**Legal Title Holder**");

and
3. **Darwin Depositary Services B.V.** a limited liability company incorporated and existing under the laws of the Netherlands, with registered office at 101, Barbara Strozziilaan, 1083 HN Amsterdam the Netherlands, (hereinafter referred to as "**Darwin**")

WHEREAS:

- A. The Fund is an common contractual fund (*fonds voor gemene rekening*) organised under the laws of The Netherlands subject to the terms and conditions as set forth in notarial deed dated 22 February 2011 and such further conditions as described in the private placement memorandum of the Fund.
- B. The Fund is an alternative investment fund in the meaning AIFMD and an investment fund (*beleggingsfonds*) in het meaning of the FMSA (as defined hereinafter).
- C. The Fund is managed by the Manager acting as manager in the meaning AIFMD and the FMSA and the assets of the Fund are held by the Legal Title holder.
- D. The Manager on behalf of the Fund has entered into a Custodian Agreement with the Custodian.
- E. The administration of the Fund is carried out by TMF Fund Administrators B.V., a limited liability company, incorporated and existing under the laws of The Netherlands, with registered office at Westblaak 89, 3012KG Rotterdam, (the "**Administrator**") pursuant to the administration services agreement as agreed between the Fund, the Manager and the Administrator;
- F. The Manager and Darwin have been engaged in discussions regarding the depositary functions and duties to be fulfilled by Darwin and the Manager has provided Darwin with the information to assess its functions and duties under this Agreement

- G. The Fund has requested Darwin to act as depository in the meaning AIFMD and the FMSA and to perform certain other duties; and
- H. Darwin is prepared to act in the said capacity and to perform certain other duties, subject to the terms and conditions of this Agreement.

HAVE AGREED AS FOLLOWS:

ARTICLE 1 DEFINITIONS

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

"**AFM**" means Stichting Autoriteit Financiële Markten.

"**Agreement**" means this agreement and the schedules and annexes hereto.

"**AIF**" means collective investment undertaking, including investment compartments, which raises capital from a number of investors with a view to investing it in accordance with a defined investment policy for the benefit of those investors and which is not covered by Directive 2009/65/EC on undertakings for collective investment in transferable securities (UCITS Directive).

"**AIFMD**" means the Directive 2011/61/EU of the European Parliament and European Council of 8 June 2011 on alternative investment Managers as it may be amended from time to time.

"**Assets**" means all Custody Assets and Non Custody Assets of the Fund.

"**Authorised Representative(s)**" means any person who is (from time to time) authorised, as satisfactorily evidenced in writing by the Manager to Darwin (along with the signature of such person), to give Instructions on behalf of the Manager and in respect of whom Darwin has not received written notice from the Manager that such authorisation has been revoked.

"**Bank**" means an entity referred to in section 18(1)a through 18(1)c of Directive 2006/73/EC and which is at least subject to prudential rules and supervision substantially as described in section 16 of Directive 2006/73/EC.

"**BGfo**" means the Decree on Supervision of Market Conduct Financial Firms FMSA ('*Besluit Gedragstoezicht financiële ondernemingen Wft*'), as amended from time to time.

"**Cash Account**" means the account or, as the case may be, any of the accounts designated by the Fund, or failing designation by the Fund, held in accordance with Directive 2006/73/EC in the name of the Fund, inter alia for the purpose of crediting the amounts payable to, and debiting amounts payable by the Fund pursuant to the terms of this Agreement.

“Clearing System” means any clearing house, settlement system, payments system, or depository (including any dematerialized book entry system) or entity that acts as a system for the central handling of securities in the country where it is incorporated or organized or that acts as a transnational system for the central handling of securities, whether or not acting in that capacity, or other financial market utility or organized funding facility used in connection with transactions relating to securities and any nominee of the foregoing.

“Custodian” means ABN Amro Clearing Bank N.V. with registered office at Gustav Mahlerlaan 10 1082 PP Amsterdam.

“Custody Agreement” means the agreement between the Manager, Darwin and the Custodian.

“Custody Assets” means all of the Fund's financial instruments that can be physically delivered to a depository and all of the Fund's financial instruments that can be registered in a financial instruments account opened in the depository books as referred to in article 21(8)a AIFMD

“Delegated Regulation” means the Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012, implementing the AIFMD with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision.

“Effective date” means the date of the signing of this Agreement.

“Escalation Procedure” means the procedure referred to in article 11.

“Financial instrument” means an instrument as defined in Annex I to Directive 2004/39/EC.

“Financial Instruments’ Account” means the administrative record or, as the case may be, any administrative records opened in the books of the Custodian in the name of and in favour of the Fund, reflecting the holding and administration of the Financial Instruments.

“Financial Instruments’ Rights” means the rights of the Fund, accepted for the purposes hereof by Darwin with respect to Financial Instruments remitted to Darwin, and that are held and/or administered by Darwin.

“FMSA” means the Dutch Financial Markets Supervision Act (*Wet op het financieel toezicht*), as amended from time to time.

“Fund” means the Theta Legends XL Fund.

“Fund Documents” means the documents concerning the Fund as listed in Schedule 1, including all rules applying to the operation of the Fund whether in the form of terms and conditions of management and custody and the prospectus in respect of the Fund.

“Instruction” means any written instruction (including by way of telefax) or, provided agreed in writing in advance, any oral instructions, believed by

Darwin in good faith to have been received from the Manager or from an Authorised Representative in compliance with the Manager' resolution, in respect of any of Darwin's duties hereunder and in conformity with the processes defined within the Custody Agreement.

"Law" means any laws, rules and regulations of the Netherlands in force from time to time, such as FMSA, the BGfo, and including directly applicable international law, such as the Delegated Regulation and any relevant notices and guidelines of any Dutch, international or supranational competent authority.

"Manager" means the Alternative Investment Manager (AIFM) in the meaning AIFMD.

"Non Custody Assets" means all Assets that are not Custody Assets.

- 1.2 Any other expression in capital letters used in this Agreement, unless the context requires otherwise, shall have the same meaning as ascribed thereto in the Fund Documentation.
- 1.3 Any reference in this Agreement to a legal structure or entity being 'controlled' by another person shall be a reference to the meaning of that term in sections 89(3) and 90(5) of the Delegated Regulation.
- 1.4 Any reference to the singular includes the plural and vice versa.
- 1.5 The use of headings and bold italics in this Agreement is for ease of reference only and shall not affect its construction.
- 1.6 The recitals, schedules and annexes to this Agreement shall be considered an integral part of this Agreement.
- 1.7 Unless the context clearly requires otherwise, references in this Agreement shall be references to articles of and schedules to this Agreement.
- 1.8 Any reference to rights or obligations of the Fund under this Agreement will be deemed to be rights or obligations of the Title Holder.

ARTICLE 2 APPOINTMENT DARWIN AS DEPOSITARY

- 2.1 Darwin is hereby appointed as the depositary (*bewaarder*) of the Fund as defined in section 1:1 FMSA with effect from the Effective Date.
- 2.2 Darwin shall perform all functions and duties of a depositary pursuant to the AIFMD in accordance with applicable Law for the benefit of the investors in the Fund ('Participants') pursuant to article 4:37f(1) FMSA, as the sole depositary. Darwin shall be responsible for (i) custody and verification of the Assets, and (ii) the oversight and supervision of the Fund and the management of the Fund by the Manager as set out in article 7.2. Darwin shall delegate custody and other depositary services in the manner as set forth in this Agreement. Darwin shall in general ensure that the cash flows of the Fund are properly monitored in accordance with applicable Law. Darwin

shall furthermore provide oversight services in respect of among other matters that:

- a. ensure that the sale, issue, re-purchase, redemption and cancellation of Shares are carried out in accordance with applicable Law and the Fund Documents;
- b. ensure that the value of the Participations is calculated in accordance with applicable Law and the Fund Documents;
- c. carry out instructions from the Manager, unless in its reasonable opinion they conflict with applicable Law and the Fund Documents;
- d. ensure that in transactions involving the Assets any consideration is remitted to the Fund within the usual time limits; and
- e. ensure that the Fund's income is applied in accordance with applicable Law and the Fund Documents.

- 2.3 The Fund a fund of funds investing in hedge funds as further described in the investment guidelines as set out in the Fund Documents, as amended from time to time and notified to Darwin. Darwin shall only perform its function and duties in respect of those assets and regions, and in the event that the investment guidelines included in the Fund Documents are amended to allow the Fund to invest in other types of assets or in other regions, Darwin and the Manager shall evaluate the suitability of Darwin as depository for such types of assets or other regions and either Darwin and the Manager may terminate the appointment of Darwin as depository, with due observance of article 18, if such amendment materially affects the performance of Darwin's functions and duties under this Agreement.
- 2.4 The Custody Agreement shall include country lists and procedures to add and/or withdraw countries from that list), and this shall be consistent with the information regarding the assets in which the Fund may invest as referred to in article 2.3.
- 2.5 Darwin shall not assume any liability with respect to depository services rendered by any predecessor.
- 2.6 Without limitation and notwithstanding anything in this Agreement to the contrary, to the extent that any term of this Agreement conflicts with any provision of applicable Law, the relevant provision of applicable Law shall override and apply instead of such term.
- 2.7 When carrying out its obligations under this Agreement Darwin shall act honestly, fairly, professionally, independently and in the interests of the Fund and the Participants.
- 2.8 Nothing in this Agreement shall limit the liability of Darwin to the extent its liability cannot be limited or excluded in accordance with applicable Law.

ARTICLE 3 SAFEKEEPING DUTIES REGARDING CUSTODY ASSETS

- 3.1 Darwin shall hold in custody the Custody Assets in accordance with the Custody Agreement (Schedule 2), provided that the safekeeping of Custody Assets shall be delegated by Darwin to the Custodian and for that purpose Darwin shall ensure: (a) the Custodian shall hold in custody all financial

instruments that be registered in a financial instruments account opened in the Custodian's books and all financial instruments that can be physically delivered to the Custodian and; (b) that all Custody Assets that can be registered in a financial instruments account opened in the Custodian's books are registered in the Custodian's books with segregated accounts in accordance with the principles set out in article 16 of Directive 2006/73/EC, in the name of the Legal Title Holder, so that they can be clearly identified as belonging to the Fund in accordance with applicable Law at all times.

- 3.2 Darwin confirms that the tasks as referred to in article 21(8) (a) AIFMD shall not be delegated to the Custodian to avoid AIFMD requirements.
- 3.3 Darwin is not a bank or institution for the custody of safekeeping of financial instruments and therefore there is an objective reason for delegating the safekeeping of Custody Assets to the Custodian. As the Custodian assumes the responsibility for such custody while Darwin is not a bank or institution for the custody of safekeeping of financial instruments, the liability for loss of assets under article 21 (12) AIFMD shall be transferred to the Custodian.
- 3.4 Darwin has exercised all due skill, care and due diligence in the selection and the appointment of the Custodian and keeps exercising all due skill, care and diligence in the periodic review and ongoing monitoring of the Custodian or any other third party to whom it has delegated parts of its tasks and of the arrangements of the third party in respect of the matter delegated to it.
- 3.5 Notwithstanding the delegation as provided for in article 3.1, Darwin shall be liable for the safekeeping of Custody Assets as depositary in the meaning of the AIFMD and the FMSA, with due observance of the provisions of the Custody Agreement, unless agreed otherwise.
- 3.6 Where the law of a third country requires that certain Custody Assets be held in custody by a local entity and no local entities satisfy the delegation requirements, Darwin may delegate its functions to such a local entity only to the extent required by the law of the third country and only for as long as there are no local entities that satisfy the delegation requirements, subject to the following requirements:
 - a) the Participants must be duly informed that such delegation is required due to legal constraints in the law of the third country and of the circumstances justifying the delegation, prior to their investment; and
 - b) the Manager, must instruct Darwin to delegate the custody of such Financial Instruments to such local entity.

Regarding the provision a) above, the Manager undertakes to provide Darwin with the notice to the Participants (if required) and the Fund Documents informing the Participants that the delegation is required due to legal constraints in the law of the third country and of the circumstances justifying the delegation.

For the purposes of this Agreement, an objective reason is (i) when Darwin can demonstrate that it has no other option but to delegate its custody functions to a third party and (ii) Darwin shall be deemed to have an objective

reason where it can demonstrate that it had no other option but to delegate its custody duties to a third party. In particular this can be the case where:

- a) the law of a third country requires that certain Financial Instruments held in custody by a local entity and local entities exist that satisfy the delegation criteria as laid down in the AIFMD;
 - b) the Manager insists on maintaining an investment in a particular jurisdiction despite warnings by Darwin as to the increased risk this presents.
- 3.7 Darwin shall notify the Manager when it becomes aware that the segregation of Custody Assets of the Fund is not, or is no longer sufficient to ensure protection from insolvency of third party, to whom safe-keeping functions are delegated in accordance with article 21(11) AIFMD. Darwin shall procure that all measures are taken, including the termination of the agreement with this third party appointed, which are in the best interest of the Fund and its investors where the third party no longer complies with the requirements.
- 3.8 Notwithstanding the delegation pursuant to the Custody Agreement as referred to in article 3.1, Darwin may delegate the safekeeping of Custody Assets to other third parties or allow sub-delegation by the Custodian, subject to the following conditions:
- a) the purpose of the delegation is not to avoid AIFMD requirements
 - b) Darwin can show an objective reason ('Objective reason') for delegating the safekeeping function
 - c) Darwin exercises due skill, care and diligence in the selection, appointment, periodic review and ongoing monitoring of its delegate; and
 - d) Darwin ensures, on an ongoing basis, that its delegate (i) has appropriate structures and expertise, (ii) if it will have sub-custody of financial instruments, is subject to a) effective prudential regulation (including capital requirements) and supervision; and b) periodical audits, (iii) segregates client assets from its own assets and those of Darwin, (iv) does not re-use funds assets without informing Darwin in advance and obtaining the prior consent of the Fund and/or the Manager and (v) performs the delegated functions in compliance with applicable Law.

ARTICLE 4 SAFEKEEPING DUTIES REGARDING NON CUSTODY ASSETS

- 4.1 Darwin shall verify the ownership of the Fund of the Non Custody Assets and shall maintain a record of the Non Custody Assets for which it is satisfied that the Fund holds the ownership of the Non Custody Assets and the assessment whether the Fund holds the ownership shall be based on information or documents provided by the Fund or the Manager and, where available, on external evidence; and Darwin shall keep such records up-to-date.
- 4.2 The Manager shall at all times and on-going basis provide Darwin with all relevant information Darwin may need to comply with its obligations pursuant to article 4.1 and article 21(8) AIFMD and the Manager procures that Darwin is provided with all relevant information by third parties, including, but not limited to:

- a) access, without undue delay, to all relevant information it needs in order to perform the ownership verification and record-keeping duties, including relevant information to be provided to Darwin by third parties,
 - b) all procedures in place to ensure that Non Custody Assets may not be assigned, transferred or delivered without Darwin having been informed of such transaction and Darwin shall have access without undue delay to documentary evidence of each transaction and position from the relevant third party and the Manager shall procure that the relevant third party, without undue delay, provide Darwin with such documentary evidence and position for each transaction and at least once per year.
- 4.3 In order to fulfil the duties pursuant to article 4.1, the Manager shall at all times:
- a) confirm and provide Darwin with the appropriate procedures it has implemented in order to verify that the Non Custody Assets acquired by the Fund are appropriately registered in the name of the Legal Title Holder.
 - b) ensure that all instructions and relevant information related to the Non Custody Assets are sent to Darwin, so that Darwin is able to perform its own verification or reconciliation procedure.
- 4.4 Darwin may, at its sole discretion and where appropriate, appoint at the cost of the Fund an independent expert in order to assist it in performing the ownership verification.
- 4.5 Subject to article 11 of the Agreement, Darwin will escalate for situations where an anomaly is detected including notification to the Manager and to the AFM if the situation can not be clarified, and, as the case may be, or corrected.
- 4.6 Without prejudice to Darwin's liability in accordance with applicable Law and the AIFMD, Darwin will be deemed to be discharged of its liability in case the required information under this Agreement is not received, is received with undue delay, is inaccurate or erroneous.

ARTICLE 5 CASH ACCOUNTS, MONITORING AND RECONCILIATION

- 5.1 The Legal Title Holder shall ensure that Darwin is at all times provided with all relevant information regarding the Cash Accounts and procure that Darwin shall at least be promptly informed as from its appointment and thereafter of:
- a) all existing Cash Accounts opened in the name of the Fund, with a copy of all accounts opening forms and a copy of all cash statements with its business explanation;
 - b) any new Cash Account by the Fund;
 - c) any cash account opened with a third party, directly by those parties and the reason why such account has been opened with such third party
 - d) on an ongoing basis, provide such information as Darwin reasonably requires to enable Darwin to assess whether cash accounts are opened in the name of the Fund and that these accounts are included in the reconciliation process.

- 5.2 The Legal Title Holder undertakes that it will only open Cash Accounts of or on behalf of the Fund with Banks.
- 5.3 The Legal Title Holder shall ensure that all instructions and information related to any Cash Account opened with a third party are sent or made available to Darwin so that Darwin is able to perform its own reconciliation procedure.
- 5.4 The Legal Title Holder shall ensure that all information related to any cash movements on any Cash Account is provided without any delay to Darwin. In case of reliance on the data/procedure received from the third party, the Legal Title Holder shall ensure Darwin has a direct access to the records of this third party. The depository shall have access to all information satisfactory to Darwin in order to comply with its obligation.
- 5.5 In case discrepancies are identified throughout the reconciliation process, Darwin shall notify the Manager and the Legal Title Holder if an irregularity has not been rectified without undue delay and subsequently the AFM if the situation can not be clarified and/or, as the case may be, corrected.
- 5.6 The Legal Title Holder shall ensure that Darwin is provided with information about payments made by or on behalf of investors upon the subscription of Participations at the close of each business day when the Legal Title Holder or a party acting on behalf of it, such as a transfer agent, receives such payments or an order from the investor.
- 5.7 The Legal Title Holder shall ensure that Darwin receives all other relevant information it needs to ensure that the payments are then booked in Cash Accounts opened in the name of the Legal Title Holder.
- 5.8 Darwin shall implement effective and proper procedures to reconcile all of the Fund's cash flows and perform such reconciliations when such cash flow movements are recorded in the book-keeping system of the Fund.
- 5.9 Darwin shall establish, implement and apply appropriate procedures to identify significant cash flows within the Legal Title Holder as well as significant in- and outflows to and from the Legal Title Holder to detect patterns that are not in line with expected cash flows resulting from the daily management of the Fund and those which could be inconsistent with the Fund's operations.
- 5.10 Darwin shall annually, or as often as it deems necessary, review the adequacy of its procedures referred to in article 5.8 and 5.9.
- 5.11 Darwin shall monitor on an on-going basis the outcomes and actions taken as a result of any discrepancies identified by the reconciliation procedures in accordance with section 86(e) of the Delegated Regulation, and if an irregularity has not been rectified without undue delay, it will follow the Escalation Procedure.

ARTICLE 6 FINANCIAL INSTRUMENTS ACCOUNTS

- 6.1 The Legal Title Holder shall ensure that Darwin is at all times provided with all relevant information regarding the Financial Instruments Accounts and procure that Darwin shall at least be promptly informed as from its appointment and thereafter of:
- a) all existing Financial Instruments Accounts opened in the name of the Legal Title Holder, with a copy of all accounts opening forms and a copy of all cash statements with its business explanation;
 - b) any new Financial Instruments Account by the Legal Title Holder or by the Manager;
 - c) any Financial Instruments Account opened with a third party, directly by those parties and the reason why such account has been opened with such third party.
- 6.2 Subject to the Custodian Agreement, any and all Financial Instruments of the Fund shall be recorded in the Financial Instruments Account(s).
- 6.3 Darwin will compare Fund accounting records with Darwin's record of assets for which Darwin is satisfied of the ownership of the Fund. To enable Darwin to perform this reconciliation the Manager and the Legal Title Holder will ensure that all instructions and relevant information relating to the Fund's assets are sent to Darwin.
If an anomaly is detected, Darwin will notify the Manager and if necessary the relevant the AFM if the entry cannot be rectified or explained. Notification of the AFM shall take place in accordance with the Escalation Procedure.

ARTICLE 7 OVERSIGHT DUTIES

- 7.1 At the time of its appointment as depository, Darwin shall assess the risks associated with the nature, scale and complexity of the Fund's strategy and the Manager's organisation in order to devise oversight procedures which are appropriate to the Fund and the assets in which it invests and which will be implemented and applied by Darwin. Such procedures shall be regularly updated.
- 7.2 In performing its oversight duties regarding:
- (a) subscription and redemptions
 - (b) valuation of shares/units
 - (c) compliance by the Legal Title Holder and the Manager
 - (d) timely settlement of transactions
 - (e) regarding the Fund's income distribution,
- Darwin shall perform ex post controls, and verifications of processes and procedures that are under the responsibility of the Legal Title Holder and the /Manager or an appointed third party. The Escalation Procedure shall apply to situations where potential irregularities are detected in the course of Darwin's oversight duties.
- 7.3 Duties regarding subscription and redemptions. In order to comply with article 21(9) (a) AIFMD, Darwin shall:
- (a) ensure that the Legal Title Holder or the Manager or the designated entity has established, implemented and applies an appropriate procedure to (i) reconcile the subscription order with the subscription proceeds, and the number of units or shares issued with the subscription proceeds received

- by the Fund, (ii) reconcile the redemption orders with the redemptions paid, and the number of Participations cancelled with the redemptions paid by the Fund and (iii) verify on a regular basis that the reconciliation procedure is appropriate. For this purpose Darwin shall in particular regularly check the consistency between the total number of Participations in the Fund's accounts and the total number of outstanding Participations that appear in the Fund's register;
- (b) ensure and regularly check that the procedures regarding the sale, issue, repurchase, redemption and cancellation of Participations comply with the applicable Law and with the Fund Documents and verify that these procedures are effectively implemented;
 - (c) ensure that the frequency of its checks shall be consistent with the frequency of subscriptions and redemptions.
- 7.4 Duties regarding the valuation. In order to comply with the duties regarding the valuation of the Participations, Darwin shall be provided by the the Legal Title Holder and/or the Manager with the procedures implemented by the Legal Title Holder, the Manager or the designated third party to ensure that the valuation of the Assets is calculated in accordance with applicable Law and Fund Documents. The Manager will make available to Darwin all accounting records relating to the Fund, and the valuation policies and procedures of the Fund, to enable Darwin to ensure that such procedures and policies are effectively implemented and periodically reviewed by the Manager and allow Darwin to perform periodic NAV checks.
- External valuer. The Manager may appoint an external valuer, provided the external valuer (i) is subject to mandatory professional registration recognised by law or to legal or regulatory provisions or rules of professional conduct, (ii) can provide sufficient professional guarantees to be able to effectively perform the valuation function (the professional guarantees shall be written documents providing sufficient personnel, technical resources, procedures, knowledge and experience. Any registered valuer must include the name of the relevant authority and the relevant rules of professional conduct) and the appointment of the external valuer complies with delegation rules. The external valuer is not allowed to delegate the valuation function to a third party. In the event an external valuer is or will be appointed, the Manager shall inform Darwin accordingly and make available to Darwin the due diligence performed on such external valuer
- Verification valuer. Darwin shall verify that any appointment of an external valuer by the Manager for the purposes of valuing the Participations or the Fund's assets has been made in accordance with section 115i of the BGfo.
- 7.5 Duties regarding the compliance of the Fund. In order to comply with article 21.9(c) AIFMD, Darwin shall (a) set up and implement appropriate procedures – proportionate to the nature, scale and complexity of the Fund - to verify that the Legal Title Holder and the Manager comply with applicable Laws and the Fund Documents. In particular, Darwin shall monitor the Fund's compliance with investment restrictions and leverage limits set in the Fund's Documents.
- 7.6 Duties regarding the timely settlement of transactions. In order to comply with article 21.9(d) AIFMD, Darwin shall set up a procedure to detect any situation where a consideration related to the operations involving any of the Assets is

not remitted to the Fund on the payment date or dates agreed in the relevant transaction documents and notify the Manager in such event where the situation has not been remedied request the restitution of such assets from the counterparty where possible. Where transactions do not take place on the regulated market, the usual time limits shall be assessed with regard to the conditions attached to the transactions (OTC derivative contracts or investments in real estate or in privately held companies). If no appropriate action is taken Darwin will follow the Escalation Procedure.

7.7 Duties related to the Fund's income distribution

In order to comply with article 21(9)e AIFMD, Darwin shall (i) ensure that the net income calculation, once declared by the Manager, is applied in accordance with the Fund Documents and applicable Law, (ii) ensure that appropriate measures are taken where the Fund's auditors have expressed reserves on the annual financial statements. The Fund or the Manager shall provide Darwin with all information on reserves expressed on the financial statements, and (iii) check the completeness and accuracy of the distributions, once they are declared by the Manager, and, where relevant, of the carried interest. Where Darwin considers that the income calculation has not been performed in compliance with applicable Law or with the Fund Documents it shall notify the Manager and ensure that timely remedial action has been taken in the best interest of the Participants.

ARTICLE 8 DUTIES OF THE FUND/MANAGER

- 8.1 The Manager and the Legal Title Holder shall ensure that all instructions related to the Assets and operations are sent or made available to Darwin so that Darwin is able to perform its own verification or reconciliation procedure.
- 8.2 The Manager Legal Title Holder shall ensure that Darwin will be provided at all times with all relevant information it needs in order to comply with its obligations under this Agreement, including information to be provided to Darwin by third parties.
- 8.3 The Manager and the Legal Title Holder shall ensure that Darwin is able to have access to the books and perform on-site visits on the premises of the Manager and of those of any service provider appointed by the Manager, such as administrators or external valuers and, as the case may be, to review reports and statements of recognised external certifications by qualified independent auditors or other experts in order to ensure the adequacy and relevance of the procedure in place.
- 8.4 The Legal Title Holder and the Manager shall inform Darwin, well in advance, about any change of the investment policy of a sub-fund of the Fund, or the launch of a new sub-fund.
- 8.5 The Legal Title Holder and/or the Manager shall, without any delay, provide Darwin (or procure that Darwin is provided) with all information related to distributions, including, but not limited to, a) minutes of all board meetings of the Manager related to the Fund, b) minutes of all meetings of Participants, c) all notices to the Participants, d) comments of the auditors on the annual

financial statements (reserves if any) e) annual and semi-annual reports (if applicable).

- 8.6 Upon request of Darwin, the Manager and the Legal Title Holder shall provide Darwin with or give Darwin access to all additional documentary evidence regarding the Assets which Darwin reasonably needs to perform its services under this Agreement.

ARTICLE 9 GENERAL

- 9.1. The Legal Title Holder and the Manager undertake to cooperate in good faith in order to allow Darwin to provide correctly and with due care the services agreed and shall among others provide Darwin promptly of any and all contract, agreements, (share) certificate, ownership certificates, contract note, deed, financial or account statements, audit reports, confirmation, legal opinion, tax opinion or other any kind of evidencing documentation, acts or papers reasonably deemed necessary or useful by Darwin to evidence a debt, an obligation, a contract, a transaction or the financial situation of the Fund whether or not in relation to the Financial Instruments or other Assets.
- 9.2 The Legal Title Holder and the Manager undertake to take the actions as set out in article 9.1 in relation to any corporate action, corporate event or any other situation having an impact on the value, booking or ownership of the Assets.
- 9.3 The Legal Title Holder and the Manager undertake to inform Darwin reasonably in advance of any change in the Fund Documents, including the Conditions, the investment policy of any sub-fund of the Fund, prospectus as the case may be, licenses, authorisations, legal proceedings, solvency (including without limitation, suspension of NAV, bankruptcy or any other similar procedure of suspension of payments, merger, winding up, etc.) and more generally of any event or change in the Fund, including the corporate life of the Fund that Darwin must reasonably know in order to provide its services in a professional and correct manner. Without limitation, the Manager shall provide Darwin with the Fund's certified annual financial statement report and external audit report(s), within fifteen (15) days of their issuance.
- 9.4 In general, the Legal Title Holder and the Manager will inform promptly Darwin in case of any change, dismissal or resignation of a managing director of the Title Holder or the Manager, or any other person who determines its daily policies.
- 9.5 Darwin shall not (re)use the Assets without the prior consent of the Manager.
- 9.6 In order to allow the Manager to review the performance of Darwin in respect of Darwin's contractual obligations, Darwin will provide to the Manager information relating to its performance of duties and delegates in the form of reports which are provided on a quarterly basis.

ARTICLE 10 POWERS AND DUTIES OF THE DEPOSITARY

10.1 Except as otherwise provided for in this Agreement or in the Custody Agreement, all transactions involving the Assets shall be executed or settled solely in accordance with the Instructions, provided that at all times Darwin may refrain from acting on any Instructions if it deems such Instructions to be outside the scope of this Agreement, infringe any law or regulation applicable to it, breaches in the reasonable opinion of Darwin, the Fund Documents, and/or breach the compliance internal rules of Darwin in relation among others to anti-money laundering, certain black listed counterparts, countries or currencies. When refraining from acting on Instructions, Darwin shall forthwith notify the Manager of the non-execution of the Instructions by fax or email. The Manager may obtain on request more information about these internal compliance rules and notably the list of the black listed countries or currencies. These internal compliance rules may be amended at any time by Darwin, without having to justify and without prior notice.

10.2. Darwin shall carry out any additional duties as may from time to time be mutually agreed in writing between the Manager and Darwin.

ARTICLE 11 ESCALATION PROCEDURE

11.1 The parties hereto agree to the escalation procedure ("Escalation Procedure") as set out in Schedule 3 and each Party shall comply with all proceedings as set out therein.

ARTICLE 12 LIABILITY FOR LOSS OF CUSTODY ASSETS

12.1 Darwin shall be liable to the Fund or to the Participants, for the loss of Custody Assets by Darwin or a third party to whom the custody of such assets has been delegated, unless otherwise stated in this Agreement or the Custody Agreement. In case of such a loss of Custody Assets for which Darwin is liable, Darwin shall return a Financial Instrument of identical type or the corresponding amount to the Fund without undue delay.

12.2 Subject to article 21.1, Darwin shall not be liable if it can prove that the loss has arisen as a result of an external event beyond its reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to the contrary ('Event').

12.3 For the purposes of article 12.2 the definition of Event shall include, but not limited to, an event whereby:

- a), the event which led to the loss is not the result of any act or omission of Darwin or of a third party to whom the custody of Custody Assets has been delegated,
- b) Darwin could not have reasonably prevented the occurrence of the event which led to the loss despite adopting all precautions incumbent on a diligent depository as reflected in common industry practice,
- c) despite rigorous and comprehensive due diligence, Darwin could not have prevented the loss.

12.4 For the purposes of article 12.2 an event shall be deemed to be an Event if one of the following circumstances is fulfilled:

- a) natural event beyond human control or influence;

- b) the adoption of any law, decree, regulation, decision, or order by any government or government body, including any court or tribunal, which impacts the financial instruments held in custody;
- c) war, riots or major upheavals.

ARTICLE 13 DISCHARGE OF LIABILITY

13.1 Notwithstanding article 12, in case of loss of financial instruments held in custody by a third party, Darwin may discharge itself of liability where it can prove that :

- a) all requirements for the delegation of its custody tasks as set out in article 3.5 are fulfilled; and
- b) a written agreement between Darwin and the third party expressly transfers the liability of the depository to that third party and makes it possible for the Fund to make a claim against the third party in respect of the loss of the Financial Instruments or for Darwin to make such a claim on their behalf; and
- c) a written agreement between Darwin and the Fund or the Manager, expressly allows a discharge of Darwin's liability and establishes the objective reason to stipulate such discharge .

13.2 Notwithstanding article 12, in case of loss of Financial Instruments held in custody by a third party, Darwin may discharge itself of liability where it can prove that the following conditions are met where the law of a third country requires that certain Custody Assets are held in custody by a local entity and there are no local entity that satisfy the delegation requirements as mentioned above :

- a) the Conditions concerned expressly allow for such a discharge;
- b) the Participants have been duly informed of that discharge and of the circumstances justifying the discharge prior to their investment;
- c) the Manager instructed Darwin to delegate the custody of such Financial Instruments to a local entity;
- d) there is a written contract between Darwin and the Manager which expressly allows such a discharge; and
- e) there is a written contract between Darwin and the third party that expressly transfers the liability of Darwin to that local entity and makes it possible for the Fund to make a claim against that local entity in respect of the loss of financial instruments or for Darwin to make such a claim on their behalf.

13.3 The parties hereto acknowledge that the delegation of safekeeping of Custody Assets to the Custodian as set out in the Custody Agreement is in compliance with the requirements as referred to in article 21(8) AIFMD.

ARTICLE 14 LIABILITY OF THE DEPOSITARY

14.1. Subject to the terms hereof, Darwin, in its functions of depository, shall use all reasonable care in the performance of this Agreement.

14.2. Darwin shall be liable to the Fund for all losses suffered as a result of Darwin's negligent or intentional failure to properly fulfil its obligations under this Agreement in accordance with section 21(12) AIFMD.

- 14.3. Darwin shall not be liable for any loss resulting from the choice of investment made in compliance with the Instructions unless Darwin acts grossly negligent or in case of wilful misconduct or default of the latter and within the limits thereof.
- 14.4. Darwin may rely in the performance of its duties under this Agreement and without liability on its part, upon any Instructions reasonably believed by it in good faith to be given by the Authorised Representative(s), the Manager or the Fund. Darwin shall not be liable for the fraudulent use by a third party of the signature of (an) Authorised Representative(s), whether such signature be authentic or forged excluding and to the extent Darwin should reasonably have been aware of such fraudulent use.
- 14.5. Except as provided otherwise in this Agreement, Darwin shall have no liability for any losses or damages incurred by the Fund or the Participants that are caused by an event of force majeure and in the following cases:
- 14.5.1. Delay in the actual receipt of notice by Darwin or any agent of any payment, redemption or other transaction, or delay in the actual receipt of such payment or the actual occurrence of such redemption or transaction, regarding Financial Instruments in respect of which Darwin has agreed to take action;
- 14.5.2. Loss, damage or theft of any Assets or Financial Instruments and/or rights corresponding thereto, held and/or administered by Darwin or a Clearing System, provided that Darwin has exercised due care in selecting and appointing the relevant agent;
- 14.5.3. The actions, omissions or shortcomings of the Clearing System(s) instructed by or through Darwin, and the bankruptcy, liquidation, winding up or similar act of a Clearing System instructed by or through Darwin, provided that Darwin has exercised due care in selecting and appointing the relevant Clearing System.
- 14.6. The Manager acknowledges and agrees that any recovery of funds (or any Assets paid or distributed) with respect to Financial Instruments will be carried out at the Fund's own risk and expense;
- 14.7. To the fullest extent permitted by the Law and other applicable Dutch laws and regulations, and despite any other provision in this Agreement, the total amount arising out of or in connection with the liability of Darwin under this Agreement will not exceed the Fund's damages at the time the loss was discovered and which were reasonably foreseeable but will not in any circumstances include indemnification of indirect, incidental, special, or consequential damages and damages for loss of profits, revenue or savings (actual or anticipated), economic loss, loss of data or loss of goodwill or other similar measures (whether or not either party knew of the possibility of such damage or such damage was otherwise foreseeable).
- 14.8. Notwithstanding anything to the contrary, Darwin shall have no other duties than those expressly provided by the Law or this Agreement.

ARTICLE 15 DEPOSITARY RIGHTS

- 15.1. Darwin may, at any time, obtain with the prior consent of the Manager advice at the expense of the Fund in the event Darwin is in doubt as to any action to be or not to be taken by it.
- 15.2. Darwin shall not be required to take any legal action hereunder unless fully indemnified to its reasonable satisfaction for costs and liabilities; if the Manager requires Darwin in any capacity to take any action which in the opinion of Darwin as depository of the Assets might make Darwin liable for the payment of money or liable in any other way, Darwin shall be kept indemnified in any reasonable amount and form satisfactory to it as a prerequisite to taking such action.
- 15.3. The Fund agrees that it will indemnify and hold harmless Darwin and its officers and directors from any and all costs, liabilities, losses and damages (including but not limited to fees of counsel) incurred by Darwin for which Darwin itself is not liable pursuant to this Agreement, and arising out of any action taken or omitted by Darwin hereunder or under any Instructions including but not limited to liabilities, losses, damages, costs and expenses arising as a result of :
- 15.3.1. Any taxes or other governmental charges, and any expenses related thereto, which may be imposed or assessed with respect to any Assets, or Financial Instruments and/or rights corresponding thereto; and
- 15.3.2. Darwin or any agent instructed by or through Darwin, or any of their respective nominees appearing as a record holder of Financial Instruments, or Financial Instruments and/or rights corresponding thereto, but excluding those liabilities, losses, damages, costs and expenses that arise as the result of the negligence or wilful misconduct of Darwin.
- 15.4 Darwin shall be entitled to be reimbursed by the Fund for all reasonable out-of-pocket or incidental expenses, including without limitation, legal fees incurred by Darwin all fees or costs charged to it or by any agent (including a clearing system or bank) or any Clearing System and any and all other specific disbursements incurred in carrying out its duties hereunder.
- 15.5. Darwin is authorised to maintain all accounts, registers, corporate books and other documents on computer records and to produce at any time during the course of legal processing, copies or reproductions of these documents made by photographic, photostatic or data processing procedures as judicial proof.

ARTICLE 16 ANTI MONEY LAUNDERING OBLIGATIONS; CONFLICTS OF INTEREST

- 16.1 Each of the Title Holder, the Manager and Darwin hereby represents, warrants and undertakes to each of the other parties to this Agreement that it is, and while this Agreement is in force will continue to be, in compliance with all requirements of the AIFMD Requirements applicable to it, and in particular (but without limitation of the generality of the foregoing) in compliance with all

applicable legal and regulatory requirements regarding the prevention of money laundering and the prevention of the financing of terrorism.

- 16.2 The Manager shall provide to Darwin details of its internal procedures and access to records relating to anti-money laundering processes, and the prevention of terrorism, which form part of the Manager's due diligence process and ongoing monitoring programme.
- 16.3 The Manager acknowledges that Darwin has arrangements in place to manage conflicts of interest (the "Conflicts Policy"). If the arrangements are not sufficient to ensure, with reasonable confidence on Darwin's part, that risks of damage to the Fund will be prevented, Darwin shall clearly disclose the general nature and/or the sources of the conflict of interest to the Manager before undertaking the relevant business with or for the Fund. None of the services of Darwin under this Agreement is to be provided on an exclusive basis. Darwin shall be free to provide similar services to (or engage in other activities with) others on such terms as Darwin may arrange and to retain for its own use and benefit fees or other monies payable for its doing so. Darwin shall not be deemed to be affected with notice of, or to be under any duty to disclose to the Manager, any fact or thing which may come into its notice or the notice of any employee or agent of it in the course of Darwin rendering similar services to others or in the course of its business in any other capacity or any manner whatsoever otherwise than in the course of carrying out its duties under this Agreement.

ARTICLE 17 FEES AND EXPENSES

- 17.1 For the rendering of its services as set out in this Agreement, Darwin shall be entitled to charge to the Fund the fees as provided in the Schedule 4 or as otherwise agreed from time to time between the Fund or the Manager and Darwin.
- 17.2 For anything not expressly provided in the Schedule 4 or in this Agreement, the fees, costs and/or expenses for a specific service or transaction, are those applicable at the prevailing rates of Darwin for its customers at the time of providing the relevant service or the transaction, as the case may be.
- 17.3 Fees, costs and/or expenses charged by Darwin to the Fund pursuant to article 17.1 and 17.2, shall be paid by the Manager to Darwin in the manner and within the time period as provided for in Schedule 4.

ARTICLE 18 TERMINATION

- 18.1 This Agreement shall become effective as from the Effective Date and shall continue and remain in force until it is terminated in accordance with its provisions.
- 18.2 Each Party shall be permitted to terminate this Agreement at any time upon one (1) calendar months' written notice to the other Parties in accordance with article 19, provided that:
- 18.2.1 termination of the Agreement with immediate effect is permitted in the event of a breach by one of the other parties to this Agreement of any

clause or obligation contained in this Agreement or the Fund Documents attached hereto which breach shall not have been remedied within thirty (30) days of written notice thereof;

18.2.2 termination of the Agreement with immediate effect is permitted in the event one of the other parties to this Agreement is being declared bankrupt or becoming subject to a similar procedure of compulsory liquidation.

18.2.3 termination of the Agreement with immediate effect is permitted by Darwin in the event (i) the Manager, after the Escalation Procedure has been followed without success, fails to comply with the obligations under this Agreement or (ii) the Manager being in material and on-going breach of its obligations under the laws and regulations on financial market supervision, (iii) the Manager fails to timely pay the fees pursuant to article 17.

However, in each case the termination is subject to the temporary continuation of this Agreement as described in article 18.3.

18.3. In the case of termination of the Agreement pursuant to article 18.2, Darwin shall continue to act as depository thereafter for such period as may be necessary for the appointment of a new depository. Failing the appointment of a new depository within sixty days after the termination of the Agreement, the Manager shall, upon first demand of Darwin, convene a meeting of Participants (to be held as soon as legally possible) in order to request the Participants to decide upon appropriate measures ensuring the release of Darwin from its function as depository of the Fund.

18.4. In the case of termination of the Agreement, Darwin shall deliver or cause to be delivered to any succeeding depository, in form for transfer all Financial Instruments then held hereunder and all Assets or other properties of the Fund deposited with or held by it hereunder and all certified copies and other documents related thereto in its possession or control at the costs, expenses and prevailing rates applicable to Darwin at that time.

18.5. Following the termination of the provision of services to the Fund for any reason, the Fund shall only be released from its obligations towards Darwin when Darwin confirms in writing to the Fund that all fees, commissions, and other charges due to Darwin have been paid and all other obligations in connection with this Agreement which Darwin reasonably requires the Fund to discharge have been discharged.

18.6. Darwin shall be entitled to receive fees as provided for hereunder for services rendered until the moment of actual delivery and/or transfer of all the Financial Instruments and other Assets in relation to the Fund as well as the rights and obligations related thereto.

ARTICLE 19 NOTICES

19.1. Any notice to be given hereunder, except if agreed otherwise, shall be given by registered letter, by swift or by fax or by delivering the same by hand; such notice shall be addressed, dispatched or delivered (as the case may be) to

the principal place of business for the time being of the party to whom it is addressed.

19.2. If to the Title Holder to :

Title holder's details

Stichting Bewaarbedrijf Legends XL Fund
Mark Bouw
Barbara Strozzilaan 101
1083 HN Amsterdam
The Netherlands
Tel: +31 (0)6 156 80 800
Email: mbouw@darwindepository.com

If to the Manager to:

Theta Legends XL Fund
Fokko Hoeksma
Honthorststraat 19
1071DC Amsterdam
Tel. +31205722734
Email: hoeksma@thetacapital.com

If to Darwin to:
Frank Hand
Darwin Depository Services BV
Barbara Strozzilaan 101
1083 HN Amsterdam
Tel. +31 20 2402576
Email: fhand@darwindepository.com

19.3. Any notice as provided in this clause shall be deemed to have been given upon receipt.

ARTICLE 20 CONFIDENTIALITY

20.1 The parties hereto shall during the course of this Agreement and following its termination maintain and preserve the utmost confidentiality in relation to all confidential information regarding the Fund and/or confidential information regarding the business of the other party hereto and shall not without the prior authorisation of relevant party make such confidential information available to any person in whatever form.

ARTICLE 21 MISCELLANEOUS

21.1 The parties hereto agree to review this Agreement and to negotiate in good faith reasonable and appropriate amendments as soon as practical possible after the first anniversary of this Agreement in order to cover in this

Agreement any changes in applicable Law or market practice as applied by the AFM.

- 21.2 No provision of this Agreement may be changed, waived, discharged or discontinued, except by an instrument in writing signed by or on behalf of all parties hereto.
- 21.3 Neither parties hereto shall do or commit any act, matter or thing which would or might prejudice or bring into disrepute in any matter the business or reputation of either of the parties or any director of any such party.
- 21.4 If any provision of this Agreement is or becomes prohibited or unenforceable in any jurisdiction, that shall not affect the validity or the enforceability of any other provisions thereof or affect the validity or enforceability of such provision in any other jurisdiction. The prohibited or unenforceable provisions shall be replaced by new provisions reflecting the initial intention of the contracting parties.
- 21.5 This Agreement embodies the entire agreement, including all of its Schedules and Annexes, of the parties hereto and cannot be altered, amended, supplemented or any provisions waived except by written agreement of the parties.
- 21.6 The duties of Darwin hereunder shall not preclude Darwin from providing services of a similar nature to any other person, fund, firm or corporation.

ARTICLE 22 LAWS AND FORUM

- 22.1 This Agreement shall be governed in all respects by the laws of the Netherlands. Any dispute in relation to this Agreement shall be brought before the competent court in Amsterdam, the Netherlands.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above.

Stichting Bewaarbedrijf
Legends XL Fund

Darwin Depository Services BV.

By:
Title:

By:
Title:

Theta Fund Management B.V.

By:

Title:

By:

Title:

SCHEDULE 1

1. PROSPECTUS

SCHEDULE 2

1. CUSTODY AGREEMENT

SCHEDULE 3

1. ESCALATION PROCEDURE

1. In order to initiate the Escalation Procedure, the Depositary shall notify the Manager in writing. Such notification should include all relevant information with regards to the issue at hand, containing at least:
 - (a) a summary of the issue at hand leading to the initiation of the Escalation Procedure;
 - (b) all relevant related documentation (e.g. prior e-mail correspondence) together with references to the relevant provisions of the Documents.

2. The Fund Manager shall revert to the Depositary within three (3) Business Days following receipt of the notification referred to in paragraph 1 above with a view to resolving the issue which has led to the initiation of the Escalation Procedure. If the Manager fails to respond or following the response of the Fund Manager, the issue fails to be resolved in the reasonable view of the Depositary, the escalation steps set out below shall be followed.

3. Meeting
 - (a) A representative of the Depositary and a representative of the Manager shall meet as soon as possible within five (5) Business days from the expiry of the period referred to in paragraph 2 above to discuss the unsolved issue.
 - (b) If no resolution can be reached among the respective representatives with regards to the relevant issue, the parties should proceed with the following step.

4. AFM and Investors Notification
 - (a) The Depositary (i) will inform the Manager in writing of its intention to escalate the issue by notification to the supervisory committee/supervisory board/shareholder's committee of the Fund along with the proposed date on which it intends to make such notification;

- (b) The Depositary may, in the absence of a solution having been reached within five (5) Business Days after the date of notification of the supervisory committee/supervisory board/ shareholder's committee of the Fund, (i) in its sole discretion instruct the Manager to convene an investors' meeting whereby the Depositary shall have the right to attend such meeting and to propose a solution with regards to the relevant issue during such meeting; and/or (ii) inform the Manager in writing of its intention to escalate the issue by notification to the AFM; and (iii) may then so notify the AFM.

SCHEDULE 4

FEE SCHEDULE AND PAYMENT CONDITIONS

For rendering the services under the depositary agreement, Darwin is entitled to charge the Fund the following fees:

- (A) For the depositary services an annual amount of EUR 16,500 including management of the foundation Stichting Bewaarbedrijf Legends XL Fund, payable quarterly in advance.
- (B) For the on-boarding process an amount of EUR 2,500 payable at the signing of this agreement.
- (C) The Depositary shall pay all of its own expenses arising from the performance of the services under this agreement. Notwithstanding any reasonable third party expenses incurred by Darwin in connection with the performance of its services under this agreement, provided the Manager has given its written prior approval, not to be unreasonably withheld to incur these costs.
- (D) All amounts are excluding VAT. It is agreed that VAT will be due and payable by the Funds when Darwin is legally required to levy VAT on services rendered.
- (E) All amounts are due and payable upon 14 days after receipt of the invoice.