

INFORMATION MEMORANDUM

June 26, 2020

# **THETA DISTRESSED CREDIT OPPORTUNITIES POOL**

Minimum Subscription € 100,000

Theta Fund Management B.V.

## **IMPORTANT INFORMATION**

**Prospective participants (“Participants”) should read this Information Memorandum carefully before deciding whether to purchase a participation (the “Participation(s)”) in Theta Distressed Credit Opportunities Pool (the “Fund”) and should pay particular attention to the information set forth under the heading ‘Risk Factors and Conflicts of Interest’.**

**The manager of the Fund is Theta Fund Management B.V. (“Theta” or the “Fund Manager”). Theta is responsible for the accuracy and completeness of the information contained in this Information Memorandum. Theta is licensed under article 2:65 of the Act as a manager of alternative investment funds and subject to supervision in The Netherlands.**

**There is not and will not be any public market for the Participations. The Participations are subject to investment risks, including the possible loss of the entire amount invested. Participants should be aware that redemption of all or part of their investment may be deferred under certain circumstances.**

**The risks inherent in investment in the Fund are greater than those typically encountered in investing in collective investment vehicles whose financial instruments are traded or listed on a regulated market, multilateral trading facility or any other trading platform. An investment in the Fund is only suitable for experienced investors who appreciate the risks involved, which include the loss of their entire investment. Investment is not suitable for investors who may wish to realize their investment at short notice.**

**Any representation or information not contained herein must not be relied upon as having been authorised by Theta since no person has been authorised to make any such representation or to provide any such information.**

**Prospective Participants should not construe the contents of this Information Memorandum as investment, legal, tax, accounting or other advice. In making an investment decision, Participants must rely on their own examination of the Fund, including the merits and risks involved, and on their own representatives, including, but not limited to, their own investment adviser, legal counsel, tax counsel and accountants.**

**This Information Memorandum is the prospectus referred to in Article 23 AIFMD with respect to the Fund. This Information Memorandum should be read in conjunction with the latest annual report, the contents of which shall be deemed to be part of this Information Memorandum and will be available on the Website.**

**This Information Memorandum does not constitute an offer to sell or solicitation of an offer to buy Participations in any jurisdiction to any person to whom it is unlawful to make such offer or solicitation in such jurisdiction.**

**The Fund is registered for distribution in The Netherlands for investments with a minimum of EUR 100,000. Theta may decide to market the Fund in other jurisdictions of the European Economic Area to eligible investors in which case it will comply with the applicable procedures under the AIFMD.**

**This Information Memorandum is governed by Dutch law. Each party has the right to submit such a dispute in relation with the Fund to the District Court of Amsterdam.**

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# 1. KEY INFORMATION AND PARTIES INVOLVED

All capitalized words in this Information Memorandum are defined in article 1 ('Definitions') of the Terms and Conditions of Management and Custody of the Theta Distressed Credit Opportunities Pool (the "Fund") (please refer to Exhibit I).

## **Structure:**

The Fund is organized as a common contractual fund (*fonds voor gemene rekening*) under the laws of The Netherlands. Theta is licensed as a fund manager (*beheerder van een beleggingsinstelling*) under article 2:65 of the Dutch Financial Supervision Act (*Wet op het financieel toezicht*, the "Act"). Theta is subject to supervision of both the AFM and the Dutch Central Bank.

Theta is a 100% subsidiary of Theta Capital Management B.V. Theta Capital Management B.V. is an independent hedge fund investment specialist based in Amsterdam, The Netherlands. Theta Capital Management B.V. is regulated by the Dutch Authority for the Financial Markets (*Autoriteit Financiële Markten*) ("AFM") as an investment firm (*beleggingsonderneming*) under article 2:96 of the Act.

Darwin Depository Services B.V. acts as depository (*bewaarder*) of the Fund Estate. Stichting Juridisch Eigenaar TDCOP is the legal title holder (*juridisch eigenaar*) of the Fund Estate. Furthermore, the general administration of the Fund is delegated by Theta to Apex Fund Services (Netherlands) B.V. as third party administrator.

Participations may be issued in Series with reference to a particular Dealing Day. Theta may decide to issue Participations after the Commencement Date in a new separate Series. Within the Fund, different Classes of Participations may exist. The different Classes will have the same assets and liabilities, but differ in redemption characteristics and fee-structure, different Series within a Class only have minor differences due to their time of issue. Therefore, all Classes will be subject to the same investment objectives and strategy but will have a currency hedge strategy linked to the currency of the Class. The related hedging costs and the gains and losses attributable to the hedging transactions will be credited or charged to the Class on behalf of which such transactions are effected.

The Terms and Conditions allow Theta to introduce multiple sub funds ("Sub-Funds"). Sub-Funds will have different investment policies and as a result thereof different assets and liabilities in their portfolio's. As of the date of the Information Memorandum one Sub-Fund, consisting of two Classes, is being offered.

## **Investment Objective:**

The Fund aims to provide investors with an investment vehicle which targets above average returns of 10%+ per annum on a five-year investment horizon by allocating to a pool of 4-8 hedge funds that focus on investing in dislocated credit instruments and distressed debt and restructuring opportunities.

## **Investments:**

Investments will be made in hedge funds (collective investment vehicles), with managers specialising in investing in dislocated credit instruments and distressed debt and restructuring opportunities. The Fund's investment mandate includes the opportunity to make investments alongside the Investee Funds and to invest in other private structures.

The Fund Manager will from time to time offer co-investment opportunities when Theta's specialist managers find attractive investments that due to sizing or liquidity constraints do not fit the flagship strategy yet offer attractive risk-reward profile. The Fund Manager will offer a new Sub-Fund for these co-investment opportunities as and when the opportunity becomes available.

### **Subscriptions:**

Participations shall be in registered form and will be issued either for a subscription price of \$1,000 per Participation, upon inception of the Fund and thereafter at the Net Asset Value. Participations may be issued in an existing or a new Series on each monthly Dealing Day at the discretion of Theta.

Applications for Participations should be made through the Application Form which will be provided by Theta upon request.

### **Minimum Subscription:**

The minimum initial subscription amount for each Participant is € 100,000.

### **Valuations:**

The Net Asset Value of a Participation will be calculated in accordance with the Terms and Conditions on the last Business Day of each calendar month. The latest NAV of each Class will be available on the Website and deemed to be incorporated by reference herein.

### **Reporting:**

Participants will receive monthly reporting of the Net Asset Value. In addition, Theta will provide:

- monthly reports, detailing *inter alia* the total value of the Fund Assets and an overview of the composition of the Fund Assets;
- quarterly reports, detailing *inter alia* the investment outlook and market commentary; and
- audited annual reports.

### **Redemptions:**

Participations may be redeemed as of the first quarterly Dealing Day following 90 calendar days prior written notice to Theta, and subject to restrictions as specified under 'Classes and Fee Structure'. Theta may limit the redemption of Participations on any Dealing Day to a maximum of 10% of the outstanding Participations in the Sub-Fund on such Dealing Day. The minimum value of Participations which may be subject of one redemption request will be the lesser of € 100,000 or 100 Participations.

### **Minimum Holding:**

A request for a partial redemption of Participations may be refused and the holding will be redeemed in its entirety, if, as a result of such partial redemption, the total Net Asset Value of the Participations retained by the Participant would be less than € 100,000.

### **Annual Accounts Date:**

Annual accounts of the Fund will be prepared as per 31 December of each calendar year.

**Distribution Policy:**

All investment gains, paid out dividends or other distributions by an Investee Fund will be reinvested within the Fund. However, in case investment opportunities meeting the requirements of the Fund are limited, Theta has the option to make distributions to Participants on a pro-rata basis.

**Classes and Fee Structure:**

As of the date of the Information Memorandum one Sub-Fund, consisting of two Classes, is being offered:

1. Class A USD: 2 year initial hard lock-up, 0.35% Management Fee, and a 5% Incentive Fee (available until 1<sup>st</sup> October 2020 for up to Euro 50 million total of Class A);
2. Class A EURO: 2 year initial hard lock-up, 0.35% Management Fee, and a 5% Incentive Fee (available until 1<sup>st</sup> October 2020 for up to Euro 50 million total of class A);
3. Class B USD: 1 year hard-lock-up, 1% Management fee, and a 10% Incentive Fee; and
4. Class B EURO: 1 year hard-lock-up, 1% Management fee, and a 10% Incentive Fee.

Both Class A and B have 25% investor gates on their redemptions. An investor may redeem 25% of his Participation in the Class as of the Dealing Date and any excess will be redeemed at the next Dealing Day, though again subject to the 25% investor gate. The maximum amount redeemable on any dealing date is calculated in all cases as 25% of the highest Participation balance on any of the four Dealing Days prior to the redemption notice.

For Class A and B, the Incentive Fee is, for each Series, calculated and payable annually and is subject to a hurdle rate of 5% per annum (non cumulative). Both Classes have perpetual High Water Marks.

**Fund Currency:**

The Fund is denominated in US Dollars. Each share class will offer a Euro hedged share class.

**Hedging strategies, Leverage:**

The Fund will make use of hedging strategies to hedge the currency risk in a particular Class. All Classes will be subject to the same investment objectives and strategy but will have a currency hedge strategy linked to the currency of the Class. The related hedging costs and the gains and losses attributable to the hedging transactions will be credited or charged to the Class on behalf of which such transactions are effected.

The Manager does not use leverage (*hefboomfinanciering*) for the purpose of enhancing the Fund's returns. The Fund Manager may however borrow for the account, and at the expense, of the Fund to temporarily finance Fund Assets, Fund Obligations and Costs. The sum outstanding at any time shall not exceed 30% of the Net Asset Value of the Sub-Fund Assets. Beyond that, Fund Investments may not be financed with any funding (including but not limited to debt funding) other than subscription proceeds received by the Legal Owner.

**Listing:**

Participations will not be listed or traded on any regulated market, multilateral trading facility or any other trading platform.

**Register:**

Theta has delegated the maintenance of the Register to the Administrator. The Register records the names and addresses of all Participants, the particulars of their Participations in each Sub-Fund, and the manner in which a Participant wishes to receive payments and any distributions. A Participant must notify the Fund Manager promptly of any change in the information referred to above.

Theta shall at all times be entitled to rely on the accuracy of the information provided by each Participant to the Administrator in this respect.

**Information on parties involved:***Fund Manager*

Theta Fund Management B.V.  
Concertgebouwplein 19  
1071 LM Amsterdam  
The Netherlands  
Tel: +31 20 5722733

*Depository:*

Darwin Depository Services B.V.  
Barbara Strozzilaan 101  
1083 HN Amsterdam  
The Netherlands  
Tel: +31 20 2402576

*Legal Owner*

Stichting Juridisch Eigenaar TDCOP  
Concertgebouwplein 19  
1071 LM Amsterdam  
The Netherlands  
Tel: +31 20 5722743

*Administrator*

Apex Fund Services (Netherlands) B.V.  
Shareholder Service Department  
Van Heuven Goedhartlaan 935 A, Room 6  
1181 LD Amstelveen,  
The Netherlands  
Tel: +31 20 2254 592  
ssg@apexfs.com

*Legal and Tax Counsel*

Greenberg Traurig, LLP  
Hirsch Building  
Leidseplein 29  
1017 PS Amsterdam,  
The Netherlands  
Tel: +3120 301 73 00

*Auditor*

Ernst & Young Accountants, LLP  
Wassenaarseweg 80  
2596 CZ The Hague  
The Netherlands

## 2. INVESTMENT STRATEGY AND POLICY

### **Key Objectives and Investment Strategy**

#### **Objective:**

The Fund aims to provide investors with an investment vehicle which targets above average returns of 10%+ per annum on a five-year investment horizon by allocating to a pool of 4-8 hedge funds that focus on investing in dislocated credit instruments and distressed debt and restructuring opportunities.

#### **Current situation:**

The Fund Manager has been expecting a large distressed debt opportunity to present itself within the next few years. With the onset of the Covid 19 virus and subsequent market turmoil, that investment opportunity has now arrived. The Fund Manager expects a multi-year, multi cycle, distressed debt opportunity to present itself on the back of the significant dislocations generated by the shutting down of economies as a result of the virus. Initially, opportunities will arise by providing liquidity to levered market participants and other forced sellers and eventually the cycle will progress to the restructuring of debt.

#### **Investment approach:**

Theta sees a great opportunity for distressed credit specialists to buy attractive assets with a large margin of safety.

These managers are specialised in situations which are:

- Out-of-favor
- Complex
- Misunderstood
- In transitional market

With one or more of the following characteristics:

- Supply/ demand imbalance
- Motivated seller
- Dislocated markets
- Under-managed/ invested assets

The managers that Theta will select differentiate themselves through:

- Sourcing capabilities
- Analyzing complexity
- Creating desired outcomes by taking an active role
- Stability of capital
- Patience – the discipline to wait until other investors flee
- Alignment of interests – circa 25% of the anticipated portfolio is internal manager capital

#### **Theta's skill set and added value:**

The professionals at Theta have substantial experience with investing in hedge funds. Theta's long history in the strategy secures access to the most successful hedge funds, which are typically highly capacity constrained and very selective as to whom they allow to invest. Theta sources the scarce talent and superior infrastructure required to execute such strategies but limit market risk by focusing on process risk and capturing differentiating risk premia such as complexity premium. Theta ensures a full alignment of interests and long-term staying power and avoids asset gatherers in favour of performance driven managers. Theta will leverage their extensive industry network to gain access to these capacity constrained opportunities.

Theta has a history of capitalizing on unique market opportunities such as investing in value stocks in 2001/2002, shorting subprime mortgages in 2006/2007, shorting banks in 2008, buying distressed debt in 2009, shorting European government debt in 2010/2011, allocating to event driven strategies in 2012-2016 and quantitative strategies in 2017/2018. While the current opportunity is very different from 2008, Theta's history of managing through the previous cycles is an important advantage.

#### **Capturing risk premia and controlling outcomes:**

The strategy offers uncorrelated returns by sourcing scarce manager alpha and by capturing different risk premiums including:

- illiquidity premium: Investors overvalue liquidity leaving an attractive premium for those with a longer investment horizon;
- complexity premium – Few investors have the expertise to understand complex distressed situation nor the ability to turn every stone;
- process risk not market risk - Returns are principally driven by idiosyncratic processes rather market movements;
- and controlling outcomes - By controlling the process, an investment manager steers the desired outcome.

#### **Investment guidelines and risk**

It is expected that the Fund Manager will allocate to funds that will invest in part or in total, long and short in debt instruments including but not limited to loans, structured credit, corporate and sovereign bonds and other debt instruments as well post reorganised equity and derivatives in both developed and emerging markets.

Risk management plays a central role to managing the portfolio, especially with respect to illiquidity. Many hedge fund failures stem from an asset liability mismatch. This is tackled by Theta's focus on funds with strong staying power by having stringent liquidity terms for investors, limited leverage and strong counterparty relationships, as well as having large amounts of internal, permanent capital.

There is an important reinforcing force at play in which the highest quality funds will be able to set more restrictive liquidity terms, attracting the highest quality long-term investors thereby further reducing the liquidity risk. The management of liquidity risk ties in with the broad alignment of interest Theta looks for with managers, namely, truly long-term oriented set ups that value the right investor base and stick to capacity limits.

The Fund Manager's strategy will be to focus on hedge funds engaging in investment strategies and special situations where it may take some time before an investment's inherent value may be unlocked but where the upside return potential is significant. To take advantage of these investment opportunities, some of the Investee Funds provide only limited redemption or subscription opportunities to their investors.

While the dominant risk in the Fund will be idiosyncratic risk relating to individual positions and individual hedge funds, rather than general market risk, large moves in credit markets as well as central bank and government intervention are expected to have an impact on the fund's returns. The Fund will be invested in a concentrated manner with allocations to 4-8 specialist managers. The Fund Manager has a wide investment mandate, enabling it to take advantage of investment opportunities that Theta considers appropriate. These may include co-investments alongside

Investee Funds and other private investment structures not limited to hedge funds. If an opportunity arises that does not fit in with the criteria of this Fund (for example due to liquidity or concentration risks), then this may be offered as a co-investment opportunity to investors in a separate fund vehicle.

No single investment in a fund will represent 30% or more of the book value of the Fund Assets. An important part of the Fund's investments will consist of vehicles managed by hedge fund managers already well-known to Theta in relation to its other investment vehicles and activities. Diversification is achieved through the underlying securities, investment strategies and regions, rather than the number of hedge funds.

The Fund Manager may temporarily borrow for the account, and at the expense, of the Fund to finance Fund Assets, Fund Obligations and other costs. The sum borrowed at any time shall not exceed 30% of the Net Asset Value of a Class. Beyond that, Fund Investments may not be financed with any funding (including but not limited to debt funding) other than subscription proceeds received. The Fund Manager does not intend to use leverage (*hefboomfinanciering*) for the purpose of enhancing the Fund's returns.

The Fund Manager intends to invest primarily in hedge funds based in established on and offshore financial centers. The Fund intends, in principle, to invest in funds established by hedge fund managers with strong and consistent track records.

The overall success of the Fund depends on (i) the ability of Theta in selecting hedge fund managers and to build a diversified investment portfolio amongst them, (ii) the hedge fund managers' ability to be successful in their strategies.

**In summary, the Fund offers:**

- A single structure to capture the distressed debt opportunity
- Double digit expected returns in an otherwise uncertain return environment
- Unique access to capacity constrained specialist managers
- Uncorrelated returns resulting from focus on process risk
- The capturing of complexity and illiquidity premiums
- Exposure to underlying specialist managers that may take an active role in work-outs and restructurings, thereby controlling outcomes
- A strategy that puts capital preservation first, minimizing realized losses in times of dislocations
- A contrarian investment: invest at the point of maximum margin of safety
- An portfolio actively managed by a highly experienced team
- Strong alignment of interests across all product aspects
- Unique availability of attractive co-investments
- A strong ESG mindset with underlying managers
- Full transparency and information sharing

### 3. RISK FACTORS AND CONFLICTS OF INTEREST

*The value of the investment may fluctuate and investors may receive less than what they have invested.*

*All hedge fund investments risk the loss of capital. No guarantee or representation is made either that the Fund will achieve its investment objectives or that Participants will not suffer loss. An investment in the Fund is speculative and involves certain risks and conflicts of interest, which prospective Participants should consider before subscribing. The following discusses certain risks and potential conflicts of interest. The list is not exhaustive and other risks and conflicts not discussed below may arise in connection with the management and operation of the Fund. In particular, the Fund's performance may be affected by changes in market conditions, and legal, regulatory and tax requirements. The Fund Manager will be responsible for paying the fees, charges and expenses referred to in this document regardless of the level of profitability.*

#### **Risks**

##### *Investments*

Investment in the Fund is speculative and entails risks. The environment for hedge fund investments is increasingly competitive and an investor should only invest in the Fund if the investor can withstand a substantial loss of its investment. No guarantee or representation is given that the Fund will achieve its investment objectives.

The Fund Manager expects that certain investments made by hedge funds may experience financial difficulties, which may not be overcome. Hedge funds may utilize highly speculative investment techniques, including but not limited to leverage and highly concentrated portfolios.

The Fund Manager and the Participants will not have the ability to direct the management of Investee Funds or their underlying portfolio investments. As a result, the returns of the Fund will primarily depend on the performance of independent fund managers and could suffer substantial adverse effects by the unfavorable performance of such fund managers.

There are no assurances that the Fund will be able to invest its capital fully, or that sufficient suitable investment opportunities will be identified. For example, as a result of market fluctuations, the Fund may at any time invest a substantial amount in a single Investee Fund so that investment concentration occurs. If the Fund receives distributions in kind from any investment, it may incur additional costs and risks to dispose of such assets.

##### *Volatility*

The Fund's investment policy is to operate through Investee Funds whose investment approach may be broadly based, speculative and aggressive. Because of the inherently speculative nature of the Fund's intended investment activities, the results of the Fund may be expected to fluctuate from month to month. Accordingly, Participants should understand that the results of a particular period will not necessarily be indicative of results in future periods.

##### *Illiquidity of Portfolio*

The redemption of Participations may be limited to 10% of the Participations in issue on any Dealing Day in any Sub-Fund and the right to redeem may be suspended in the event of market disruption or a breakdown in the means employed to value the assets of the Fund. The Fund's interests in hedge funds and the investments made by those funds may in certain circumstances be difficult to realise and may be subject to restrictions on transfer. As some of the Investee Funds in any Sub-Fund may offer only limited redemption opportunities, this may adversely impact the

means available to meet the redemption of Participations in a particular Sub-Fund. A (global) market collapse or financial crisis may in particular affect the liquidity of the Fund's investments.

#### *Valuation Risk*

To the extent that the investments of Investee Funds may in certain circumstances be difficult to realise and may be subject to restrictions on transfer, the sale of any investments may sometimes be possible only at substantial discounts. Further, such investments may be difficult to value. It should be noted that in preparing the monthly, quarterly and annual reports, Theta is dependent on the Investee Fund managers and their administrators, both in respect of timing and the contents of the reports. Provisional valuations may sometimes have to be applied. The Investee Funds may engage in privately placed less-liquid investment for which no proper valuation may exist until a transaction is executed.

The Net Asset Valuation calculations, for the reasons noted above, are estimates according to its best judgment (following the method described under 'Portfolio Valuation/Determination of Results') which may not necessarily correspond with the actual net asset value on the relevant date. However, the Fund does not make retroactive adjustments in the Net Asset Values previously used for subscriptions and redemptions. Therefore, such transactions are final and binding when made notwithstanding any different later determination (See also 'Errors in the calculation of the Net Asset Valuation').

#### *Concentration Risk*

The Fund may have significant exposure to a limited number of hedge funds who, in turn, may have significant exposure to a limited number of positions. As a consequence, the value of the Fund may display a high sensitivity to adverse developments in any particular hedge fund. A high degree of concentration in a limited number of Investee Funds may also lead to a higher level of volatility.

#### *Lack of Transferability of Participations*

There is and will not be any public market for the Participations. Redemption of Participations may under certain circumstances not be exercisable. Investment in the Fund should therefore only be considered by persons financially able to maintain their investment for an extended period of time and who can afford a loss of all or a substantial part of their investment.

#### *Effects of substantial redemptions*

Substantial redemptions may affect the value of a Participant's investment. Such redemptions may require the Manager to liquidate the Fund Investments rapidly, which may adversely affect the value of both the Participations being redeemed and the remaining Participations. In addition, the Fund Assets may be substantially reduced, which may make it more difficult for the Fund to generate investment profits or recoup losses and may even cause the Fund to liquidate positions prematurely.

#### *Possibility of fraud, misappropriation or other misconduct*

Misconduct by the advisors to the Investee Funds, service providers to the Fund or the Investee Funds and/or their respective affiliates could cause significant losses to the Fund. Misconduct may include binding the Investee Fund or the Fund to transactions that exceed authorized limits or present unacceptable risks, unauthorized trading activities, concealing unsuccessful trading activities (which, in either case, may result in unknown and unmanaged risks or losses) and fraud. Losses could also result from actions by service providers, including, without limitation, failing to recognize trades and misappropriating assets. In addition, employees of Investee Funds may trade on the basis of material non-public information or otherwise improperly use or disclose confidential information, which could result in litigation or cause financial harm, including limiting the Fund's or an Investee Fund's business prospects or future marketing activities. No assurances can be given that Theta or the advisors to the Investee Funds, as applicable, will be able to identify or prevent such misconduct.

Custody of an Investee Fund's assets will typically rest with the Investee Fund's broker-dealer or custodian but may also, in some instances, rest with the relevant investor manager of the Investee Fund or its affiliates. Therefore, there is the risk that the party with custody of an Investee Fund's assets could abscond with, or misappropriate, those assets. In addition, information supplied by an Investee Fund's advisor or another party with custody of an Investee Fund's assets may be inaccurate or even fraudulent.

Pursuant to article 6.10 of the Conditions, neither the Manager nor any of its respective directors, employees or affiliates shall be liable towards the Participants for a loss suffered by them as a result of any act or omission of a third party. Moreover, they will not be liable towards the Participants for a loss suffered by them in connection with the performance of its respective duties and responsibilities, unless and to the extent that such loss is directly caused by the gross negligence (*grove schuld*) or willful default (*opzet*) of Theta.

#### *Various legal forms of hedge funds*

The Investee Funds may be organized in various legal forms, including but not limited to, partnerships, corporations and managed accounts. These different legal forms may have different impacts on the liabilities the Fund may incur in relation to investments in these Investee Funds. The Fund may, depending on the legal form of an Investee Fund, be required to pay up additional capital or return profits already distributed to the Fund, thereby negatively influencing the Net Asset Value.

#### *Competition*

Gaining access to pooled investment vehicles can be problematic given the high level of investor demand some vehicles receive. The business of investing in hedge funds is highly competitive.

#### *Foreign Exchange Risk & Hedging*

Many of the Investee Funds may be exposed to foreign exchange risk. The Fund is denominated in US Dollars, but each share class has a Euro hedge share class. It is envisaged that at no point more than 10% of the market value of a Euro Fund Class will be unhedged. All Classes will be subject to the same investment objectives and strategy but will have a currency hedge strategy linked to the currency of the Class. The related hedging costs and the gains and losses attributable to the hedging transactions will be credited or charged to the Class on behalf of which such transactions are effected.

#### *Leverage*

The Manager does not use leverage (*hefboomfinanciering*) for the purpose of enhancing the Fund's returns. Theta may however borrow for the account, and at the expense, of the Fund, to temporarily finance Fund Assets, Fund Obligations and Costs. The sum outstanding at any time shall not exceed 30% of the book value of the Fund Assets. This leverage may, under certain circumstances, negatively affect the Net Asset Value of a Participation.

#### *Market collapse*

Investors should be aware that a global market collapse or other dislocation will affect the performance and success of the Fund.

#### *Covid-19 ('coronavirus')*

The outbreak of the coronavirus may have continued adverse effects on the global economy, including (1) closures or cancellations of, or reductions in, productions or operations in affected areas, (2) mandatory quarantines and other restrictions on movement, transportation, or travel, (3) decrease in demand for certain products or services, and (4) disruptions to supply chain and other logistical networks. As such, companies with operations, productions, offices, and/or personnel in (or other exposure to) areas affected with the virus may experience significant disruptions to their

business which may continue for an unknown period of time. Although the economic effects of the coronavirus provides business opportunities for the Fund, the extent to which the coronavirus will impact and or provide opportunities to the Fund will depend on future developments, which are highly uncertain and cannot be predicted, including new information that may emerge concerning the severity of the coronavirus, the availability of a vaccine, the regions affected and the actions taken to contain the coronavirus and the (long term) effect thereof, among others.

*Default of counterparty or issuer*

Part of the general investment risk includes default of the counterparty of the Investee Funds and/or default of the issuer in whose securities the Investee Funds invest. Furthermore, the Fund has a counterparty risk on (custody) banks when financial instruments and / or monies are placed on an (securities) account with such banks.

*Default in settlement and clearing system*

Participants may run the risk that clearing and settlement of transactions undertaken for the Fund does not occur as expected, since payment or delivery of the financial instruments by a counterparty does not occur or not in time or as expected.

*Risk of custody*

The Depository has delegated the safekeeping of the Fund Assets to a third party.

If the Legal Owner becomes insolvent, it is theoretically possible that creditors of the Legal Owner that are not creditors of the Fund may seek recovery against the Fund Assets. In practice, however, the Legal Owner will have no creditors that are not creditors of the Fund as the Legal Owner may not perform activities other than those which it performs for the Fund.

The Fund runs the risk that its assets placed in custody with commercial custodians where the Legal Owner maintains securities and/or cash accounts may be lost as a result of the liquidation, bankruptcy, insolvency, negligence of or fraudulent activities by the (sub-)custodian appointed.

*No Management Participation by the Participants*

Participants will have no right or power to participate in the management or control of the Fund and thus must depend solely on the ability of Theta with respect to making investments. In addition, Participants will not have an opportunity to evaluate the specific investments made by the Fund or the terms of any investment made by the Fund.

*Participant may lose more than initial investment*

The Fund is structured as a common contractual fund (*fonds voor gemene rekening*). The Terms and Conditions provide that the terms and conditions and the arrangements made in connection thereto do not establish a partnership (*maatschap* or *vennootschap onder firma*) or limited partnership (*commanditaire vennootschap*). Also, a Participant's obligation to pay a consideration for Participations to be issued is a commitment (*verbintenis*) to the Manager and the Legal Owner only. In case the Fund is deemed to be a (separate) partnership, it is not certain whether what has been specified under Article 6.4 of the Terms and Conditions, which inter alia states that Participants will not be liable to contribute any sum to the Fund Estate beyond the subscription price for the Participations, can be invoked against third parties. In case Article 6.4 of the Terms and Conditions cannot be invoked against third parties, Participants may be liable to contribute any sum to the Fund Estate beyond the subscription price for the Participations.

*Risk of changes in legislation*

Financial and fiscal legislation and regulation are subject to change. Such changes may be unfavorable to the Fund or the Participations and may negatively influence the results of the investment.

## **Conflicts of Interest**

### *Incentive Fee Compensation*

Theta will receive incentive compensation from the Fund. Managers of the Investee Funds are likely to also receive incentive compensation from the funds they manage. As a result, the fee structure imposed by the Fund may be higher than if a Participant directly invested in the Investee Fund. Moreover, such a compensation arrangement may create an incentive for Theta or the fund managers of the Investee Funds to make investments that are riskier or more speculative than would be the case if such an arrangement were not in effect.

### *Diverse Participants*

Participants in the Fund are expected to include persons or entities organized in various jurisdictions and subject to various tax regimes. As a result, conflicts of interest may arise in connection with decisions made by Theta that may be more beneficial for one type of Participant than for another type of Participant. In selecting investments appropriate for any Sub-Fund, Theta will consider the investment objectives of that Sub-Fund as a whole, not the investment objectives of any Participant individually.

### *Multiple Layers of Expense*

The Fund and the Investee Funds each have expenses and management costs that will be borne, directly or indirectly, by the Fund. However, due to long standing relationships that Theta has established with the Investee Funds, it may be able to negotiate fee reductions, which will be for the benefit of investors with the aim to reduce fees as best possible.

### *Activities*

In the ordinary course of business, Theta and its affiliates are engaged or may be engaged in the management and the advisory of other funds or portfolios of hedge funds, where their interests or the interests of their clients may conflict with the interests of the Fund's Participants. Conflicts of interest may also arise if Theta and / or its affiliates become subject to any merger or acquisition. Theta and its affiliates will, on a best efforts basis, attempt to serve the Participants' interests to the best possible extent should a conflict of interest arise.

By acquiring Participations, each Participant will be deemed to have acknowledged the existence of such actual and potential conflicts of interest and to have waived any claim with respect to any liability arising from the existence of any such conflict.

### *Other Investment Funds*

Theta or its affiliates are, or may in the future be, the fund manager or investment adviser of other private investment funds or pooled investment vehicles of other clients which may have similar objectives as the Fund.

# FUND STRUCTURE

## The Fund

The Fund is organized as a common contractual fund (*fonds voor gemene rekening*) and has been established on June 26, 2020. The Fund is subject to Dutch law.

The Fund may consist of Sub-Funds, for which separate portfolios of assets shall be maintained. The Fund may issue Participations in a Sub-Fund in the form of Series on each particular Dealing Day. All benefits and burdens, beneficially attached to the ownership of the Fund Estate relating to a Sub-Fund, shall be in favor or for the risk and account of a Participant in such a Sub-Fund. Within a Sub-Fund, the different Series are organized in Classes.

Participations in different Classes of the same Sub-Fund relate to the same portfolio of assets and liabilities and differ only in the Net Asset Value, the Incentive Fee and Management Fee potentially to be paid, the remaining lock-up period and the redemption conditions depending on the Class in the Sub-Fund. After the end of the first financial year following the expiration of the lock-up period of a particular Series, the Series may be converted into one Series of the same Class in the same Sub-Fund.

## Common contractual fund

Under Dutch law, a common contractual fund may be considered a contract *sui generis*. The management and custody of the assets of the Fund are governed by the Terms and Conditions. The Terms and Conditions provide that the arrangements made in connection thereto do not establish a partnership (*maatschap or vennootschap onder firma*) or limited partnership (*commanditaire vennootschap*). Dutch case law and scholars, however, have regularly deemed common contractual funds to be partnerships (*maatschappen*). Whether a common contractual fund is deemed a partnership or not is of particular importance for the applicability of the legal – statutory - provisions concerning partnerships. One of the most important provisions concerns the pro rata shared liability of the partners in a partnership for obligations assumed in the name of the partnership. In case the Fund and/or the Sub-Funds are deemed to be (separate) partnership(s), it is not certain whether what has been specified under Articles 3.2 and 6.4 of the Terms and Conditions can be invoked against third parties. In view of the investment policy of the Sub-Funds it is not foreseeable that, in practice, a situation will occur in which the Participants are liable for more than the Subscription Price.

## Fund Management

The Fund is managed by Theta, a private limited-liability company under Dutch law with its statutory seat in Amsterdam, The Netherlands. The Fund Manager delegates certain operational aspects of the management of the Fund to Theta Capital.

The Fund Manager is a manager of alternative investment funds specialising in the management of collective investment institutions and providing investment services. The Fund Manager has obtained an authorisation as referred to in Section 2:65 of the Act. Beside the Fund, Theta also manages Legends Fund. The Fund Manager is pursuant its license subject to the requirements of the AIFMD and the Act, and the further regulations promulgated thereunder, including, inter alia, the requirement to maintain at all times a minimum level of own assets (*eigen vermogen*) of EUR 125,000. In order to cover professional liability risks, Theta maintains additional own funds in accordance with Article 14 of AIFMD Regulation (EU) 231/2013.

Both Theta and the Fund are subject to the permanent supervision of the Netherlands Authority for the Financial Markets (*Autoriteit Financiële Markten / AFM*) and the Dutch Central Bank (*De Nederlandsche Bank / DNB*).

The Fund Manager aligned its risk structure in accordance with the applicable legislation (Article 80 AIFMD Regulation). The Fund Manager separated the responsibility for risk management within its organization. In accordance with the AIFMD Regulation, a distinction is made between risks with regard to the funds and risks with regard to the organization of Theta.

Solely Theta is responsible for the management of the Fund. In carrying out its task, Theta acts exclusively in the interest of the Participants. The management and administration of the Fund encompasses investing the Fund Assets in accordance with the Terms and Conditions and all activities in connection therewith.

### **Legal Owner**

Stichting Juridisch Eigenaar TDCOP (the “Legal Owner”) will be acting as legal title holder (*juridisch eigenaar*) of the Fund Assets and Fund Obligations (the “Fund Estate”). The Legal Owner is not supervised by a regulatory authority. The Legal Owner’s statutory purpose is to act solely as legal title holder of the Fund Estate.

The Legal Owner was established on May 13, 2020 and is registered with the trade register of the Chamber of Commerce under no. 78036666. The board of the Legal Owner consists solely of Theta.

Notwithstanding the liability of the Fund Manager for certain losses, the Legal Owner shall only be liable towards the Fund and the Participants for direct losses suffered to the extent that the losses result from culpable non-performance or defective performance of its obligations, also in case the Legal Owner delegated the custody of Fund Assets in whole or part to a third party.

### **Depositary**

The Fund Manager appoints, also for the benefit of the Fund and the Participants, a depositary pursuant to Section 4:37f of the Act (the “Depositary”). To that end, Theta has entered into a depositary agreement with Darwin Depositary Services B.V. The Depositary is charged with the tasks as set out in Article 21(7)-21(9) and 21(17)(c) AIFMD.

Under the rules of the Wft and AIFMD the Depositary shall safeguard the interests of the Participants. Its most important tasks are:

- to hold in custody the financial instruments referred to under article 21(8)a AIFMD and owned by the Fund (*bewaarneming*);
- to verify transfer of title of other assets (including derivatives) referred to under article 21(8)b AIFMD;
- to verify that the investment policy set out in the Information Memorandum is observed;
- to monitor whether the cash flows of the Fund are in compliance with the Information Memorandum and applicable law;
- to ensure that in transactions involving the assets of the Fund any consideration is remitted to the Fund within the usual time limits;
- to ensure that the Fund’s income is applied in accordance with applicable law and the Information Memorandum;
- verification if the calculation of the Net Asset Value takes place in accordance with applicable regulations and the Information Memorandum; and
- to verify that Participants who redeem Participations receive the correct redemption amount and that Participants who subscribe receive the correct number of Participations.

The Depositary delegated the custody of financial instruments to the European Depositary Bank SA.

The Depositary shall only be liable towards the Fund and the Participants for losses suffered by them to the extent that the losses result from:

- (i) loss of financial instruments that can be held in custody, as defined under article 21(8)a AIFMD) (unless the Depositary can demonstrate that such loss has arisen as a result of an external event beyond the Depositary's reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to the contrary (*ondanks alle inspanningen om ze te verhinderen*); and
- (ii) for all other losses as a result of the Depositary's negligent or intentional failure to properly fulfill its obligations pursuant to the AIFMD (*niet naar behoren nakomen van zijn verplichtingen als gevolg van opzet of nalatigheid*).

If liable, the Depositary shall compensate the Fund for damages suffered. If this does not happen, Participants may claim their damages from the Depositary themselves. Any such claim needs to be submitted in writing to the Fund Manager, who thereupon (for the account and risk of the Fund) will take the necessary actions towards the Depositary. If the Manager is of the opinion that the Depositary is not liable, he will inform the Participants thereof in writing. Participants who disagree with this opinion, are entitled (for their own risk and account) to claim directly from the Depositary or the relevant delegate of the Depositary. If Theta, for whatever reason, does not take the required actions against the Depositary, or does not do so adequately or vigorously enough, the Participants will be entitled to take those actions themselves.

The Depositary may, if the conditions mentioned under article 21(13) AIFMD are met, transfer its liability for loss of financial instruments to a third party, provided (i) this is laid down in a written agreement with the Fund Manager establishing the objective reason to contract the discharge; and (ii) the third party concerned accepts liability for loss of financial instruments deposited and accepts that the Fund or Theta, acting on behalf of the Fund, shall be entitled to make a claim against him for loss of financial instruments deposited.

The Fund, Theta and the Participants will only have recourse to the equity of the Depositary and not to assets it holds in custody for parties other than the Fund.

### **Management and custody agreement**

The terms and conditions of the agreement between Theta and the Legal Owner concerning the management and custody are laid down in the Terms and Conditions included herein as Exhibit I.

### **The Administrator**

Theta has appointed Apex Fund Services (Netherlands) B.V. as administrator of the Fund (the "Administrator"). The Administrator is part of the Apex Group, a global provider of fund administration services with over 40 offices across the globe, ISAE 3402/SSAE18 audited, independently owned with \$650 Billion under administration. Apex Group provides specialist fund administration, share registrar, corporate secretarial services and directors to funds and collective investment schemes globally. The Administrator will perform all general administrative tasks for the Fund, including the preparation of valuations, keeping of financial records and maintaining the Register. The Administrator shall receive an annual fee calculated in accordance with its customary schedule of fees and is also entitled to be reimbursed for all out of pocket expenses properly incurred in performing its duties as Administrator of the Fund.

The Administrator provides administrative services required in connection with the Fund's operations, including, compiling and publishing the Net Asset Value and the Subscription Price, providing registrar and transfer agent services in connection with the issue and redemption of Participations and collecting subscription payments and disbursing redemption payments.

Under the Administration Agreement, the Administrator will not, in the absence of gross negligence, wilful default or fraud on the part of the Administrator, be liable to the Fund or to any investor for any act or omission, in the course of, or in connection with providing services to the Fund or for any losses, claims, damages, liabilities and expenses or damage which the Fund may sustain or suffer as a result of, or in the course of, the discharge by the Administrator or its duties pursuant to the Administration Agreement.

Under the Administration Agreement, the Fund will indemnify the Administrator to the fullest extent permitted by law against any and all judgments, fines, amounts paid in settlement and reasonable expenses, including legal fees and disbursements, incurred by the Administrator, save where such actions, suits or proceedings are the result of fraud, wilful misconduct or gross negligence of the Administrator.

In accordance with the terms of the Administration Agreement, the services of the Administrator may be terminated by at least 90 days written notice from either the Fund Manager or the Administrator (or such shorter notice period as the parties may agree to accept) or earlier on the liquidation of either the Fund or the Administrator.

### **Term of the Fund**

The Fund has an indefinite term. Theta may terminate the Fund or a Sub-fund at any time, subject to a notice of at least three months to the Participants. Upon dissolving the Fund or the Sub-fund, the cash proceeds from liquidation of the interests in the Investee Funds will be distributed to the Participants.

### **Distributions**

Theta shall have sole discretion whether to distribute any income of the Fund or whether to retain it within the Fund. All investment gains, paid out dividends or other distributions by Investee Funds will be reinvested within the Fund. However, Theta has the option to make distributions, these shall be made to Participants in the relevant Sub-Fund, pro rata to their Participations.

### **OUTSOURCING**

The general administration of the Fund is delegated by Theta to Apex Fund Services (Netherlands) B.V. as third party administrator. Services of the Administrator include processing the subscription and redemption of Participations, maintaining all appropriate investor registers and ledgers, preparing and maintaining financial and accounting books and records and maintaining the Fund's principal administrative records. The calculation of the Net Asset Value is also outsourced to the Administrator.

### **NETHERLANDS LAW**

The legal relationship between the Fund and the Participants is in principle governed by Dutch law. The Terms and Conditions and the Information Memorandum are expressed to be governed by the laws of the Netherlands. The applicable legal provisions are in particular included in the Dutch Civil Code, the Act and the AIFMD. Other than pursuant to the Terms and Conditions and the law, the

Participants do not have any rights against the Manager, Legal Owner, Depositary or parties that provide services to the Fund. Decisions of a Dutch court or judicial body can be enforced against the aforementioned parties in accordance the provisions of Dutch law. Decisions of non-Dutch courts or judicial bodies can be recognized and enforced in accordance with the applicable treaties and regulations.

# PARTICIPATION, SUBSCRIPTIONS AND REDEMPTIONS

## **Participation**

### Rights and duties

The rights and duties of a Participant are described in detail in article 9 of the Terms and Conditions.

### Pro rata entitlement

Each Participant shall be beneficially entitled to the Fund Estate of a Sub-Fund pro rata to the number of its Participations in that Sub-Fund. All benefits and (subject to Article 6.4 of the Terms and Conditions) burdens, beneficially attached to the ownership of the Fund Estate, shall be in favor and for the account of each Participant pro rata to the number of its Participations in that Sub-Fund.

### Form

Participations shall be in registered form only. Certificates shall not be issued.

### Transferability

No assignment, sale, transfer, or other disposition of a Participation (whether voluntary or involuntary) shall be valid or effective. Participations cannot be made subject to any pledge, mortgage, usufruct, charge, lien, retention or other encumbrance (*beperkt recht*) of any nature whatsoever.

### Voting rights

Each Participation gives an entitlement to one vote in a meeting of Participants of the Fund or in a meeting of Participants of a Sub-Fund, provided, in the latter case, the Participation relates to such Sub-Fund.

### No management participation by the Participants

Participants will have no right or power to participate in the management or control of the Fund and thus must depend solely on the ability of Theta with respect to making investments. In addition, Participants will not have an opportunity to evaluate the specific investments made by the Fund or the terms of any investment made by the Fund.

### Complaints

Participants may submit complaints regarding the Fund to Theta by regular mail.

## **Listing**

The Participations will not be listed or traded at any trading platform.

## **Subscriptions**

Participants can at the discretion of Theta enter the Fund on a (monthly) Dealing Day at a Subscription Price equal to € 1,000, or at Net Asset Value, where it regards an existing Series. The minimum initial subscription amount equals € 100,000.

To participate in the Fund, a Participant must:

- complete and execute an Application Form;

- send this form to the Fund Manager at least 10 Business Days before the Dealing Day on which the Participant wants to enter the Fund; and
- transfer the total subscription amount to a Fund Bank Account (as advised by Theta), specifying the desired Sub-Fund and Class and currency, if any, at least 10 Business Days before the Dealing Day on which the Participant wants to enter the Fund, unless otherwise agreed by Theta. Should the subscription amount not be paid-in on the Fund Bank Account in the relevant currency, the Fund will convert the relevant currency into the share class currency at the expense of the Participant.

Theta reserves the right to accept or reject any application in its sole discretion. Prerequisite for acceptance of applications is provision by the potential investor of information, inter alia, relating to his antecedents, so as to comply with Dutch anti money laundering regulations. Theta endeavors to provide deal confirmations to Participants within 12 Business Days after the Dealing Day.

### **Series**

The Fund may issue Participations in a Sub-Fund in the form of Series of a Class on each particular Dealing Day. Participations in different Classes in a Sub-Fund relate to the same portfolio of assets and liabilities and differ only in the Net Asset Value, the Incentive Fee and Management Fee potentially to be paid and the remaining lock-up period. After the end of the first financial year following the expiration of the lock-up period of a particular Class, the Series may be converted into one Series of the same Sub-Fund.

Theta may where it deems such practicable convert at any Dealing Day all the Participations of any Series into any other Series of the same Sub-Fund.

### **Redemptions**

Participants will have the possibility to redeem Participations starting a (quarterly) Dealing Day following at least 90 calendar days prior written notice given to the Theta and subject to a lock-up period, if applicable.

All redemption requests will be executed subject to a 25% investor gate. Each redemption will be redeemed at a price equal to the Net Asset Value of the relevant Series on the Dealing Day on which the redemption is effected. The investor gate will be calculated as 25% of the highest balance of the Participant's holdings in the relevant Series on any of the four Dealing Days immediately preceding the redemption request. Any excess over the amount of the investor gate will be redeemed at the following Dealing Day subject again to the investor gate. For clarity, this means for example that a Participant wishing to redeem 50% of his holdings will have his request met in full over 2 Dealing Days. A 100% redemption will be met in full over 4 Dealing Days.

Once a redemption request has been accepted by Theta, any costs incurred as a result of withdrawal of the redemption request will be charged to the Participant.

Theta may limit the redemption of Participations on any Dealing Day to a maximum of 10% of the outstanding Participations in the Sub-Fund on such Dealing Day. In the event Theta invokes its right to limit the redemptions to the 10% threshold, it will allocate the redemptions that will be executed on a pro rata basis.

Issue and redemption of Participations may be suspended by Theta in the event of, inter alia, market disruption or breakdown of means of valuing the Fund.

The minimum Net Asset Value to be redeemed subject to one redemption request should at least equal €100,000 or 100 Participations.

Theta endeavors to provide deal confirmations to Participants within 12 Business Days after the relevant Dealing Day of redemption and to distribute redemption proceeds to Participants within 30 Business Days after the Dealing Day.

### **Suspension of dealings**

#### Situations in which dealings may be suspended

Theta may declare a suspension of valuations and the issue and Redemption of Participations in any Sub-Fund for the whole or any part of a period during which:

1. by reason of the closure of or the suspension of trading on any stock exchange or over-the-counter market or any other reason, circumstances exist as a result of which, in the opinion of Theta, it is not reasonably practicable for the Fund to dispose of investments or fairly to determine the Net Asset Value; or
2. a breakdown occurs in any of the means normally employed by Theta in ascertaining the value of investments or any other reason or circumstances exists which in the opinion of Theta means the value of the investments or other assets of the Fund cannot reasonably be ascertained; or
3. it is not possible to receive remittances in respect of the investments or to make payments pursuant to a Redemption at all or without undue delay.

#### Duration of suspension of dealings

Any such suspension shall take effect at such time as Theta shall declare but not later than the close of business on the Business Day next following the declaration and thereafter there shall be no determination of Net Asset Value until Theta shall declare the suspension at an end except that the suspension shall terminate in any event on the first Business Day on which:

- the condition giving rise to the suspension shall have ceased to exist; and
- no other condition shall exist under which suspension is authorised under the Terms and Conditions.

Each such declaration by Theta shall be consistent with such official rules and regulations (if any) relating to the subject matter thereof as shall have been promulgated by any authority having jurisdiction over the Fund as shall be in effect at the time. To the extent not inconsistent with such official rules and regulations, the determination of Theta shall be conclusive.

## 6. COSTS AND EXPENSES

This section provides a summary of article 11 of the Terms and Conditions. Please note that the latest financial annual statement are incorporated by reference in this Information Memorandum. Reference is made to the annual report as regards actual costs incurred by the Fund and allocated to the Sub-Funds, if any.

### Fund Fee Structure

The fee structure relating to the Fund is as follows:

- **Management Fee:** Theta shall be entitled to receive an annual Management Fee up to a one per cent (1%) of the Net Asset Value of a Class (see also *Classes and Fee Structure*). The Management Fee shall accrue on each Dealing Day by reference to the Net Asset Value on that day and be paid quarterly in arrears on, the last Business Day in each of March, June, September and December; and
- **Incentive Fee:** an Incentive Fee shall be payable to Theta calculated and out of each Series in respect of each financial year. The Incentive Fee shall be based on the amount by which the Total Return exceeded the Benchmark Return ('hurdle rate'). See also *Classes and Fee Structure*.

For this purpose, both the Total Return and the Benchmark Return shall be determined in accordance with article 11.3 of the Terms and Conditions, Total Return being the increase in Net Asset Value (before accrual for Incentive Fee) during a financial year and the Benchmark Return being based on a rate of 5 % per annum (non cumulative). No Incentive Fee is charged when the Net Asset Value, including distributions, at the end of a financial year is below the highest Net Asset Value at year-end of any of the previous financial years ('perpetual High Water Mark'). All fees are excluding VAT, if and when due.

The Incentive Fee, monthly determined on a pro rata basis and calculated and charged to the Net Asset Value, is paid to Theta once a year, after the end of the financial year of the Fund or at redemption, if applicable.

### Classes and Fee Structure:

As of the date of the Information Memorandum there is one Sub-Fund in which 2 Classes are being offered:

- Class A USD: 2 year initial hard lock-up, 0.35% Management Fee, and a 5% Incentive Fee (available until 1<sup>st</sup> October 2020 for up to Euro 50 million total of Class A)
- Class A EURO: 2 year initial hard lock-up, 0.35% Management Fee, and a 5% Incentive Fee (available until 1<sup>st</sup> October 2020 for up to Euro 50 million total of class A)
- Class B USD: 1 year hard-lock-up, 1% Management fee, and a 5% Incentive Fee
- Class B EURO: 1 year hard-lock-up, 1% Management fee, and a 5% Incentive Fee

Both Classes have 25% investor gates on their redemptions. An investor may redeem 25% of his Participation balance in the Class as of the Dealing Day and any excess will be redeemed at the next Dealing Day, though again subject to the 25% investor gate. The maximum amount redeemable on any dealing date is calculated in all cases as 25% of the highest share balance on any of the four dealing dates prior to the redemption notice.

For all Classes, the Incentive Fee is, for each Series, calculated and payable annually and is subject to a hurdle rate of 5% per annum (non cumulative). All Classes have perpetual High Water Marks.

## **COSTS**

### **Depository and Administration Fees**

The fees of the Depository and the Administrator shall be borne by the Fund. The current annual fee charged by the Depository equals €16,500.

The current annual fee charged by the Administrator equals 0.05% with a minimum fixed fee of €15,000. All fees are excluding VAT, if and when due. During the life of the Fund Theta may negotiate changes in these fees without the consent of Participants being required.

### **Overhead Costs**

Theta shall provide, at its own expense, office facilities and staff to facilitate the carrying on of the activities of the Fund.

### **Expenses and Operating Costs**

Operating expenses shall be borne by the Fund, including (but not limited to), costs relating to the acquisition and disposal of investments, the fees and expenses of such attorneys, agents, lawyers, accountants or other advisers as Theta may deem necessary or advisable in relation to the affairs of the Fund, costs relating to the administration of the Fund, advertising and printing expenses, tax compliance costs, the costs of meetings of Participants, auditors' fees, any taxes due by the Fund, interest, bank charges and litigation related expenses.

### **Audit and other professional fees**

The annual audit fees of the Fund are estimated to be approximately to be €20,000 (excluding VAT). Other professional fees are estimated to be approximately €20,000 to €25,000 per year (excluding VAT). The audit fees and other professional fees will be split across the Sub-Funds unless specifically attributable to one Sub-Fund.

### **Supervisory Costs**

Levies of supervisors and costs related to supervision, including fees due by the Fund Manager based on the Fund assets under management, are borne by the Fund and are split equally across the Sub-Funds. The actual supervisory costs due to the Fund vary each year and will be included in the annual accounts.

# THETA

## General

Theta Capital Management B.V. (“Theta Capital”) is an independent discretionary asset manager and investment advisor concentrating exclusively on hedge funds and is licensed with the AFM under article 2:96 of the Act. Theta Capital Management B.V. is a private limited liability company with its statutory seat in Amsterdam, The Netherlands, incorporated on May 28, 2001, and registered with the Trade Register of the Chamber of Commerce under no 34150519. The statutory directors of Theta are Mr. Tijo van Marle and Mr. Ruud Smets.

## History Theta

Theta is operationally integrated with Theta Capital of which Theta is wholly owned and fully integrated subsidiary. Theta Capital is an independent discretionary asset manager and investment advisor concentrating exclusively on hedge funds. Theta Capital was founded in 2001.

Theta Capital started investing for its clients in September 2001. Historically, Theta’s clients are mainly the 'classic' hedge fund investors, being high net worth private individuals, and family offices, but an increasing part of the assets is managed on behalf of institutional investors. Since its inception Theta Capital has managed separate individual portfolios of hedge funds for its clients. It continues to do so.

Theta invests across all main hedge fund strategies and has a long track record of investing in credit strategies across the cycle.

## A Successful history of proactively positioning for a turning of the credit cycle

### In 2006

- Became very wary of problems in structured credit markets, predominantly mortgage based
- Went through deep analyses of existing holdings and redeemed from all long-biased credit managers
- Identified a uniquely attractive trade: shorting subprime strategies
- Raised a dedicated longer-lock vehicle to optimally capitalize on this opportunity

### In 2007

- Added to dedicated short corporate credit funds as it was expected for the crisis to spread from mortgages to banks to the real world
- Further expanded our short subprime mortgage investments with additional managers
- Booked strong one-way gains on the short subprime trade causing the dedicated vehicle to gain 7.3% in 2007-2008 while the HFRX Global Hedge Fund index was down 21.7% in the same period

### In 2008

- Short subprime exposure was rotated into short banking equity
- Towards the end of the year, a great distressed debt opportunity started to present itself with unique upside and great margins of safety as distressed sellers wanted to get out at any price
- The ability to move with the opportunities was enabled by Theta’s sophisticated, long term investors, who were willing to be contrarian in their views

While Theta expects the current opportunity to be very different from 2008, we believe our history of managing through the previous cycle is an important advantage. We have had a similar experience managing through the European debt crisis in 2010/2011

## **Investment Process**

In its investment process, Theta takes a predominantly bottom-up approach reflecting its profound belief that hedge fund managers are well equipped to capitalize on varying market conditions. In other words, Theta does not actively manage its portfolios according to pre-formulated return expectations. Rather, Theta strives to select managers that have proven the ability to successfully exploit investment opportunities across various market environments. This approach endeavors to provide Theta's clients with capital appreciation and to take advantage of the dislocations in the markets.

## **Manager Selection and Due Diligence**

The objective of Theta's manager selection process is to identify hedge fund managers with superior investment skills that have proven to operate successfully through different market environments. The selection process entails three levels of analysis, each with its own information requirements, documents and criteria. The selection process is supported by several databases, a qualitative information system and various tools (some proprietary) for quantitative fund analysis and stress-testing.

In the *qualitative* due diligence process Theta focuses on:

- staying power, securing a conservative match between assets and potential liabilities, such as investor redemptions and leverage facilities. Staying power is key in avoiding realized losses in dislocated markets and in having the ability to play offense in such markets;
- independent mind, potential to generate uncorrelated returns, flexibility of investment approach;
- competitive edge in investment strategy, trading style;
- investment process;
- risk management; and
- background and experience.

The objective of performing *quantitative* analysis of a hedge fund track record is twofold: risk analysis and relative return analysis. To allow for the dynamism inherent in a fund's investment strategy, quantitative techniques cannot be applied in a strict and rigid manner, but a healthy dose of common sense and expert judgment is required.

The objective of Theta's *operational* due diligence process is to provide a transparent overview of the infrastructure supporting the trading strategy in terms of:

- people & organization;
- processes & systems; and
- involvement of third party service providers.

Crucial elements in the operational risk assessment are reference checks, evaluation of portfolio marking-to-market and NAV calculations, administrators and prime brokers.

## **Portfolio Construction and Risk Management**

In its portfolio construction, Theta seeks to maximize exposure to potential areas of opportunity, adding specialized managers to the extent they offer exposure to additional opportunity sets. By focusing on established managers and extensive manager due diligence, Theta seeks to minimize manager specific business risks, reducing the need for multiple managers in specific sub-strategies. Allocation limits to managers and market risks are applied to control concentration risk. This approach to portfolio construction complements the manager selection process, where Theta strives to select managers that are able to produce positive returns under all market environments.

## **Investment Team**

Short biographies of the persons involved with the management of the Fund are provided below.

Tijo van Marle obtained a Master of Business Administration (MBA) degree from the Harvard Business School in 1966. He subsequently worked as an investment banker at Pierson, Heldring & Pierson in Amsterdam (1967-1972), J. Henry Schroder Wagg & Co in London as Director International Capital Markets (1972-1982) and in Hong Kong as Managing Director (1982-1984) and from 1984 to 2001 as Managing Director at Credit Suisse First Boston in London and Amsterdam. He has been a director of Theta since January 2001.

Ruud Smets, CAIA joined Theta in 2005 and is responsible for investments. He worked at the interest rate derivatives desk of NIBCcapital before joining Theta. Prior to joining NIBCcapital in 2004 Ruud worked at FundPartners, a company focusing on structured product solutions and hedge fund investments for institutional investors, where he was responsible for the hedge fund allocation of a large Dutch pension fund. Ruud has obtained his master's degree in Business Economics and Information Technology from Tilburg University in 2002 and is a Chartered Alternative Investment Analyst (CAIA). He has been a director of Theta since September 2013.

Marc de Kloe joined Theta in 2019 and focusses on strategy, operations, product development and client relations. Marc has an extensive investment background covering the full range of alternative investments. Marc started at Clifford Chance in Germany as a foreign associate in private equity, more recently as Global Head of Funds and Alternatives at ABN AMRO Private Banking based in Amsterdam and finally as COO of Adamas Asset Management a Hong Kong based Private Credit Manager. In addition, Marc co-founded Alternatives4Children, an industry supported charity raising money for children's education. Marc holds an LL.B in English and German Law from the University of Kent, Canterbury (U.K.) in 1996, an LL.M in European Business Law from the University of Amsterdam in 1999 and an MBA from the Vlerick Business School in Belgium in 2004.

## 8. REPORTING AND INFORMATION

### **Financial year**

The financial year of the Fund coincides with the calendar year.

### **Periodical reports**

Theta will prepare monthly, quarterly and annual reports on the Fund's portfolio. The reporting currency is the US Dollar.

It should be noted that for the monthly, quarterly and annual reports, Theta depends on the administrators of the Investee Funds, both in respect of timing and the contents of the reports. Provisional valuations may sometimes have to be applied and are based on information supplied by the Investee Funds. As soon as audited annual accounts of the Investee Funds are available, any provisional information will be reviewed and necessary adjustments will be made.

### **Monthly**

As soon as reasonably practicable following the last calendar day of each month, pursuant to the periodic disclosure requirements under the AIFMD, if and when applicable and to the extent relevant, Theta will include the following items in the monthly report:

- the percentage of the Fund's assets which are subject to special arrangements arising from their illiquid nature;
- any new arrangements for managing the liquidity of the Fund;
- changes to the risk profile of the Fund and the risk management systems employed by Theta to manage those risks; and
- to the extent leverage is employed by the Fund: (i) any changes to the maximum level of leverage which Theta may employ on behalf of the Fund as well as any right of the reuse of collateral or any guarantee granted under the leveraging arrangement; and (ii) the total amount of leverage employed by the Fund.

### **Quarterly**

A written narrative detailing the investment outlook and market commentary.

### **Annual report**

The annual report of the Fund will include the information required pursuant to the Act and the AIFMD.

The annual report will be audited and prepared within 6 months after the end of each financial year. The annual report will be audited by a reputable auditing firm. The annual report includes for each Sub-Fund:

- balance sheet;
- income statement;
- explanatory notes;
- statement of the investments acquired, sold or otherwise disposed of during the financial year and a report by Theta expressing its opinion on the value of the investments held at the end of the financial year; and

- a specification of the composition of each Sub-Fund by an Investee Fund in percentages of that portfolio for all Investee Funds which represent more than 5 % of the value of that Sub-Fund.

The annual accounts of the Fund are in principle based on audited annual accounts of the Investee Funds. Deviation from this general rule is possible when the audited accounts of the Investee Funds are not received in time. If that is the case, and also in the case that an Investee Fund in which a Sub-Fund participates has a different year-end date, an estimate of the Net Asset Value of that particular Investee Fund provided by that Investee Fund will be used.

The auditor of the Fund will be asked to express an opinion about the relevance of the use of this estimate for the accuracy of the accounts of the Fund.

All reports relating to the Fund will be sent to each Participant's (electronic) address.

## **Portfolio Valuation/Determination of Results**

### General

The accounts of the Fund will be prepared in accordance with Dutch Generally Accepted Accounting Principles. The Fund's investments in Investee Funds will be valued based on the reporting received from the administrators of those funds, unless considered inappropriate by Theta. The value of investments in Investee Funds will generally be taken as the aggregate of the Fund's attributable share of the latest available net asset value of such Investee Funds, where it is the intention to base the Net Asset Value of the Fund on the fair value of the financial assets and liabilities of the Fund. Theta may, if it thinks fit, make adjustments as a result of the different bases of valuation applied by the Investee Funds, which will be reflected and explained in the accounts. The establishment costs will be capitalized and amortized over a 2-year period. For a corresponding amount, a legal reserve will be held. The Fund's other assets and liabilities will generally be valued at nominal value, unless a permanent impairment occurs.

The result of the Fund on its Investee Funds will generally be taken as the aggregate of the Fund's attributable share of the result of the Investee Funds. Theta may, if it thinks fit, make adjustments as a result of the different bases of determination of results applied by the Investee Funds, which will be reflected and explained in the accounts. The results made on the Fund's other assets and liabilities will generally be taken into account in the period to which they relate.

Where an up-to-date value of an Investee Fund is not available, or the valuation date does not coincide with that of the Fund, Theta will use an estimated value.

### **Assessment of Net Asset Value**

As of each Dealing Day, Theta shall determine the Net Asset Value, in accordance with article 12 of the Terms and Conditions. The Net Asset Value shall be expressed in USD or, in the case of Sub-Funds valued in another currency, in such currency as may have been designated by Theta. The Net Asset Value of a Participation will be calculated in accordance with the Terms and Conditions on the Dealing Day and shall be sent to the (electronic) addresses of Participants.

### **Notice of distributions**

The announcement of payment of distributions, if any, the composition of the distributions and the way the distributions will be paid, shall be sent to the (electronic) addresses of Participants.

## 9. TAXATION / LEGAL

### **Taxation General**

Prospective Participants are urged to consult their own professional advisers regarding the possible tax and legal consequences of acquiring, holding or disposing of Participations under the laws of the jurisdictions of which they are citizens, residents or domiciliaries and in which they conduct business. The Fund has been structured so as to reduce as much as possible the additional tax cost compared to a direct investment by the Participants in the Investee Funds (which generally are not directly accessible to the Participants).

### **Taxation of the Fund**

The Fund aims to qualify as a common contractual fund that is not subject to corporate income tax (i.e. transparent for Dutch tax purposes). Theta shall use reasonable endeavors to assist Participants in obtaining the benefit of any tax exemptions applicable to investments made by the Fund and any tax refunds available in respect of tax withheld from sums receivable by the Fund. Theta shall not be obliged to seek any exemption or refund where the effort or expense would be disproportionate to the sums likely might be recovered. If Theta thinks fit, the amount distributable to any Participant may take into account the availability of tax exemptions or refunds attributable to him and to the rate of withholding applicable to him.

### **Taxation of Participants – The Netherlands**

#### *General*

Please note that the summary in this section does not describe the Netherlands tax consequences for Participants if such Participants, and in the case of individuals, his/her partner or certain of their relatives by blood or marriage in the direct line (including foster children), have a substantial interest (*aanmerkelijk belang*) or deemed substantial interest in the underlying investment(s) of the Fund under the Netherlands Income Tax Act 2001 nor for pension funds, investment institutions (*fiscale beleggingsinstellingen*), exempt investment institutions (*vrijgestelde beleggingsinstellingen*) (as defined in the Netherlands Corporate Income Tax Act 1969) and other entities that are exempt from Netherlands corporate income tax.

#### *Residents of the Netherlands*

Generally speaking, if a Participant is an entity that is a resident or deemed to be resident of the Netherlands for Netherlands corporate income tax purposes, any income derived from the Fund or any gain or loss realized on the disposal, or deemed disposal, of the investment in the Fund is subject to Netherlands corporate income tax at a rate of 25% (a corporate income tax rate of 16.5% applies with respect to taxable profits up to EUR 200,000, the bracket for 2020).

If a Participant is an individual, resident or deemed to be resident of the Netherlands for Netherlands income tax purposes, any income derived from the Fund or any gain or loss realized on the disposal, or deemed disposal, of the investment in the Fund is taxable at the progressive income tax rates (with a maximum of 49.5%), if:

- (a) the investment in the Fund is attributable to an enterprise from which the Participant derives a share of the profit, whether as an entrepreneur or as a person who has a co-entitlement to the net worth of such enterprise without being an entrepreneur or a shareholder (as defined in the Netherlands Income Tax Act 2001); or
- (b) the Participant is considered to perform activities with respect to the investment that go beyond ordinary asset management (*actief vermogensbeheer*) or derives benefits from the

Fund that are (otherwise) taxable as benefits from other activities (*resultaat uit overige werkzaamheden*).

If the abovementioned conditions (a) and (b) do not apply to a Participant who is an individual, resident or deemed to be resident of the Netherlands for Netherlands income tax purposes, such Participant will be taxed annually based on a deemed return on income from savings and investments (*sparen en beleggen*) rather than on the basis of income actually received or gains actually realized. As a result, the value of the investment of the specific individual investor on January 1 is partly subject to an assumed yield of 0.07% and partly to an assumed yield of 5.28% (2020) insofar as the individual's yield basis exceeds a certain threshold (*heffingsvrij vermogen*). The assumed yield would be taxed against a tax rate of 30%.

#### *Non-residents of the Netherlands*

A Participant who is neither resident nor deemed to be resident of the Netherlands would not be subject to Netherlands taxes on income or capital gains in respect of any income derived from the Fund or in respect of any gain or loss realized on the disposal or deemed disposal of the investment in the Fund, provided that:

- (a) such Participant does not have an interest in an enterprise or deemed enterprise (as defined in the Netherlands Income Tax Act 2001 and the Netherlands Corporate Income Tax Act 1969, including, but not limited to, article 17-3-c) which, in whole or in part, is either effectively managed in the Netherlands or carried on through a permanent establishment, a deemed permanent establishment or a permanent representative in the Netherlands and to which enterprise or part of an enterprise the investment in the Fund is attributable;
- (b) in the event the Participant is an individual, such Participant does not carry out any activities in the Netherlands with respect to the investment in the Netherlands that go beyond ordinary asset management and does not derive benefits from the Fund that are (otherwise) taxable as benefits from other activities in the Netherlands; and
- (c) such Participant does not have an interest in an enterprise in the Netherlands and to which enterprise the investment in the Fund is attributable other than by way of the holding of securities and is not a managing director or part of a supervisory board of an enterprise in the Netherlands.

#### *Withholding tax*

To the extent the Fund invests in Dutch resident entities, Dutch dividend withholding tax may be due upon dividends distributed by these entities via the Fund to the Participants. The dividend withholding tax rate may be reduced under the applicability of a tax treaty concluded by The Netherlands and the jurisdictions of which the Participants are tax resident.

Also withholding tax may be due in case of investments by the Fund in assets outside the Netherlands for which foreign jurisdictions have the taxation rights. Next to that the Netherlands may introduce in the near future new withholding taxes on interest and royalties paid to certain low tax jurisdictions by Dutch entities subject to the Dutch corporate income tax.

## **Legal**

### General

The Documentation relating to the Fund consists of:

- Terms and Conditions of Management and Custody (Exhibit I); and
- Application Form (which is available upon request).

### Amendment of Terms and Conditions

The Terms and Conditions may be amended by Theta without the consent of the Participants unless the amendment involves:

- (i) a change in the Investment Objectives;
- (ii) an increase of the fees of Theta;
- (iii) any negative change in the Terms and Conditions relating to the redemption of Participations, which requires the prior consent of the Participants through an Ordinary Resolution.

Theta will inform the Participants of the text of an (proposed) amendment of the Terms and Conditions at least thirty (30) calendar days before the day on which the (proposed) amendment shall come into effect.

### Termination and winding up

#### *General conditions for termination*

Although the Fund has an indefinite duration, it shall be terminated on the bankruptcy, dissolution or liquidation of the Theta unless the appointment of a replacement Theta is approved by an Ordinary Resolution.

#### *Termination on sanction of Special Resolution*

The Fund may also be terminated at any time with the sanction of a Special Resolution, upon the Theta committing fraud, illegal acts, gross negligence (*grove schuld*), wilful default (*opzet*) or material breach of these Terms and Conditions which is not remedied within a reasonable period of time. Furthermore, it may be terminated with the consent of Theta and the sanction of a Special Resolution, or on not less than a three months' notice by Theta to the Participants.

#### *Termination on sanction of Ordinary Resolution*

Theta may also (with the consent of an Ordinary Resolution) by notice in writing to the Participants, terminate the Fund at any time if in its reasonable opinion it would be impracticable, unlawful or inadvisable to continue.

#### *Winding-up*

Upon termination or dissolution of the Fund or a Sub-Fund, no further business shall be conducted for the Fund or that Sub-Fund (as the case may be), except for such actions as shall be necessary for the winding up of the affairs of the Fund or that Sub-Fund and the distribution of the Fund Assets which shall be effected by Theta.

#### *Terms and Conditions*

During the liquidation period the Terms and Conditions shall, to the extent possible, remain in full force and effect. The balance left after the liquidation shall be distributed in accordance with the provisions specified in the Terms and Conditions. Notice that distributions are to be made payable to the Participants and the composition of the distributions or collections shall be given in accordance with the provisions as specified by Article 16 of the Terms and Conditions. Theta shall duly render accounts to the Participants before making any distributions.

#### *Depositary's certificate*

Theta shall prepare liquidation accounts, which shall be accompanied by a certificate of the Depositary. Approval of those liquidation accounts by a meeting of Participants shall constitute, upon approval by Special Resolution, a discharge of the Legal Owner and Theta.

### Meeting of Participants

#### *Meeting of Participants*

Theta may, as often as it deems necessary in the interest of the Participants, convene a meeting of all Participants or of the Participants in one or more Sub-Funds. The meetings will be held in Amsterdam or another place to be determined by Theta. Notice for a meeting will be given in accordance with Article 16 of the Terms and Conditions at least fourteen (14) days prior to the meeting and will state the date, time, place and agenda for the meeting.

*Notification for attending*

Participants wishing to attend a meeting must notify Theta thereof in writing no later than five (5) Business Days prior to the meeting. Participants, which have so notified Theta, are entitled to be heard at the meeting and to exercise their voting rights.

*Procedure at meetings*

Theta shall appoint a chairman and a secretary for each meeting. The chairman shall be responsible for determining the procedure to be adopted for the conduct of any meeting Participants. The secretary shall be responsible for the preparation of minutes of the meeting.

*Voting rights*

Each Participation entitles to one vote in a meeting of Participants.

## 10. IMPORTANT INFORMATION

### **Default / Creditworthiness / Negative Tax Implications**

If a Participant fails to fulfil any of its obligations under the Terms and Conditions, Theta may, in addition to any other rights afforded by law, undertake certain (legal) actions.

Also, pursuant to article 14.2.2 of the Terms and Conditions, if the tax status of the Fund Estate, Legal Owner or the other Participants is negatively affected by the tax status of that particular Participant, Theta is entitled to redeem that Participant's Participations.

### **Related Party transactions**

There will be no related party transactions, except for possible trades with other fund-of-funds or accounts managed by Theta. Such transactions are not concluded at a regulated market or another market in financial instruments, but will always be at the net asset value of the underlying fund and therefore on market-based terms and conditions. All such transactions will be based in all cases on an independent valuation, but a valuation by one or more of the parties involved in the transaction is also possible.

### **General Data Protection Regulation**

Theta will ensure that personal data that has been collected and processed in connection with the Fund, will be treated confidentially. Theta will comply with the General Data Protection Regulation. Personal data of Participants is collected and processed in accordance with the Privacy Policy of Theta which is available on the Website.

Theta will use the personal data in connection with its duties as mentioned in the Terms and Conditions and the Information Memorandum. The personal data will not be shared with third parties other than the Administrator, unless this is necessary to carry out the duties under the Terms and Conditions and the Information Memorandum or when statutory provisions make it mandatory to share such information with third parties.

### **Voting policy**

As a fund-of-funds, the Fund normally does not have voting rights in other enterprises. Occasionally, Theta is asked to vote regarding corporate actions of an Investee Fund. In such a case Theta will vote in manner as is deemed in the best interest of the Fund.

# EXHIBIT I

## Terms and Conditions of Management and Custody

### 1 Definitions

1.1 The following terms have the definitions hereinafter indicated whenever used in these Terms and Conditions with initial capital letters:

‘Act’ the Netherlands Financial Markets Supervision Act (*Wet op het financieel toezicht*);

‘Administrator’ means Apex Fund Services (Netherlands) B.V. or such other entity as may be appointed as administrator of the Fund by the Fund Manager, from time to time;

‘AIFMD’ means Directive 2011/61/EU of the European Parliament and of the Council dated 8 June 2011 on Alternative Investment Fund Managers and the regulations (*verordeningen*) and further rules in relation thereto;

‘Annual Management Fee’ means the fee payable to the Fund Manager under Article 11.1;

‘Application Form’ means the form of application or subscription to participate in the Fund completed by a Participant;

‘Benchmark Return’ means the increase in a financial year of the Net Asset Value of a Class calculated on the basis of a return rate of 5% per annum;

‘Business Day’ means a day on which banks are generally open for business in both Amsterdam and New York City;

‘Cash’ means cash in any currency held in interest bearing call accounts or bank deposits;

‘Cash Equivalents’ means money market instruments in any currency which are regularly negotiated and which have a residual maturity of twelve (12) months or less;

‘Class’ means a separate class of Participations within a Sub-Fund each having equal rights and obligations and a Net Asset Value that can only differ due to a different moment of issue of the respective Series;

‘Commencement Date’ means, in relation to any Sub-Fund, the date upon which Participations in that Sub-Fund are first issued;

‘Costs’ means all costs, fees and expenses incurred by or charged to the Legal Owner or the Fund Manager in connection with the Fund Estate;

‘Dealing Day’ means the last Business Day in each calendar quarter and such other days as the Fund Manager may determine;

‘Depositary’ means the depositary (*bewaarder*) of the Fund within the meaning of the AIFMD and the Act as appointed from time to time by the Fund Manager;

‘Fund’ means the contractual arrangements between the Participants, the Fund Manager and the Legal Owner in relation to the participation in and the management, custody and administration of the Fund as governed by the Terms and Conditions and the Application Form, also referred to as Theta Distressed Credit Opportunities Pool;

‘Fund Assets’ means the Fund Means and the Fund Investments relating to a Sub-Fund;

‘Fund Bank Account’ means a bank account in the name of the Legal Owner for the account of the Fund;

‘Fund Estate’ in relation to any Sub-Fund, means the totality of the Fund Assets and the Fund Obligations relating to that Sub-Fund;

‘Fund Investments’ means all Securities and/or other assets (*goederen*) other than Fund Means that are acquired and held by the Legal Owner for a Sub-Fund in its own name on behalf and for the account of the Participants in connection with the Fund;

‘Fund Manager’ means Theta Fund Management B.V. or an affiliate thereof or such other investment manager, as may be appointed by the Participants from time to time in accordance with Article 6;

‘Fund Means’ means Cash and Cash Equivalents;

‘Fund Obligations’ means the liabilities which the Legal Owner (or the Fund Manager, whether or not on behalf of the Legal Owner) assumes and/or incurs in its own name on behalf and for the account of the Fund;

‘Incentive Fee’ means the fee payable to the Fund Manager under Article 11.3;

‘Interested Party’ means the Fund Manager, its associates and its respective directors, officers, shareholders or partners;

‘Investee Fund’ means a company, partnership, mutual fund or other pooled investment vehicle in, or Managed Account through, which the Fund has made an investment;

‘Information Memorandum’ means the prevailing information memorandum relating to the Fund;

‘Investment Objectives’ means the investment objectives of a Sub-Fund and the restrictions imposed on the Fund Manager referred to in the Information Memorandum, as amended from time to time;

‘Legal Owner’ means the legal holder of the Fund Assets as referred in article 4:37j of the Act, being Stichting Juridisch Eigenaar TDCOP or such other holder as may be appointed in accordance with the Terms and Conditions, from time to time;

‘License’ means the license as asset manager of the Fund Manager under the applicable financial supervision laws;

‘Linked Fund’ means a collective investment vehicle or investment portfolio managed or advised by the Fund Manager and investing in parallel with the Fund, as described in Article 18;

‘Managed Account’ a segregated portfolio of assets placed with a portfolio manager for discretionary management by such portfolio manager on behalf of a Sub-Fund;

‘Minimum Holding’ means the minimum value of the Participations in the Fund which may be held or initially acquired by any Participant, as determined by the Fund Manager from time to time;

‘Net Asset Value’ means the net asset value of a Participation, Series, Class, Sub-Fund or the Fund as determined in accordance with the provisions of Article 12 calculated to two (2) decimal places;

‘Ordinary Resolution’ means a resolution (a) in writing (which may consist of one or more documents in like form each signed by one or more Participants) signed by Participants whose Participations represent in excess of fifty per cent. (50%) of the total Participations or (b) passed at a meeting of Participants by

Participants whose Participations represent in excess of fifty per cent. (50%) of the total Participations;

‘Participants’ means the persons or entities which participate in the Fund in accordance with the terms of the Application Form and the Terms and Conditions;

‘Participations’ means the units in which the rights of the Participants to the Fund Estate have been divided, each Participation representing an equal interest in the Fund Estate without priority or preference one over the other;

‘Redemption’ means the redemption of a Participation;

‘Register’ means a register maintained by the Fund Manager for the administration of the Participations and Participants;

‘Securities’ means ordinary shares, preference shares, convertible securities or other financial instruments or interests in a company or entity, including but not limited to any Investee Fund;

‘Series’ means a series of Participations of the same Class issued on particular day within a Sub-Fund;

‘Special Resolution’ means a resolution:

(a) in writing (which may consist of one or more documents in like form each signed by one or more Participants) signed by Participants whose Participations represent seventy-five per cent. (75%) or more of the total Participations; or (b) passed at a meeting of Participants by Participants whose Participations represent seventy-five per cent. (75%) or more of the total Participations;

‘Subscription Price’ means the subscription price payable for the acquisition of a Participation;

‘Sub-Fund’ means a sub-fund of the Fund and may include any Class and/or Series which the Fund Manager may decide to establish from time to time;

‘Terms and Conditions’ means the terms and conditions of participation, management and custody of the Fund set forth herein and as amended from time to time; and

‘Total Return’ means the increase of the Net Asset Value of a Class as at the end of the financial year over its level at the beginning of the year (after deduction of all expenses and liabilities allocated to a Class before deduction of the Incentive Fee).

- 1.2 Unless the context requires otherwise, references to Articles are to articles of these Terms and Conditions.

## 2 **Name**

- 2.1 The name of the Fund is: Theta Distressed Credit Opportunities Pool.

## 3 **Objects, Sub-Funds, Classes and Series**

- 3.1 The Fund is a common contractual fund (*fonds voor gemene rekening*). These Terms and Conditions and the arrangements made in connection herewith do not establish a partnership (*maatschap* or *vennootschap onder firma*) or limited partnership (*commanditaire vennootschap*).
- 3.2 The Fund may consist of Sub-Funds. If any, a separate portfolio of assets shall be maintained for each Sub-Fund and, save as expressly required by the Terms and Conditions, the Fund Assets of any Sub-Fund shall be available only to meet the liabilities relating to that Sub-Fund and not those of any other Sub-Fund.

- 3.3 A Sub-Fund may consist of Classes and Series having the same investment objectives and policies and underlying assets as all other Classes and Series, but in addition thereto may have different rights and obligations, in particular in relation to the effective applicable Incentive Fee, and have a different Net Asset Value.
- 3.4 The Fund Manager may where it deems such practicable convert at any Dealing Day all the Participations of any Series into any other Series of the same Sub-Fund.

#### 4 **Subscriptions**

- 4.1 Participations in each Sub-Fund shall be offered on the Commencement Date at an initial fixed Subscription Price of \$ 1,000 each or at Net Asset Value.
- 4.2 Participations may be issued in Series on any subsequent Dealing Day after payment to the Legal Owner of a Subscription Price equal to \$ 1,000 plus the Subscription Charge. Payment must be made to the relevant Fund Bank Account in accordance with the Information Memorandum for value at least ten (10) Business Days before the Dealing Day, unless otherwise agreed by the Fund Manager.
- 4.3 Fractional Participations may be issued at the discretion of the Fund Manager.
- 4.4 The Fund Manager may, at its sole discretion, suspend the issue of new Participations or reject any subscription for Participations in whole or in part and return subscription moneys to applicants without interest.
- 4.5 The Fund Manager may, at its discretion, agree to accept the transfer of Securities to the Fund, by way of exchange, in satisfaction of the Subscription Price payable. Any such Securities will be valued in accordance with the valuation principles applied by the Fund.

#### 5 **Legal Owner and Depositary**

- 5.1 All the Fund Assets shall be legally owned by, and will be administered in the name of, the Legal Owner.
- 5.2 The Legal Owner shall, inter alia:
  - 5.2.1 acquire and hold the Fund Assets for the purpose of management and custody (*ten titel van beheer en bewaring*) on behalf and for the account of the Participants;
  - 5.2.2 act solely in the interests of the Participants;
  - 5.2.3 not acquire any assets or assume any obligations for its own account or for the account of third parties who or which are not Participants;
  - 5.2.4 open and maintain Fund Bank Accounts with such bank or banks as the Fund Manager may from time to time select; and
  - 5.2.5 shall hold all uninvested monies of the Fund in such accounts
- 5.3 The Legal Owner shall only be liable towards the Fund and the Participants for direct losses suffered to the extent that the losses result from culpable non-performance or defective performance of its obligations, also in case the Legal Owner delegated the custody of Fund Assets in whole or part to a third party.
- 5.4 The Legal Owner shall not be entitled to resign without the appointment of a new legal owner in his place by an Ordinary Resolution. If the Legal Owner notifies the Fund Manager of its wish to resign, the Fund Manager shall within 4 weeks convene a meeting of Participants to approve the appointment of a successor as nominated at the initiative of the Fund Manager only.
- 5.5 The Fund Manager will appoint a Depositary with respect to the Fund in accordance with the AIFMD and the Act. The Participants will be informed in writing of any amendment, renewal, restatement, assignment or termination of the

agreement with the Depositary and of the entering into any new agreement with the Depositary, within 20 Business Days after such event. Upon request, the Participants will be provided with a copy of the agreement with the Depositary.

## 6 **Management and Investments**

- 6.1 The Fund Manager is charged with the management and administration of the Fund Estate and is, subject to these Terms and Conditions, entitled to invest the Fund Means, to dispose of or exchange any of the Fund Investments, to assume Fund Obligations and to perform any and all other acts in its own name on behalf and for the account of the Fund which are in the opinion of the Fund Manager reasonably necessary for, or conducive to, the attainment of the Investment Objectives. The Fund Manager may, from time to time, seek third party advice regarding overall asset allocation and investment management.
- 6.2 In managing the Fund Estate, the Fund Manager shall act solely in the interest of the Participants. In the performance of its obligations and in the exercise of its rights, powers and authorities hereunder, the Fund Manager shall exercise the standard of care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character, risk profile and investment objectives as the relevant Sub-Fund, having regard to the provisions hereof.
- 6.3 The Fund Manager may, subject to compliance with the applicable provisions of the AIFMD and the Act, accordingly delegate all or any part of its powers and duties under these Terms and Conditions to one or more suitable third parties such as the Administrator.
- 6.4 The management and administration of the Fund Estate shall be performed for the account and at the risk of the Participants in the relevant Sub-Fund. Benefits and/or losses resulting therefrom shall consequently be for the benefit of or be borne by such Participants. No Participant shall be liable to contribute any sum to the Fund Estate beyond the Subscription Price for his Participations.
- 6.5 The Fund Manager may borrow for the account, and at the expense, of a Sub-Fund to finance Fund Assets, Fund Obligations and Costs. The sum outstanding at any time in relation to any Sub-Fund shall not exceed thirty per cent. (30%) of the book value of the Fund Assets. Subject to that, Fund Investments may not be financed with any funding (including but not limited to debt funding) other than Subscription proceeds.
- 6.6 Any transaction undertaken by the Fund Manager in breach of the Terms and Conditions shall be cancelled and shall be for the account of the Fund Manager.
- 6.7 The Fund Manager shall not resign or withdraw from the Fund unless replaced by a successor with the sanction of an Ordinary Resolution (meeting of Participants to be held within 4 (four) weeks after the Fund Manager has announced its intention to resign).
- 6.8 The Fund Manager may be removed from office and a new Fund Manager may be appointed, by Special Resolution, in the event of fraud, illegal acts, gross negligence (*grove schuld*), wilful default (*opzet*) or a material breach (not remedied within one hundred and twenty (120) days of a Participant giving notice to the Fund Manager requiring it to do so) by the Fund Manager in carrying out its obligations under the Terms and Conditions.

- 6.9 The Fund Manager nor any of its respective directors, employees or affiliates shall be liable towards the Participants for a loss suffered by them in connection with the performance of its respective duties and responsibilities, unless and to the extent that such loss is directly caused by the gross negligence (*grove schuld*) or wilful default (*opzet*) of the Fund Manager. Neither the Fund Manager nor any of its respective directors, employees or affiliates shall be liable towards the Participants for a loss suffered by them as a result of any act or omission of a third party.
- 6.10 The Fund Manager and the Legal Owner and their respective officers, directors, shareholders, agents and employees shall be entitled to be indemnified out of the Fund Assets against any claims, liabilities, costs and expenses (including reasonable legal fees) incurred in relation to the performance of their duties in relation to the Fund provided however that no such person shall be so indemnified with respect of any matter resulting from its or his fraud, gross negligence (*grove schuld*) or wilful default (*opzet*) in the performance by it or him of its or his obligations and duties in relation to the Fund or material breach of the Terms and Conditions not remedied within sixty (60) days of receiving notice requiring such remedy.

## 7 **Fund Means**

- 7.1 The Fund Means of the Fund may be received by the Legal Owner in consideration for the subscription of Participations, in respect of or in exchange for Fund Investments, by creation and increase of Fund Obligations and/or by creation, increase and application of provisions and reserves, if any.
- 7.2 The Fund Means shall be held by the Legal Owner pending the selection and purchase of suitable investments and reinvestments by the Fund Manager, and to maintain liquidity to meet payment obligations which arise or may arise.
- 7.3 The Fund Means may be used to pay for all Fund Obligations and Costs relating to that Sub-Fund. Where an expense is incurred, or liability suffered, by the Fund which is not solely or directly attributable to any one Sub-Fund it shall be allocated between the Sub-Funds on such basis as the Fund Manager considers equitable.

## 8 **Authority to Invest and Administer Fund Assets**

- 8.1 Subject to the provisions set forth in the Terms and Conditions, the Fund Manager may invest the Fund Means of a Sub-Fund in any Fund Investments and the determination of the Fund Manager as to whether or not any investments are of a type which may be purchased or held by the Legal Owner in view of the Investment Objectives of that Sub-Fund shall be conclusive.
- 8.2 It is the intention that (subject only to the specific restrictions mentioned herein) the Fund Manager shall have the broadest power and authority in making investments consistent with the investment powers herein provided. The Fund Manager shall have full discretionary power to retain Fund Assets for as long a period as it shall think proper and to manage, convert, exchange, transfer and dispose of the Fund Assets. The Fund Manager shall have and may exercise every right and privilege pertaining to management provided that the exercise of such right or privilege is, in its opinion, conducive to the attainment of the Investment Objectives.
- 8.3 Without limiting the generality of the foregoing, the Fund Manager's powers and authority shall include:

- 8.3.1 to enter into, perform and carry out contracts of any kind necessary or incidental to the matters set forth in this Article, including, without limitation, contracts with affiliates of the Fund Manager and/or with the Depositary;
- 8.3.2 to bring, sue, prosecute, defend, settle or comprise actions at law related to the purposes of the Fund;
- 8.3.3 to employ, retain or otherwise secure or enter into agreements or other undertakings with persons or firms in connection with the management and operation of the Fund's business, including, without limitation, auditors, attorneys, consultants, investment bankers, any other agents, all on such terms and for such consideration as the Fund Manager deems advisable;
- 8.3.4 to enter into partnership and joint venture agreements and to take any and all actions incidental to investing in Investee Funds;
- 8.3.5 to exercise the statutory and contractual voting rights attached to or concerning the Fund Investments; and
- 8.3.6 to engage in any kind of lawful activity, and perform and carry out contracts of any kind, necessary or advisable in connection with the accomplishment of the purposes of the Fund.

**9 Participants**

- 9.1 Each Participant shall be beneficially entitled to the Fund Estate of a Sub-Fund pro rata to the number of its Participations in that Sub-Fund.
- 9.2 All benefits and (subject to Article 6.4) burdens, beneficially attached to the ownership of the Fund Estate, shall be in favour and for the account of each Participant pro rata to the number of its Participations in that Sub-Fund.
- 9.3 By signing an Application Form, each Participant shall be bound by and subject to the Terms and Conditions.

**10 Participations**

- 10.1 Participations shall be in registered form only. Certificates shall not be issued.
- 10.2 In the Register the names and addresses of all Participants will be recorded, stating the particulars of their Participations in each Sub-Fund including the Class, Series and the date of acquisition of the Participations. The Register shall also state the manner in which a Participant wishes to receive payments and any distributions.
- 10.3 The Fund Manager shall at all times be entitled to rely on the accuracy of the information provided by each Participant for inclusion in the Register and to treat such information as conclusive with respect to such Participant and its entitlement to its Participations. The Fund Manager shall not be bound:
  - 10.3.1 by any change in such information which has not been notified to the Fund Manager in accordance with Article 10.4; or
  - 10.3.2 to recognise any interest or claim of any person to a Participation other than the Participant whose details have been duly entered in the Register in respect thereof.
- 10.4 Each Participant shall notify the Fund Manager promptly of any change in the information referred to in Article 10.3 in relation to such Participant. The Fund Manager shall upon receipt cause the Register to be amended accordingly within five (5) Business Days.
- 10.5 Within ten (10) Business Days following entry (or any change in the entry relating to it) the Fund Manager shall send to each Participant an extract from the Register signed by the Fund Manager, in so far as it concerns its Participation(s). Such extract shall only serve as evidence of the entry and is non-negotiable.

10.6 Upon written request to that effect by the Participant to the Fund Manager, the Register shall be available at the Fund Manager's office for the inspection of each Participant on Business Days, but only in so far as it concerns the Participant's own entry.

## 11 **Costs and Fees**

### 11.1 Annual Management Fee

11.1.1 The Fund Manager shall be entitled to receive out of the Fund Assets an annual management fee equal to a one per cent. (1%) of the Net Asset Value of the Fund. The Fund Manager may determine that a reduced or no management fee is due for certain Classes.

11.1.2 The annual management fee shall accrue on each Dealing Day by reference to the Net Asset Value on that day and be paid quarterly in arrears on, the last Business Day in each of March, June, September and December.

### 11.2 Incentive Fee

11.2.1 The Fund Manager shall be entitled to an annual incentive fee calculated per Series equal to 5% of the smaller of the following two amounts: (a) the amount by which the Total Return exceeds the Benchmark Return; or (b) the amount by which the Net Asset Value of a Series at the end of the financial year exceeds the highest of the Net Asset Value of the Series at any previous end of the year of such Series. The Fund Manager may at its own discretion determine a lower fee which may vary by Series.

In calculating the Incentive Fee in an absolute amount:

- 1) an equitable adjustment shall be made for Participations subscribed and redeemed during the financial year; and
- 2) any distributions paid to Participants during the financial year shall be added back.

11.2.2 The Incentive Fee shall be payable to the Fund Manager as to 90% of the estimated amount thereof one month after the end of the relevant financial year. The balance shall be payable within 14 days following completion of the audit of the accounts for the relevant financial year. On redemption of Participations during the year an amount equal to the Incentive Fee accrued to the date of Redemption in respect of such Participations shall be due to the Fund Manager.

### 11.3 Expenses to be borne by the Fund Manager

The Fund Manager shall at its own expense provide office facilities and staff to facilitate the carrying on of the activities of the Fund.

### 11.4 Establishment Costs

The fees and expenses payable in connection with the formation of the Fund (including, but not limited to, fees and expenses of attorneys, tax advisers, auditors, consultants and other professional advisers) shall be borne by the Fund.

### 11.5 Other Operating Costs

All other operating expenses shall be borne by the Fund (and allocated between the Sub-Funds as the Fund Manager considers equitable) including (but not limited to):

11.5.1 management or advisory fees payable in respect of any Investee Fund, fees, brokerage expenses and duties associated with any investment proposals, or with the realisation of investments and other costs of acquisition and disposal of investments;

11.5.2 the fees and expenses of the Legal Owner, Depositary and the Administrator;

- 11.5.3 the fees and expenses of such attorneys, agents, lawyers, auditors or other advisers as the Fund Manager may deem necessary or advisable in relation to the affairs of the Fund and the parties involved;
- 11.5.4 the cost of preparation of tax returns and establishing the tax status of the Fund;
- 11.5.5 the costs of meetings of Participants;
- 11.5.6 auditors' fees and expenses;
- 11.5.7 transfer and other taxes and duties (including any irrecoverable value added tax payable by the Fund Manager in respect of services provided to it in connection with the Fund);
- 11.5.8 interest;
- 11.5.9 bank charges;
- 11.5.10 fees and expenses in connection with pursuing or defending any complaint or litigation by or against the Fund; and
- 11.5.11 any other expenses reasonably incurred in connection with the operation of the Fund.

## 12 **Net Asset Value and Value of the Participations**

- 12.1 As of each Dealing Day, the Fund Manager shall determine the Net Asset Value taking the following into account:
  - (a) the value of units, shares or other securities of any unit trust, mutual fund, investment company or other similar investment vehicle or collective investment scheme shall be derived from the most up to date prices available from the managers or their respective administrators thereof;
  - (b) deposits shall be valued at their principal amount plus accrued interest calculated on a daily basis;
  - (c) certificates of deposit shall be valued with reference to the best price bid for certificates of deposit of like maturity, amount and credit risk, for settlement as at the relevant Dealing Day;
  - (d) treasury bills and bills of exchange shall be valued with reference to prices ruling in the appropriate markets for such instruments for settlement as at the relevant Dealing Day;
  - (e) forward foreign exchange contracts will be valued by reference to the market value of similar contracts settled as at the relevant Dealing Day;
  - (f) all valuations of financial futures contracts and purchased or sold options shall be assessed by reference to the prevailing prices on the relevant futures/options exchanges;
  - (g) where any financial instrument owned or contracted for by the Sub-Fund is listed or dealt in on a trading platform recognised as such under the securities laws of the jurisdiction in which it is situated or any over-the-counter market, all calculations of the Net Asset Value which are required for the purpose of computing the price at which Participations are to be issued, shall be based on the latest trade price therefor as at the relevant Dealing Day. When such financial instrument is listed or dealt in on more than one trading platform or over-the-counter market, the Fund Manager may in its absolute discretion select any one of such trading platforms or over-the-counter markets for the foregoing purposes;
  - (h) in respect of any financial instrument the quotation of which has been temporarily suspended or in which there has been no recent trading, the value shall be taken to be a reasonable estimate of the amount which would be

- received by a seller by way of consideration for an immediate transfer or assignment from the seller at arm's length less any fiscal charges, commission and other sales charges which would be payable by the seller;
- (i) the value of any investment which is not quoted, listed or normally dealt in on a trading platform or over-the-counter market shall be the value considered by the Fund Manager in good faith to be the value thereof;
  - (j) all bills, notes and accounts payable;
  - (k) all administrative and operating expenses, payable and/or accrued (the latter on a day-to-day basis);
  - (l) all known liabilities, present and future, including the amount of any unpaid dividend, contractual obligations for the acquisition of investments or other property or for the payment of money and outstanding payments on any Participations previously redeemed;
  - (m) an appropriate provision for taxes as determined from time to time by the Fund Manager;
  - (n) all other liabilities of the Sub-Fund of whatsoever kind and nature except liabilities represented by Participations referable to the Sub-Fund and reserves (other than reserves authorised or approved by the Fund Manager); and
  - (o) such allowance as the Fund Manager considers appropriate for contingent liabilities.

Notwithstanding the foregoing, the Fund Manager shall be entitled, at its discretion, to apply a method of valuing any investment different from that prescribed hereunder if such method would in its opinion better reflect the fair value of such investment and without prejudice to the generality of the foregoing, the Fund Manager may rely upon opinions and estimates of any persons who appear to it to be competent to value investment of any type or designation by reason of any appropriate professional qualification or experience of the relevant market. In determining the amount of liabilities the Fund Manager may calculate administrative and other expenses of a regular or recurring nature on an estimated figure for yearly or other periods in advance and accrue the same in equal proportions over any such period.

Assets or liabilities not directly referable to a particular Sub-Fund shall be allocated between the Sub-Funds by the Fund Manager as it considers equitable. For the purposes of determining the Net Asset Value, any assets or liabilities in currencies other than USD will be converted into USD at the rate (whether official or otherwise) which the Fund Manager shall in its absolute discretion deem appropriate to the circumstances having regard, inter alia, to any premium or discount which it considers may be relevant and to the costs of exchange at the time of determination of the Net Asset Value.

In addition the foregoing the Fund Manager shall take all necessary differences into account to determine the Net Asset Value.

- 12.2 The Net Asset Value shall be expressed in USD or, in the case of Sub-Funds valued in another currency, in such currency as may have been designated by the Fund Manager.
- 12.3 The reasonable and equitable decision of the Fund Manager regarding the Net Asset Value, including the determination whether a method of valuation fairly indicates fair market value, and the selection of experts for purposes of assessing

the value of the Fund Assets and the Fund Obligations, shall be conclusive and binding upon all Participants.

### 13 **Transfer or Encumbrance of Participations**

- 13.1 No assignment, sale, transfer, or other disposition of a Participation (whether voluntary or involuntary) shall be valid or effective.
- 13.2 Participations cannot be made subject to any pledge, mortgage, usufruct, charge, lien, retention or other encumbrance (*beperkt recht*) of any nature whatsoever.

### 14 **Redemption of Participations**

- 14.1 Participants may only redeem Participations in accordance with the provisions of this Article.
- 14.2 The Fund Manager shall be entitled to redeem all (but not part of) the Participations of any Participant:
  - 14.2.1 if the Participant is dissolved, becomes insolvent, is unable to pay its debts, institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy, insolvency or similar law; or
  - 14.2.2 if in the Fund Manager's reasonable opinion the tax position of the Legal Owner, the Fund Estate or any of the other Participants is or will become negatively affected due to the tax status or position or any change therein of the relevant Participant or any other circumstance concerning such Participant.
- 14.3 Each Participant shall immediately notify the Fund Manager if any such status, position, change therein or any other circumstance occurs.
- 14.4 Participations may be redeemed following written notice given to the Fund Manager (unless otherwise agreed by the Fund Manager) setting forth the number of Participations. Redemptions will be effected in four equal instalments on four succeeding Dealing Days, the first Dealing Day being the first Quarterly Dealing Day at least ninety (90) calendar days after receipt of the redemption request by the Fund Manager provided such first Dealing Day is at least 24 months after the date the Participations to be redeemed have been issued to the Participant. The Fund Manager may determine that for certain Classes, the aforementioned 24 month period is shorter or not applicable.
- 14.5 Redemptions shall be effected at a price equal to the Net Asset Value of the relevant Participations on the Dealing Day on which Redemption is effected.
- 14.6 Any redemption request which would bring the value of a Participant's holding below the Minimum Holding will be treated as a request to redeem the entire holding, unless otherwise agreed by the Fund Manager.
- 14.7 The Fund Manager is not obliged to redeem more than 10% of the total Participations in a Sub-Fund in issue on any Dealing Day. Any excess requests will be carried forward to the next Dealing Day at which time they will be given priority over subsequent requests for redemption.
- 14.8 Unless otherwise agreed by the Fund Manager, the minimum value of Participations which may be the subject of one redemption request will be € 100,000.
- 14.9 An acknowledgement will be sent to the redeeming Participant within 12 Business Days of the Dealing Day upon which his redemption request takes effect. A confirmatory detailed confirmation will be despatched as soon as possible containing details of the Redemption Price (estimated to the extent necessary) and

- the total amount of proceeds (whether estimated or otherwise). A revised confirmation will be issued, if necessary, when the Redemption is confirmed.
- 14.10 The proceeds of redemption of Participations will, provided no unforeseen circumstances prevent the Fund Manager to liquidate the assets of the Fund in time, be despatched within 30 days following Redemption or, if later, receipt of correctly completed documentation.
  - 14.11 Participations which are redeemed shall not be held by the Legal Owner but shall be automatically cancelled.
  - 14.12 Immediately upon redemption the Fund Manager shall procure that the necessary amendments are made to the Register.
  - 14.13 Participations may be redeemed against the transfer to the Participant concerned of an equitable proportion of the Fund Investments, with the Fund Manager making such adjustments as it thinks fit to deal with any restrictions on, or inconvenience arising from, particular transfers. Any such transfer and redemption may be subject to the transferee also assuming an equitable proportion of the Fund Obligations, with such adjustments as the Fund Manager thinks fit. Any such redemption shall require the prior consent of the Fund Manager which may be given (with or without the imposition of conditions) or withheld at the absolute discretion of the Fund Manager.

## 15 **Suspension of Dealings**

- 15.1 The Fund Manager may declare a suspension of valuations and the issue and redemption of Participations in any Sub-Fund for the whole or any part of a period during which:
  - 15.1.1 by reason of the closure of or the suspension of trading on any stock exchange or over-the-counter market or any other reason, circumstances exist as a result of which, in the opinion of the Fund Manager, it is not reasonably practicable for the Fund to dispose of investments or fairly to determine the Net Asset Value; or
  - 15.1.2 a breakdown occurs in any of the means normally employed by the Fund Manager in ascertaining the value of Investments or any other reason or circumstances exists which in the opinion of the Fund Manager means the value of the investments or other assets of the Fund cannot reasonably be ascertained; or
  - 15.1.3 it is not possible to receive remittances in respect of the investments or to make payments pursuant to a redemption at all or without undue delay.
- 15.2 Any such suspension shall take effect at such time as the Fund Manager shall declare but not later than the close of business on the Business Day next following the declaration and thereafter there shall be no determination of Net Asset Value until the Fund Manager shall declare the suspension at an end except that the suspension shall terminate in any event on the first Business Day on which:
  - 15.2.1 the condition giving rise to the suspension shall have ceased to exist; and
  - 15.2.2 no other condition shall exist under which suspension is authorised under the Terms and Conditions.
- 15.3 Each such declaration by the Fund Manager shall be consistent with such official rules and regulations (if any) relating to the subject matter thereof as shall have been promulgated by any authority having jurisdiction over the Fund as shall be in effect at the time. To the extent not inconsistent with such official rules and regulations, the determination of the Fund Manager shall be conclusive.

## 16 **Notices**

- 16.1 All notices to Participants shall be sent in writing to the (electronic) addresses of Participants stated in the Register. All notices to a Legal Owner or Fund Manager shall be sent in writing and shall be addressed or directed to the addresses set out in the Information Memorandum or such other address(es) as may have been notified to the Participants in writing.
- 16.2 The Information Memorandum sets forth the information the Fund Manager provides through the Website;
- 16.3 The information regarding the Legal Owner, the Depositary and the Fund Manager which needs to be filed in the trade register of the Chamber of Commerce may be provided to any person at cost price. Upon request any person will be provided with a free copy of the Terms and Conditions.
- 16.4 The License and the Terms and Conditions may be inspected at the office of the Fund Manager. Participants may be provided at cost price with a copy of the License and a copy of the monthly report and notes including as per the end of the preceding month information about the Net Asset Value of each Sub-Fund and the Participations, an overview of the composition of the Fund Investments and the number of outstanding Participations.
- 16.5 The annual accounts of the Fund and the Fund Manager may be inspected at the offices of the Fund Manager. Any Participant will be provided with a free copy of aforementioned information upon request.
- 16.6 The Fund Manager will inform the Participants of a request to withdraw its License.

## 17 **Disclosure of Interests**

- 17.1 Interested Parties may buy, hold or deal in any investments upon their own account notwithstanding that the same or similar securities or other investments may be held by or on behalf of the Fund and an Interested Party shall not be liable to account either to the other Interested Parties or to the Fund, the Participants or any other person for any profits or benefits made or derived by or in connection with any such transaction.
- 17.2 An Interested Party may enter into any transaction with any Investee Fund and may be interested in any such contract or transaction (but only on an arm's length basis) and shall not be liable to account either to other Interested Parties or to the Fund, the Participants or any other person for any profits or benefits made or derived by or in connection with any such transaction.
- 17.3 Details of each transaction falling within Articles 17.1 and 17.2 entered into by any of the directors of the Fund Manager shall be provided to Participants in the annual accounts prepared in accordance with Article 19.2.

## 18 **Linked Funds**

- 18.1 The Fund Manager may manage or advise other collective investment schemes or investors for the purpose of investment in parallel with, and on substantially similar terms as, the Fund.
- 18.2 The Fund Manager shall, so far as consistent with applicable fiscal, legal and regulatory requirements, allocate investment opportunities in proportion to the funds respectively committed to the Fund and such Linked Funds and any such co-investment shall be made on the same financial terms as the acquisition by the Fund.

- 18.3 The Fund Manager may make arrangements with Linked Funds on such terms as it reasonably thinks fit to share income, costs, expenses and liabilities relating to such investments with the Linked Funds in proportion to the amounts respectively invested, to equate the rate of return earned from any investment and make such other arrangements as it thinks fit.

**19 Accounting and Reporting**

- 19.1 The financial year of the Fund shall coincide with the calendar year.
- 19.2 The Fund Manager shall prepare annual accounts, consisting of a balance sheet and an income statement for each Sub-Fund and explanatory notes thereto. The accounts of the Fund shall be signed by all members of the board of directors of the Fund Manager. Should one (1) or more signatures be missing, this shall be disclosed, stating reasons. The annual accounts shall be prepared in accordance with the Act and the AIFMD.
- 19.3 The Fund Manager shall appoint an auditor, as referred to in article 2:393(1) of the Netherlands Civil Code, to audit the annual accounts of the Fund and report on the Net Asset Value(s) as determined by the Fund Manager. Such person shall report on his audit to the Fund Manager, shall set out the results of his audit in a certificate and shall be entitled to receive reasonable compensation for the services rendered.
- 19.4 The Fund Manager shall with the annual accounts send to each Participant a statement of the Participations acquired, sold or otherwise disposed of during such period and a report by the Fund Manager expressing its opinion on the value of the Participations held at the end of the financial year.
- 19.5 The Fund Manager shall prepare the annual accounts within 6 months following the end of each financial year of the Fund.
- 19.6 As soon as reasonably practicable following the last calendar day of each month, the Fund Manager shall send a statement to each Participant with information with respect to the Fund as required by the Act and the AIFMD and as provided in the Information Memorandum.

**20 Distributions**

- 20.1 The Fund Manager shall have sole discretion whether to distribute any income of the Fund or whether to retain it within the Fund. Any sums which it determines to distribute shall be paid to Participants in the relevant Sub-Fund, pro rata to their Participations.
- 20.2 Distributions in cash shall be made by credit to such bank account as the Participant may agree with the Fund Manager. Cash Equivalents and Securities shall be transferred into the name of the relevant Participant.
- 20.3 Any announcement of payment of distributions pursuant to this Article 20 shall be given to Participants in accordance with Article 16.

**21 Tax Aspects**

- 21.1 The Fund Manager shall use reasonable endeavours to assist Participants in obtaining the benefit of any tax exemptions applicable to investments by the Fund and any tax refunds available in respect of tax withheld from sums receivable by the Fund. The Fund Manager shall not be obliged to seek any exemption or refund where the effort or expense would be disproportionate to the sums likely to be recovered. If the Fund Manager thinks fit, the amount distributable to any

- Participant may take into account the availability of tax exemptions or refunds attributable to him and to the rate of withholding applicable to him.
- 21.2 Each Participant shall promptly provide all information required for the purpose of Article 21.1 and do all such acts and things as the Fund Manager may reasonably require in connection therewith.
- 21.3 Each Participant shall indemnify the Fund and the other Participants for any taxes incurred or suffered by the Fund or any other Participant as a result of his failure to comply with Article 21.2, his tax residence or status or otherwise resulting from his participation in the Fund.

## 22 **Amendments to the Terms and Conditions**

- 22.1 The Terms and Conditions may be amended by the Fund Manager without any further consent of the Participants being required provided the amendment does not involve: (i) a change in the Investment Objectives; (ii) an increase of the fees of the Fund Manager; (iii) or any negative change in the Terms and Conditions relating to the redemption of Participations, which require the prior consent of the Participants through an Ordinary Resolution.
- 22.2 The Terms and Conditions cannot be amended at the request of the Participants.
- 22.3 Notice will be sent by the Fund Manager to all Participants to inform the Participants of the text of a proposed amendment of the Terms and Conditions at least thirty (30) calendar days before the day on which the amendment shall come into effect.
- 22.4 Upon amendment of the Terms and Conditions, the Fund Manager shall promptly send to the Participants the text of the revised Terms and Conditions.

## 23 **Termination and Winding Up**

- 23.1 The Fund shall be of indefinite duration.
- 23.2 The Fund shall be terminated on the bankruptcy, dissolution or liquidation of the Fund Manager unless the appointment of a replacement Fund Manager is approved by Ordinary Resolution.
- 23.3 The Fund or a Sub-Fund may be terminated at any time:
- 23.3.1 with the sanction of a Special Resolution, upon the Fund Manager committing fraud, illegal acts, gross negligence (*grove schuld*), wilful default (*opzet*) or material breach of these Terms and Conditions which is not remedied within a reasonable period of time;
- 23.3.2 with the agreement of the Fund Manager and the sanction of a Special Resolution; or
- 23.3.3 on not less than three month's notice by the Fund Manager to the Participants.
- 23.4 The Fund Manager may (with the consent of an Ordinary Resolution) by notice in writing to the Participants, terminate the Fund at any time if in its reasonable opinion it would be impracticable, unlawful or inadvisable to continue.
- 23.5 Upon termination of the Fund or a Sub-Fund in accordance with this Article, or dissolution, no further business shall be conducted for the Fund or that Sub-Fund (as the case may be), except for such actions as shall be necessary for the winding up of the affairs of the Fund or that Sub-Fund and the distribution of the assets of the Fund which shall be effected by the Fund Manager.
- 23.6 During the liquidation period the Terms and Conditions shall, to the extent possible, remain in full force and effect.

23.7 The balance left after the liquidation shall be distributed in accordance with Article 20. Notice that distributions are to be made payable to the Participants and the composition of the distributions or collections shall be given in accordance with the provisions of Article 16. The Fund Manager shall duly render accounts to the Participants before making any distributions.

23.8 The Fund Manager shall prepare liquidation accounts, which shall be accompanied by a certificate of the Depositary. Approval of those liquidation accounts by a meeting of Participants shall, upon approval by Special Resolution, constitute a discharge of the Legal Owner and the Fund Manager.

#### 24 **Meetings of Participants**

24.1 The Fund Manager may, as often as it deems necessary in the interest of the Participants, convene a meeting of Participants or of Participants in any Sub-Fund. The meetings will be held in Amsterdam or another place to be determined by the Fund Manager. Notice for a meeting will be given in accordance with Article 16 at least fourteen (14) days prior to the meeting and will state the date, time, place and agenda for the meeting.

24.2 Participants wishing to attend a meeting must notify the Fund Manager thereof in writing no later than five (5) Business Days prior to the meeting. Participants which have so notified the Fund Manager are entitled to be heard at the meeting and to exercise their voting rights.

24.3 The Fund Manager shall appoint a chairman and a secretary. The chairman shall be responsible for determining the procedure to be adopted for the conduct of any meeting. The secretary shall be responsible for the preparation of minutes of the meeting.

24.4 Each Participation gives an entitlement to one vote.

#### 25 **Applicable Law and Competent Court**

The Terms and Conditions shall be governed by the laws of The Netherlands. The competent courts of Amsterdam and its appellate courts shall have exclusive jurisdiction to decide on a dispute between the parties arising from the Terms and Conditions.