

# US Dollar Interim Facility Agreement

Concord Chorus Limited as Borrower

The entities listed in Schedule 1 hereto as Original Interim  
Lenders

Atlas Securitized Products Advisors, L.P. as the Agent

Atlas Securitized Products Advisors, L.P. as the Security Agent

Dated 18 April 2024

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## Parties

- (1) **Concord Chorus Limited**, a company incorporated under the laws of England and Wales with registered office at C/O Chorus Aldwych House, 71-91 Aldwych, London, United Kingdom, WC2B 4HN and registered number 15637043 (the **Borrower**);
- (2) **The entities listed in Schedule 1 hereto** as lenders (the **Original Interim Lenders**);
- (3) **Atlas Securitized Products Advisors, L.P.** as facility agent for the other Interim Finance Parties (the **Agent**); and
- (4) **Atlas Securitized Products Advisors, L.P.** as security agent for the Secured Parties (the **Security Agent**).

## It is agreed:

### 1 Definitions and interpretation

#### 1.1 Definitions

In this Agreement:

**ABS Pledge Condition** means:

- (a) an executed payment direction (in a form agreed between the Securitization Issuer and the Agent (for and on behalf of the Interim Lenders)) has been delivered by the Securitization Issuer to the Securitization Trustee which irrevocably and unconditionally requires all amounts paid in respect of the Residual Payments to be deposited by the Securitization Trustee to an account in the name of Chorus SPV Member, LLC (the "**Huey Residual Payment Account**") that is subject to an account control agreement for the benefit of the Security Agent; and
- (b) a first priority, perfected lien on Chorus SPV Member, LLC's right, title and interest in and to the Huey Residual Payment Account and the Residual Payments (together with such other security documentation and other documentation in connection therewith as is satisfactory to the Security Agent (acting reasonably)) has been entered into by Chorus SPV Member, LLC;

**Acceleration Notice** means a notice given pursuant to clause 6.1 (b) which notice has not been withdrawn, cancelled or otherwise ceased to have effect;

**Acquisition** means the acquisition of Target Shares by the Borrower to be implemented by means of the Scheme or (except in respect of the Excluded Shares) Offer and, if applicable, a Squeeze-Out;

**Acquisition Consideration** means the consideration payable for:

- (a) the Acquisition (including in respect of the acquisition of any Target Shares to be acquired after the Initial Closing Date (including pursuant to a Squeeze-Out or the Target's amended articles of incorporation)); and
- (b) any other acquisition of Target Shares by the Borrower whether on market or off market;

**Acquisition Documents** means the Scheme Documents and/or the Offer Document and any other document designated as an Acquisition Document by the Borrower and the Agent (each acting reasonably);

**Affiliate** means, in relation to any person, a Subsidiary or a Holding Company of that person or any other Subsidiary of that Holding Company;

**Alchemy** means Alchemy Copyrights, LLC a Delaware limited liability company whose chief executive office is at 10 Lea Ave #300, Nashville, TN 37210;

**Authorisation** means an authorisation, approval, consent, exemption, licence, filing, registration, resolution or notarisation;

**Available Interim Commitment** means an Interim Lender's Interim Commitment minus:

- (a) its participation in any outstanding Interim Loans; and
- (b) in relation to any proposed Interim Loan, its participation in any other Interim Loans that are due to be made on or before the proposed Drawdown Date;

**Available Interim Facility** means the aggregate for the time being of each Interim Lender's Available Interim Commitment;

**Bank Levy** means any amount payable by an Interim Lender or any of its Affiliates on the basis of, or in relation to, its balance sheet or capital base or any part of it or its liabilities or minimum regulatory capital or any combination thereof (including, without limitation:

- (a) the United Kingdom bank levy as set out in the Finance Act 2011; and
- (b) any Tax (in any jurisdiction applied on a similar basis or for a similar purpose) or any financial activities Taxes (or other Taxes) of a kind contemplated in the European Commission consultation paper on financial sector taxation dated 22 February 2011;

**Base Indenture** means the amended and restated base indenture dated 24 October 2023 made between the Securitization Issuer and the Securitization Trustee;

**Break Costs** means the amount (if any) by which:

- (a) the interest (excluding the Margin) which an Interim Lender should have received for the period from the date of receipt of all or any part of its participation in the relevant Interim Loan or Unpaid Sum to the last day of the current Interest Period in respect of that Interim Loan or Unpaid Sum, had the principal amount or Unpaid Sum received been paid on the last day of that Interest Period;  
  
exceeds:
- (b) the amount which that Interim Lender would be able to obtain by placing an amount equal to the principal amount or Unpaid Sum received by it on deposit with a leading

bank in the Relevant Market for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period;

**Business Day** means a day (other than a Saturday or Sunday) on which banks are open for general business in London and New York and (in relation to the fixing of an interest rate) which is a US Government Securities Business Day, provided that for the purposes of the definition of "Certain Funds Period" and Clause 5.2(a) **Business Day** has the meaning given to that term in the Acquisition Documents and provided further that it is also a day (other than a Saturday or Sunday) on which banks are open for general business in New York;

**Certain Funds Period** means the period from (and including) the date of this Agreement to (and including) the earliest of:

- (a) where the Acquisition proceeds by way of a Scheme, the date on which the Scheme lapses (including, subject to exhausting any rights of appeal, if a relevant court refuses to sanction the Scheme) or it is withdrawn in writing (with the consent of the Panel) in each case, in accordance with its terms in the Rule 2.7 Announcement or Scheme Document (other than:
  - (i) where such lapse or withdrawal is as a result of the exercise of the Borrower's right to effect a switch from the Scheme to an Offer in accordance with the terms of this Agreement; or
  - (ii) it is otherwise followed within 20 Business Days by a Rule 2.7 Announcement by the Borrower to implement the Acquisition by a different offer or scheme (as applicable) in accordance with the terms of this Agreement),

provided that where there is a switch from a Scheme to an Offer, the relevant Offer Document includes, and the Offer is subject to, the Minimum Acceptance Threshold; and

- (b) where the Acquisition is to be consummated pursuant to an Offer, the date on which the Offer lapses, terminates or is withdrawn (with the consent of the Panel) in each case, in accordance with the terms of the applicable Offer Document (other than:
  - (i) where such lapse, termination or withdrawal is as a result of the exercise of the Borrower's right to effect a switch from the Offer to a Scheme in accordance with the terms of this Agreement; or
  - (ii) it is otherwise followed within 20 Business Days by a Rule 2.7 Announcement by the Borrower to implement the Acquisition by a different offer or scheme (as applicable) in accordance with this Agreement),

provided that the Offer Document includes, and the Offer is subject to, the Minimum Acceptance Threshold;

- (c) the date of Completion;
- (d) if the first Rule 2.7 Announcement in relation to the Acquisition has not been released by such time, 11:59pm, (London time) on the date falling 10 Business Days after the date of this Agreement; and
- (e) where the Acquisition:
  - (i) proceeds by way of a Scheme, the date which is six (6) weeks after the Long Stop Date; or

- (ii) is to be consummated pursuant to an Offer, the date which is eight (8) weeks after the Long Stop Date,

or such later date (if any) as the Borrower and the Agent (acting on the instructions of the Interim Lenders) may agree;

**Change of Control** means:

- (a) Alchemy ceasing to legally and beneficially own (indirectly) at least 80% of the issued share capital of the Shareholder;
- (b) the Shareholder ceasing to legally and beneficially own (directly) 100% of the issued share capital of the Borrower; or
- (c) following the date of Completion, the Borrower ceasing to legally and beneficially own (directly) 100% of the issued share capital of the Target;

**Charged Property** means all of the assets which from time to time are, or are expressed to be, the subject of the Transaction Security;

**City Code** means the UK City Code on Takeovers and Mergers as administered by the Takeover Panel, as may be amended from time to time;

**Code** means the US Internal Revenue Code of 1986, as amended;

**Completion** means the date on which the Borrower acquires all of the Target Shares and all of the consideration payable under the Acquisition Documents has been paid in full;

**Court** means the Royal Court of Guernsey;

**Court Order** means the order of the Court sanctioning the Scheme;

**CTA** means the Corporation Tax Act 2009;

**Delegate** means any delegate, agent, attorney or co-trustee appointed by the Security Agent;

**Dispute** has the meaning given to that term in clause 23.1 (*Submission to jurisdiction*);

**Disruption Event** has the meaning given to that term in the LMA Agreement save that any reference therein to:

- (a) "Facilities" shall be deemed to be a reference to the Interim Facility;
- (b) "Finance Documents" shall be deemed to be a reference to the Interim Documents; and
- (c) "Parties" or any "Party" shall be deemed to be a reference to the "Parties" or any "Party" as defined in this Agreement;

**Defaulting Lender** means any Interim Lender:

- (a) which has failed to make its participation in an Interim Loan available (or has notified the Agent or the Borrower (which has notified the Agent) that it will not make its participation in an Interim Loan available) by the Drawdown Date of that Interim Loan in accordance with Clause 5.4 (*Interim Lenders' participation*);
- (b) which has otherwise rescinded or repudiated an Interim Document; or

- (c) with respect to which an Insolvency Event has occurred and is continuing;

**Drawdown Date** means the date of or proposed date for the making of an Interim Loan;

**Drawdown Request** means a signed notice requesting an Interim Loan in the form set out in Schedule 2 (*Form of Drawdown Request*);

**Engagement Letter** means the engagement letter from Apollo Global Funding, LLC to Alchemy dated on or around the date of this Agreement in respect of the appointment of Apollo Global Funding, LLC as arranger, structuring agent and bookrunner in respect of certain financing arrangements as described therein;

**Equity Loans** means the unsecured loans from the Shareholder to the Borrower up to an aggregate amount equal to:

- (a) the difference, if any, between the Acquisition Consideration and the Interim Facility (including the full amount of the Acquisition Consideration where the Interim Facility is undrawn); plus
- (b) the costs, fees, expenses and taxes (including stamp duty) incurred in connection with the Acquisition, any other acquisition of Target Shares by the Borrower (whether on market or off market) and the Transaction Documents; plus
- (c) the amount required to refinance, discharge and/or acquire any existing indebtedness of the Target Group and to pay breakage costs, any redemption premium and any other fees, costs and expenses payable in connection with such refinancing, discharge and/or acquisition,

provided that such unsecured loans shall be subordinated to the Interim Facility on terms satisfactory to the Interim Lenders (acting reasonably);

**Excluded Shares** has the meaning given to that term in the Rule 2.7 Announcement;

**Facility Office** means:

- (a) in respect of an Interim Lender, the office or offices notified by that Interim Lender to the Agent in writing on or before the date it becomes an Interim Lender (or, following that date, by not less than five Business Days' written notice) as the office or offices through which it will perform its obligations under the Interim Facility; and
- (b) in respect of any other Interim Finance Party, the office in the jurisdiction in which it is resident for tax purposes;

**FATCA** means:

- (a) sections 1471 to 1474 of the Code or any associated regulations or other official guidance;
- (b) any treaty, law, regulation or other official guidance enacted in any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law, regulation or guidance referred to in paragraph (a); or
- (c) any agreement pursuant to the implementation of any treaty, law, regulation or guidance referred to in paragraphs (a) or (b) with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction;



**FATCA Deduction** means a deduction or withholding from a payment under an Interim Document required by FATCA;

**FATCA Exempt Party** means a Party that is entitled to receive payments free from any FATCA Deduction;

**Final Repayment Date** has the meaning given to that term in clause 6.1 (*Repayment*);

**Financial Indebtedness** means indebtedness in respect of:

- (a) moneys borrowed and debt balances at banks or other financial institutions;
- (b) any amount raised by acceptance under any acceptance credits or bill discounting facility (or dematerialised equivalent);
- (c) moneys raised under or pursuant to bonds, notes, debentures, loan stock or any similar instrument;
- (d) any finance or capital lease or hire purchase contract which would, in accordance with generally accepted accounting principles in the jurisdiction of incorporation of the relevant Group Company, be treated as a finance or capital lease but only to the extent of such treatment;
- (e) receivables sold or discounted (other than to the extent they are sold on a non-recourse basis);
- (f) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby letter of credit or any other instrument issued by a bank or financial institution in respect of an underlying liability of an entity which is not a member of the Group which would fall within one of the other paragraphs of this definition;
- (g) any Treasury Transaction (and, when calculating the value of any Treasury Transaction, only the marked to market net value (or, if any actual amount is due as a result of the termination or close-out of that Treasury Transaction, that amount) shall be taken into account);
- (h) the acquisition cost of any asset where the deferred payment is arranged primarily as a method of raising finance or financing the acquisition or construction of the relevant asset and in circumstances where the due date for payment is more than 180 days after the expiry of the period customarily allowed by the relevant supplier save where the payment deferral results from non or delayed satisfaction of contract terms by the supplier or from contract terms establishing payment schedules tied to total or partial contract completion and/or to the results of operational testing procedures;
- (i) any amount raised by the issue of redeemable preference shares by any Group Company (other than to another Group Company and other than those redeemable at the option of the issuer) which mature prior to the Final Repayment Date; and
- (j) any amount raised under any other transaction which has the commercial effect of a borrowing,

and provided that:

- (i) in relation to bank accounts only the net balance shall be taken into account; and
- (ii) pension liabilities and provisions which are treated as borrowings or financial debt under IFRS shall not be included;

**Group** means the Borrower and its Subsidiaries from time to time;

**Group Company** means a member of the Group;

**Guarantors** means Alchemy and the Shareholder (each a **Guarantor**);

**Holding Company** means, in relation to any person, any other body corporate or other entity of which it is a Subsidiary and, for the avoidance of doubt and for the purpose of section 531(7) of the Law, a "Holding Company" includes an overseas company;

**IFRS** means UK-adopted international accounting standards within the meaning of Section 474(1) of the Companies Act 2006 to the extent applicable to the most recent financial statements of the Borrower;

**Impaired Agent** means the Agent at any time when:

- (a) it has failed to make (or has notified a Party that it will not make) a payment required to be made by it under the Interim Documents by the due date for payment;
- (b) it otherwise rescinds or repudiates an Interim Document;
- (c) (if the Agent is also an Interim Lender) it is a Defaulting Lender; or
- (d) an Insolvency Event has occurred and is continuing with respect to the Agent;

**Initial Closing Date** means the date on which first payment is made to the shareholders of the Target as required by the Offer or Scheme (as applicable) in accordance with the City Code;

**Insolvency Event** has the meaning given to that term in the LMA Agreement save that:

- (a) the wording at limb (f) shall not be included and the paragraph references in square brackets in limb (j) shall be updated accordingly; and
- (b) the square brackets in limb (j) shall be removed;

**Interest Period** has the meaning given to that term in clause 7.2 (*Payment of interest*);

**Interim Commitment** means:

- (a) in relation to an Original Interim Lender, the amount set out opposite its name under the heading "Commitment" in Schedule 1 and the amount of any other Interim Commitment transferred to it under this Agreement; and
- (b) in relation to any other Interim Lender, the amount of any Interim Commitment transferred to it under this Agreement,

to the extent not cancelled, reduced or transferred by it under this Agreement;

**Interim Documents** means each of this Agreement, any Drawdown Request, the Security Documents and any other document designated as such in writing by the Agent and the Borrower;

**Interim Facility** means the term loan facility made available under this Agreement as described in clause 2 (*The Interim Facility -Availability*);

**Interim Finance Parties** means the Agent, the Interim Lenders and the Security Agent;

**Interim Liabilities** means all liabilities and obligations (both actual and contingent and whether incurred solely or jointly or in any capacity) of the Borrower under the Interim Documents relating to or arising in respect of the Interim Facility;

**Interim Loan** means a loan made or to be made under the Interim Facility or the principal amount outstanding for the time being of that loan;

**Interim Lender** means:

- (a) each Original Interim Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Party as an Interim Lender in accordance with clause 18 (*Changes to the Parties*),

which in each case has not ceased to be a Party as such in accordance with the terms of this Agreement;

**ITA** means the Income Tax Act 2007;

**Law** means the Companies (Guernsey) Law, 2008 (as amended);

**LMA Agreement** means the Loan Market Association's draft Senior Multicurrency Term and Revolving Facilities Agreement for leveraged acquisition finance transactions (senior/mezzanine) incorporating backward-looking compounded rates and forward-looking term rates with rate switch provisions (with option for lookback without or with observation shift) dated 15 December 2021;

**Long Stop Date** means the date specified in the Rule 2.7 Announcement as the long stop date in respect of the Acquisition in accordance with Rule 12.1(a) of, or paragraph 3(b)(i) of Appendix 7 to, the City Code, as applicable;

**Major Event of Default** means an event or circumstance set out in Part 3 (*Major Events of Default*) of Schedule 4 (*Major Representations, Major Undertakings and Major Events of Default*), in each case as to the Borrower or (if applicable) the Guarantors only (and for the avoidance of doubt not with respect to the Target Group or any other Group Company) and excluding any procurement obligation with respect to the Target Group or any other Group Company and save that, prior to the expiry of the Certain Funds Period, no Major Event of Default shall occur in respect of any event or circumstance set out in paragraph 1 (*Payment default*) other than in so far as it relates to payment of principal and/or interest;

**Major Representation** means:

- (a) prior to the expiry of the Certain Funds Period, a representation set out in Part 1 (*Major Representations*) of Schedule 4 (*Major Representations, Major Undertakings and Major Events of Default*) (other than paragraphs 3(c) and 6); and
- (b) after the expiry of the Certain Funds Period, a representation set out in Part 1 (*Major Representations*) of Schedule 4 (*Major Representations, Major Undertakings and Major Events of Default*),

in each case as to the Borrower only (and for the avoidance of doubt not with respect to the Target Group or any other Group Company) and excluding any procurement obligation with respect to the Target Group or any other Group Company;

**Major Undertaking** means:

- (a) prior to the expiry of the Certain Funds Period, an undertaking set out in Part 2 (*Major Undertakings*) of Schedule 4 (*Major Representations, Major Undertakings and Major Events of Default*) (other than paragraphs 7(a), 7(f), 7(h), 7(i) and 10); and
- (b) after the expiry of the Certain Funds Period, an undertaking set out in Part 2 (*Major Undertakings*) of Schedule 4 (*Major Representations, Major Undertakings and Major Events of Default*),

in each case as to the Borrower only (and for the avoidance of doubt not with respect to the Target Group or any other Group Company) and excluding any procurement obligation with respect to the Target Group or any other Group Company;

**Margin** means the aggregate of:

- (a) 5.82% per annum; plus
- (b)
  - (i) if and for so long as the ABS Pledge Condition remains unsatisfied, a step-up of 5.00% per annum (the “**Rate Step-Up #1**”);
  - (ii) if and for so long as the ABS Pledge Condition is satisfied but the RHMPF Mojo Contribution Condition remains unsatisfied, a step-up of 2.50% per annum (the “**Rate Step-Up #2**”); or
  - (iii) if and for so long as the ABS Pledge Condition and the RHMPF Mojo Contribution Condition remain unsatisfied, a cumulative step-up equal to the sum of the Rate Step-Up #1 and the Rate Step-Up #2;

**Material Adverse Effect** means any event or circumstance which, in each case after taking into account all mitigating factors or circumstances including, any warranty, indemnity or other resources available to the Group or right of recourse against any third party with respect to the relevant event or circumstance and any obligation of any person in force to provide any additional equity investment, has a material adverse effect on:

- (a) the consolidated business, assets or financial condition of the Group (taken as a whole);
- (b) the ability of the Borrower to perform its payment obligations under the Interim Documents; or
- (c) subject to the Reservations and the Perfection Requirements, the validity or enforceability of any Transaction Security granted pursuant to the Security Documents and which, if capable of remedy, is not remedied within 20 Business Days of the earlier of the Borrower or the relevant Guarantor (as applicable) (i) becoming aware of the issue or (ii) being given notice of the issue by the Agent;

**Minimum Acceptance Threshold** has the meaning given to it in the definition of Offer;

**Obligor** means each of the Borrower and the Guarantors;

**Offer** means a takeover offer (which shall be an offer for the purposes of section 337 of the Law) to the holders of the Target Shares (other than the Excluded Shares) with a minimum acceptance threshold of not less than 90% of the Target Shares or such lower acceptance threshold agreed by the Interim Lenders (the **Minimum Acceptance Threshold**) to be made by the Borrower pursuant to the terms of the Offer Documents. For the avoidance of doubt,

the Parties acknowledge and agree that no provision of this Agreement or any other Interim Document shall operate to prevent a takeover offer being made by the Borrower to the holders of the Target Shares (other than the Excluded Shares) with an initial minimum acceptance threshold greater than 90%;

**Offer Documents** means each Rule 2.7 Announcement and the offer documents to be sent or made available by the Borrower to the Target's shareholders setting out the terms and conditions of an Offer and any other documents designated as "Offer Documents" by the Agent and the Borrower;

**Panel** means The Panel on Takeovers and Mergers;

**Party** means a party to this Agreement;

**Perfection Requirements** means the making or the procuring of the necessary registrations, filing, endorsements, notarisation, stampings and/or notifications of the Interim Documents necessary for the validity and enforceability thereof;

**Permitted Disposal** means any sale, lease, licence, transfer or other disposal:

- (a) of any asset by the Borrower or any other Group Company (the **Disposing Company**) to another Group Company (the **Acquiring Company**), but if the Disposing Company had given security over the asset, the Acquiring Company must give equivalent security over that asset;
- (b) entered into in the ordinary course of the day-to-day business (in acting as a holding company) of the Borrower;
- (c) of assets (other than shares or businesses) in exchange for other assets reasonably comparable or superior as to type, value or quality;
- (d) of assets (other than shares in any Group Company) which are obsolete, redundant or no longer required for the Borrower's business or operations;
- (e) of cash or cash equivalent investments;
- (f) of any asset compulsorily acquired by any governmental authority, to the extent that such disposal does not result in a Major Event of Default;
- (g) required by law or regulation or any order of any governmental entity, provided that this does not result in a Major Event of Default;
- (h) which constitutes a surrender of tax losses to any Group Company;
- (i) that arises as a result of a Permitted Transaction; or
- (j) that arises as a result of any Permitted Security;

**Permitted Financial Indebtedness** means any Financial Indebtedness:

- (a) in respect of the Interim Facility;
- (b) arising under the Equity Loans;
- (c) incurred in order to prepay or replace the Interim Loans in full (**Refinancing Indebtedness**);
- (d) arising under any loans made between Group Companies;

- (e) arising under a Permitted Transaction or Permitted Guarantee;
- (f) arising in the ordinary course of cash pooling arrangements entered into by the Borrower or any Group Company; or
- (g) under BACS, credit cards, cash pooling and automated payment facilities entered into in the ordinary course of business;

**Permitted Guarantee** means any guarantee:

- (a) the endorsement of negotiable instruments in the ordinary course of trade;
- (b) by the Borrower of the obligations of members of the Target Group existing at the date of this Agreement and/or the Initial Closing Date;
- (c) guaranteeing performance or any counter indemnity in favour of a third party who has guaranteed performance by a Group Company under any contract entered into in the ordinary course of business;
- (d) constituting a customary guarantee and/or indemnity in favour of directors and officers in their capacity as such;
- (e) permitted as Permitted Financial Indebtedness;
- (f) of Permitted Transactions or in connection with a Permitted Disposal;
- (g) any guarantee given in respect of the netting or set-off arrangements permitted pursuant to the definition of Permitted Security;
- (h) given by a Group Company in respect of the obligations of a former Subsidiary of such Group Company where such Group Company has received an indemnity in respect of the maximum aggregate amount of its liabilities under such guarantee for the full term of such guarantee; or
- (i) given or arising under legislation relating to Tax or corporate law under which any Group Company assumes general liability for the obligations of another Group Company incorporated or Tax resident in the same country;

**Permitted Holding Company Activity** means:

- (a) normal holding company activities and activities;
- (b) activities contemplated by the Acquisition or any other acquisition of Target Shares by the Borrower (whether on market or off market) or referred to in the definitions of Permitted Disposal, Permitted Financial Indebtedness, Permitted Guarantee, Permitted Payment and Permitted Security;
- (c) the incurrence of any financial indebtedness and/or other liabilities incurred under the Interim Documents, Equity Loans and/or Refinancing Indebtedness;
- (d) taking those steps necessary to maintain its corporate existence and tax status;
- (e) holding cash, cash equivalent investments and balances in bank accounts;
- (f) activities in connection with any litigation or court or other proceedings that are, in each case, being contested in good faith, those activities arising by law or court order and liabilities for, or in connection with, Taxes;

- (g) the provision of management and administrative services (and related costs), research and development and marketing and the employment and secondment of employees;
- (h) ownership of shares in the Target and any liabilities incurred or payments made by the Borrower in its capacity as a holding company in respect of the Target's share capital and professional fees, employee costs, administration costs and Taxes in each case incurred in the ordinary course of its business as a holding company and not expressly prohibited under this Agreement;
- (i) consisting of the ownership of cash balances or cash equivalent investments at any time (including arising under any cash pooling arrangement entered into with any of its Subsidiaries not prohibited under this Agreement) and the on-lending of cash intra-Group;
- (j) the payment of fees, costs and expenses, stamp, registration, land and other Taxes incurred in connection with the Acquisition, any other acquisition of Target Shares by the Borrower (whether on market or off market) and/or the Transaction Documents;
- (k) incurred as a result of operation of law; or
- (l) permitted by the Agent (at the direction of the Interim Lenders);

**Permitted Payment** means:

- (a) payment of professional fees, Taxes, regulatory and administrative costs of Holding Companies of the Borrower in relation to the Group;
- (b) payment of costs and expenses in connection with the Acquisition and any other acquisition of Target Shares by the Borrower (whether on market or off market) payable by the Borrower or any of its Holding Companies provided that the aggregate amount of all such payments does not exceed the aggregate of:
  - (i) USD 181,000,000; and
  - (ii) any dealing fees on market purchases of Target Shares,
 during the life of the Interim Facility; or
- (c) a payment or declaration of a dividend, return of capital, capital contribution or other distribution, redemption, repurchase, defeasement, retirement, reduction or payment in respect of share capital made by any Group Company and/or a payment of interest on or repayment of principal of loans made to the Borrower which are subordinated to the Interim Facility in order to enable the payments referred to in the preceding paragraphs above or to enable the Borrower to make payments to the Interim Finance Parties under the Interim Documents;

**Permitted Security** means:

- (a) the security granted under the Security Documents;
- (b) any netting or set-off arrangement entered into in the ordinary course of banking arrangements (including any hedging) for the purpose of netting debit and credit balances;
- (c) any lien or other security interest in favour of a bank or financial institution with which any Group Company holds bank accounts pursuant to such bank or financial institution's general terms and conditions;

- (d) any lien arising by operation of law or agreement of similar effect and in the ordinary course of trading;
- (e) any right of set-off arising under contracts entered into by members of the Group in ordinary course of their day-to-day business;
- (f) any security or quasi security arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to a member of the Group in the ordinary course of trading;
- (g) any security consisting of cash collateral (including any security over any related bank account) provided or to be provided to support letter of credit or other obligations of the Target Group to facilitate completion of the Acquisition;
- (h) security or quasi-security arising as a result of legal proceedings discharged within 30 days or otherwise contested in good faith;
- (i) any security arising by operation of law in respect of Taxes being contested in good faith; or
- (j) any security granted as part of a financial institution's standard terms and conditions in the ordinary course of business, including without limitation with any financial institution with whom any Group Company maintains a banking relationship;

**Permitted Transaction** means:

- (a) any disposal required, financial indebtedness incurred, guarantee, indemnity, payment or security or any other transaction arising, under any of the Interim Documents, the Acquisition Documents or any of the transactions envisaged therein;
- (b) any Permitted Holding Company Activity, Permitted Guarantee, Permitted Disposal, Permitted Payment or Permitted Security; or
- (c) any transaction permitted by the Agent (acting on the instructions of the Interim Lenders);

**Person** means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, governmental authority or other entity;

**Protected Party** means an Interim Finance Party to the extent it is or will be subject to any liability or required to make any payment for or on account of Tax in relation to a sum received or receivable (or any sum deemed for the purposes of Tax to be received or receivable) under an Interim Document;

**Qualifying Lender** has the meaning given to that term in clause 8 (*Taxes*);

**Reference Rate** means the fixed rate that would be payable under a US dollar interest rate swap with a designated maturity of 3 months, referencing the Secured Overnight Financing Rate administered by the Federal Reserve Bank of New York (or any successor administrator), as administered by ICE Benchmark Administration Limited (or a successor administrator) as of the Specified Time;

**Related Fund** means, in relation to an Interim Lender (the **first fund** or **first account**), either: (1) a fund which is managed or advised by the same investment manager or adviser as the first fund or, if it is managed by a different investment manager or adviser, a fund whose investment manager or adviser is an Affiliate of the investment manager or adviser of the first fund; or (2) a managed account, insurance account or cedant controlled, managed and/or advised by the first account or any Affiliate of the first account;



**Relevant Market** means the market for overnight cash borrowing collateralised by US Government securities;

**Relevant Jurisdiction** means, in relation to the Borrower:

- (a) its jurisdiction of incorporation; and
- (b) any jurisdiction where it conducts a substantial part of its business;

**Reports** means each of:

- (a) the valuation report dated 28 March 2024 on the Target Group prepared by Shot Tower Capital, LLC;
- (b) the financial due diligence report dated 8 March 2024 on the Target Group prepared by BDO;
- (c) the music legal due diligence report dated 4 March 2024 on the Target Group prepared by Reed Smith LLP; and
- (d) the supplemental music legal due diligence report dated 8 April 2024 on the Target Group prepared by Reed Smith LLP;

**Reservations** means the principle that equitable remedies may be granted or refused at the discretion of the court, the limitation on enforcement by laws relating to bankruptcy, insolvency, liquidation, reorganisation, court schemes, moratoria, administration and other laws generally affecting the rights of creditors and similar principles or limitations under the laws of any applicable jurisdiction, the time barring of claims under any applicable limitation statutes, the possibility that an undertaking to assume liability for or indemnify a person against non-payment of stamp duty may be void and defences of set-off or counterclaim and similar principles or limitations under the laws of any applicable jurisdiction, the possibility that a court may strike out provisions of a contract as being invalid or unenforceable for reasons of oppression, undue influence or (in the case of default interest) representing a penalty, the unavailability of, or limitation on the availability of a particular right or remedy because of equitable principles of general application, the possibility that any security created or purported to be created by any Security Document that is expressed to be fixed or floating may not be treated as such by an English Court and any other reservations or qualifications as to matters of law (only) which are referred to in any legal opinion referred to in Schedule 3 (*Conditions Precedent*);

**Residual Payments** means amounts payable to the Securitization Issuer in accordance with the Base Indenture pursuant to clause (xiii) of the Base Priority of Payments (as defined in the Base Indenture) and under clause (viii) of the Post-EOD Priority of Payments (as defined in the Base Indenture);

**RHMPF Mojo Contribution Condition** means that substantially all of the assets (or 100% of the equity interests in the entities that own the assets) associated with the formerly listed company Round Hill Music Royalty Fund Limited excluding, for the avoidance of doubt, the Carlin joint venture interests (the "**RHMPF Assets**") and 100% of the assets acquired from Mojo Music & Media (the "**Mojo Music Interests**") have been transferred to the Securitization Issuer after which the Securitization Issuer has an assets valuation of at least XXXXXXXXXX (provided that, the parties agree that for purposes of this valuation, prior to the issuance of any updated valuation report by Virtu Global Advisors, LLC, the respective purchase prices (including any deferred purchase price payment amount for the RHMPF Assets and the Mojo Music Interests) shall be deemed to equal the total valuation of such interests/assets and the value of the assets owned by the Securitization Issuer (prior to such contributions) shall equal the latest valuation);

**Rule 2.7 Announcement** means any press release made by or on behalf of the Borrower (or by or on behalf of the Borrower and the Target acting jointly) announcing a firm intention to implement a Scheme or, as the case may be, make an Offer, in each case in accordance with Rule 2.7 of the City Code;

**Scheme** means the scheme of arrangement under Part VIII of the Law between the Target and the Scheme Shareholders which implements the Acquisition, with or subject to any modification, addition or condition permitted by the Panel and this Agreement;

**Scheme Circular** means the circular (including any supplemental circular) dispatched by the Target to shareholders of the Target setting out the resolutions and proposals for and the terms and conditions of the Scheme;

**Scheme Documents** means:

- (a) each Rule 2.7 Announcement;
- (b) the Scheme Circular;
- (c) the Court Order;
- (d) any other documents distributed by or on behalf of the Borrower to (among others) shareholders of the Target in connection with the Scheme; and
- (e) any other document designated as a "Scheme Document" by the Agent and the Borrower;

**Scheme Effective Date** means the date on which the Court Order sanctioning the Scheme is duly delivered on behalf of the Target to the Guernsey Registry;

**Scheme Shareholders** means the holders of Target Shares, other than those shareholders holding Excluded Shares;

**Secured Parties** means the Security Agent, the Agent, any Receiver or Delegate and each of the Interim Lenders from time to time;

**Securitization Issuer** means Concord Music Royalties, LLC, a limited liability company organised under the laws of the State of Delaware;

**Securitization Trustee** means The Bank of New York Mellon as trustee under the Base Indenture;

**Security** means a mortgage, charge, land charge, pledge, lien, assignment or transfer for security purposes, (extended) retention of title arrangements or other security interest securing any obligations of any person or any other agreement or arrangement having a similar effect;

**Security Document** means each security and/or guarantee document to which an Obligor is a party set out in paragraph 2 of Schedule 3 (*Conditions Precedent*) and paragraph 10 (a) of Part 2 (*Major Undertakings*) of Schedule 4 (*Major Representations, Major Undertakings and Major Events of Default*) together with any other document entered into by an Obligor creating or expressed to create any security over all or any part of its assets in favour of the Security Agent in respect of the Obligors' obligations under the Interim Documents;

**Shareholder** means Chorus SPV, LLC, a Delaware limited liability company with its registered office at 251 Little Falls Drive, City of Wilmington, County of New Castle, Delaware 19808;

**Specified Time** means a time determined in accordance with Schedule 5 (*Timetables*);

**Squeeze-Out** means an acquisition of the outstanding shares in the Target (other than the Excluded Shares) that the Borrower has not acquired pursuant to the procedures contained in Part XVIII of the Law;

**Structuring Fee** has the meaning given to that term in the Engagement Letter;

**Sub-Participation** means a sub-participation or any other agreement or arrangement having an economic effect substantially similar to a sub-participation by an Interim Lender of any of its obligations under the Interim Facility;

**Subsidiary** means in relation to any company, corporation or partnership, a company, corporation or partnership:

- (a) which is controlled, directly or indirectly, by the first mentioned company or corporation or partnership; or
- (b) more than half the issued share capital or membership interests of which is beneficially owned, directly or indirectly by the first mentioned company or corporation or partnership,

for the avoidance of doubt and for the purpose of section 531(6) of the Law, a "Subsidiary" includes an overseas company and for this purpose, a company or corporation or partnership shall be treated as being controlled by another if that other company or corporation or partnership is able to direct its affairs and/or to control the composition of its board of directors or equivalent body;

**Target** means Hipgnosis Songs Fund Limited;

**Target Group** means the Target and its Subsidiaries;

**Target Shares** means ordinary shares in the capital of the Target from time to time including without limitation any ordinary shares in the Target arising on exercise of Target Group options, awards, warrants and other rights to require allotment or issue of any shares in the Target, whether or not such rights are then exercisable;

**Tax** means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same) imposed or levied by any government or other taxing authority and **Taxes** shall be construed accordingly;

**Tax Credit** means a credit against, relief from, or rebate, repayment, remission or refund of, any Tax;

**Tax Deduction** means a deduction or withholding for or on account of Tax from any payment under an Interim Document, other than a FATCA Deduction;

**Total Interim Commitments** means the aggregate of the Interim Commitments, being USD 1,514,000,000 at the date of this Agreement;

**Transaction Documents** means the Interim Documents and the Acquisition Documents;

**Transaction Security** means the Security created or expressed to be created in favour of the Security Agent pursuant to the Security Documents;

**Treasury Transactions** means any swap, forward, future or derivative transaction or option or similar agreement entered into in connection with protection against or benefit from fluctuation in any rate or price;

**Unpaid Sum** means any sum due and payable but unpaid by the Borrower under the Interim Documents;

**US Government Securities Business Day** means any day other than:

- (a) a Saturday or a Sunday; and
- (b) a day on which the Securities Industry and Financial Markets Association (or any successor organisation) recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in US Government securities; and

**VAT** means:

- (a) any value added tax imposed by the Value Added Tax Act 1994;
- (b) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and
- (c) any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraphs (a) or (b) above, or imposed elsewhere.

## 1.2 Other References

- (a) In this Agreement, unless a contrary intention appears, a reference to:
  - (i) an **agreement** includes any legally binding arrangement, contract, deed or instrument (in each case whether oral or written);
  - (ii) an **amendment** includes any amendment, supplement, variation, novation, modification, replacement or restatement and **amend** and **amended** shall be construed accordingly;
  - (iii) **assets** includes properties, assets, businesses, undertakings, revenues and rights of every kind (including uncalled share capital), present or future, actual or contingent, and any interest in any of the above;
  - (iv) a **disposal** includes any sale, transfer, grant, lease, licence or other disposal, whether voluntary or involuntary and **dispose** will be construed accordingly;
  - (v) **\$, US dollars** and **USD** denotes the lawful currency of the United States of America;
  - (vi) a **guarantee** includes:
    - (A) an indemnity, counter-indemnity, guarantee or assurance against loss in respect of any indebtedness of any other person; and
    - (B) any other obligation of any other person, whether actual or contingent:
      - (1) to pay, purchase, assume, provide funds (whether by the advance of money to, the purchase of or subscription for

shares or other investments in, any other person, the purchase of assets or services, the making of payments under an agreement or otherwise) for the payment of, to indemnify against the consequences of default in the payment of, or otherwise be responsible for, any indebtedness of any other person; or

- (2) to be responsible for the performance of any obligations by or the solvency of any other person,

and **guaranteed** and **guarantor** shall be construed accordingly;

- (vii) **including** means including without limitation and **includes** and **included** shall be construed accordingly;
- (viii) **indebtedness** includes any obligation (whether incurred as principal, guarantor or surety and whether present or future, actual or contingent) for the payment or repayment of money;
- (ix) **losses** includes losses, actions, damages, claims, proceedings, costs, demands, expenses (including legal and other fees) and liabilities of any kind and loss shall be construed accordingly;
- (x) a **month** means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:
- (A) (subject to clause 1.2(a)(x)(C)) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day;
- (B) if there is no numerically corresponding day in the month in which that period is to end, that period shall end on the last Business Day in that calendar month; and
- (C) if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end,

and references to **months** shall be construed accordingly;

- (xi) a Major Event of Default being **outstanding** or **continuing** means that such Major Event of Default has occurred or arisen and has not been remedied or waived;
- (xii) a **person** includes any individual, trust, firm, fund, company, corporation, partnership, joint venture, government, state or agency of a state or any undertaking or other association (whether or not having separate legal personality); and
- (xiii) a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but if not having the force of law compliance with which is customary) of any governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.
- (b) In this Agreement, unless a contrary intention appears:

- (i) a reference to a Party includes a reference to that Party's successors and permitted assignees or permitted transferees but does not include that Party if it has ceased to be a party under this Agreement;
- (ii) references to paragraphs, clauses, sub-clauses, appendices and Schedules are references to, respectively, paragraphs, clauses and sub-clauses of and appendices and Schedules to this Agreement and references to this Agreement include its appendices and Schedules;
- (iii) a reference to (or to any specified provision of) any agreement (including any of the Interim Documents) is to that agreement (or that provision) as amended from time to time;
- (iv) a reference to a statute, statutory instrument or provision of law is to that statute, statutory instrument or provision of law, as it may be applied, amended or re-enacted from time to time;
- (v) a reference to a time of day is, unless otherwise specified to London time; and
- (vi) the index to and the headings in this Agreement are for convenience only and are to be ignored in construing this Agreement.

## **2 The Interim Facility - Availability**

- (a) Subject to the terms of this Agreement, the Interim Lenders make available to the Borrower a term loan facility in an aggregate amount equal to the Total Interim Commitment.
- (b) Any undrawn part of the Interim Commitments will be automatically cancelled:
  - (i) at 11:59pm (London time) on the last day of the Certain Funds Period; and/or
  - (ii) when Completion occurs if an Interim Loan has not been drawn.
- (c) The Borrower may, by one Business Day's prior written notice to the Agent, at any time cancel the whole or any part of the Available Interim Facility. Any such cancellation shall reduce the Interim Commitments of the Interim Lenders rateably.

## **3 Purpose**

The Borrower shall apply all amounts borrowed by it under the Interim Facility in or towards (including, without limitation, by way of on-lending to the Target Group):

- (a) the Acquisition Consideration;
- (b) payment of costs, fees, expenses and taxes (including stamp duty) incurred in connection with the Acquisition (and/or any other on market or off market acquisition of Target Shares by the Borrower) and the Transaction Documents (including the fees referred to in the Engagement Letter); and/or
- (c) the refinancing, discharge and/or acquisition of existing indebtedness of the Target Group and to pay breakage costs, any redemption premium and any other fees, costs and expenses payable in connection with such refinancing, discharge and/or acquisition.

#### 4 The making of the Interim Loan(s)

- (a) Each Interim Lender will be obliged to participate in an Interim Loan subject only to:
- (i) the Agent having received or waived the requirement to receive all of the documents and evidence referred to in Part 2 (*Conditions Precedent to the Initial Closing Date*) of Schedule 3 (*Conditions Precedent*), it being acknowledged and agreed that:
    - (A) the Agent has received all of the documents and evidence referred to in Part 1 (*Conditions Precedent to Signing*) of Schedule 3 (*Conditions Precedent*) on or prior to the date of this Agreement and that these are irrevocably satisfied conditions precedent to the making of any Interim Loan; and
    - (B) the certificate referred to in paragraph 1(a) of Part 2 (*Conditions Precedent to the Initial Closing Date*) of Schedule 3 (*Conditions Precedent*) is in agreed form on the date of this Agreement and will be irrevocably satisfied when delivered;
  - (ii) no Change of Control having occurred;
  - (iii) no Major Event of Default being continuing; and
  - (iv) it not being illegal in any applicable jurisdiction for that Interim Lender to make, or to allow to have outstanding, an Interim Loan (and if that is the case that Interim Lender must notify the Borrower as soon as it becomes aware of the relevant legal issue and to the extent that the Interim Lender's participation has not been transferred pursuant to 9.3(b) its Interim Commitment shall be cancelled pursuant to clause 9.3(a)), provided that such illegality alone will not excuse any other Interim Lender from participating in the relevant Interim Loan and will not in any way affect the obligations of any other Interim Lender.
- (b) Notwithstanding any other provision of any Interim Document, during the Certain Funds Period, no Interim Lender shall:
- (i) refuse to participate in or make available an Interim Loan;
  - (ii) cancel its Interim Commitment;
  - (iii) be entitled to take any action to rescind, terminate or cancel this Agreement (or any provision hereof or obligation hereunder) or an Interim Loan or exercise any similar right or remedy or exercise any right of set-off or counterclaim in respect of an Interim Loan;
  - (iv) accelerate an Interim Loan or otherwise demand or require or cause repayment or prepayment of an Interim Loan or enforce any security under any Security Document;
  - (v) take any other action or make or enforce any claim which would directly or indirectly prevent an Interim Loan from being made that would otherwise be permitted; or
  - (vi) make or enforce any claim under any indemnity or in respect of any payment obligation of the Borrower as set out in the Interim Documents, including, but not limited to, clause 8 (*Taxes*), clause 9 (*Change in circumstances*), clause 11 (*Expenses*) and clause 12 (*Indemnities*),

unless at any time any of the conditions in clause 4(a) are not satisfied, provided that immediately upon the expiry of the Certain Funds Period all such rights, remedies and entitlements shall be available to the Interim Lenders notwithstanding that they may not have been used or been available for use during the Certain Funds Period.

- (c) Notwithstanding any other provision of any Interim Document, save where agreed otherwise by the Agent (acting on the instructions of all the Interim Lenders) and the Borrower, an Interim Loan shall not be funded prior to receipt by the Agent of the certificate referred to in paragraph 1(a) of Part 2 (*Conditions Precedent to the Initial Closing Date*) of Schedule 3 (*Conditions Precedent*).

## **5 Drawdown**

### **5.1 Giving of Drawdown Requests**

- (a) The Borrower may borrow an Interim Loan by giving to the Agent a duly completed Drawdown Request. Once given a Drawdown Request is irrevocable, save where the Borrower has submitted a drawdown request in respect of any Refinancing Indebtedness and that loan has been funded. Upon such Refinancing Indebtedness being received by the Borrower any outstanding Drawdown Request shall be revoked at the request of the Borrower.
- (b) Unless the Agent otherwise agrees, the latest time for receipt by the Agent of a duly completed Drawdown Request is the Specified Time.
- (c) No more than:
  - (i) if the Acquisition will complete by way of a Scheme, one Interim Loan may be outstanding under this Agreement at any time; or
  - (ii) if the Acquisition will complete by way of an Offer, three Interim Loans may be outstanding under this Agreement at any time.
- (d) No more than one Interim Loan may be requested in any Drawdown Request.

### **5.2 Completion of Drawdown Requests**

- (a) A Drawdown Request for an Interim Loan will not be regarded as having been duly completed unless the Drawdown Date is a Business Day within the Certain Funds Period and the amount of the Interim Loan requested does not exceed the Available Interim Commitments.
- (b) For the avoidance of doubt, each Drawdown Request in respect of a utilisation to be made during the Certain Funds Period shall be considered validly submitted if completed and signed by the Borrower, notwithstanding that all conditions precedent to such utilisations have not been satisfied (and no funding indemnities shall be required in addition to those set out in this Agreement).

### **5.3 Advance of Interim Loans**

An Interim Loan may only be denominated in USD.

### **5.4 Interim Lender's participation**

- (a) If the conditions set out in this Agreement have been met, each Interim Lender shall make its participation in each Interim Loan available by the Drawdown Date through its Facility Office.



- (b) The amount of each Interim Lender's participation in each Interim Loan will be equal to the proportion borne by its Available Interim Commitment to the Available Interim Facility immediately prior to making the Interim Loan.
- (c) The Agent shall promptly notify each Interim Lender of the amount of the Interim Loan and the amount of its participation in that Interim Loan.
- (d) The obligations of each Interim Finance Party under the Interim Documents are several. Failure by an Interim Finance Party to perform its obligations under the Interim Documents does not affect the obligations of any other Party under the Interim Documents.

## 6 Repayment and prepayment

### 6.1 Repayment

- (a) The Borrower must repay the outstanding Interim Loans (together with all interest and all other amounts accrued or outstanding under or in connection with the Interim Documents) on the earlier of:
  - (i) the date falling:
    - (A) 60 days after the Initial Closing Date where the Acquisition proceeds by way of a Scheme (provided that if the Borrower switches to the use of an Offer as permitted by this Agreement then paragraph (B) below shall apply); or
    - (B) 90 days after the Initial Closing Date where the Acquisition proceeds by way of an Offer,

(the **Final Repayment Date**);
  - (ii) the repayment date specified in, or in accordance with, an Acceleration Notice;
  - (iii) subject to clause 4 (*The making of the Interim Loan(s)*), the occurrence of a Change of Control; and
  - (iv) subject to clause 4 (*The making of the Interim Loan(s)*) the date on which the Borrower sells all or substantially all of the assets of the Group (whether in a single transaction or a series of related transactions).
- (b) Subject to clause 4 (*The making of the Interim Loan(s)*), if a Major Event of Default has occurred and is outstanding the Agent (acting on the instructions of the Interim Lenders) may, by notice to the Borrower:
  - (i) cancel each Available Interim Commitment of each Interim Lender at which time each such Available Interim Commitment shall immediately be cancelled and the Interim Facility shall immediately cease to be available for further utilisation; and/or
  - (ii) declare that all or any part of the outstanding Interim Loans together with accrued interest and any other amounts accrued or outstanding under the Interim Documents be immediately due and payable, at which time they shall become immediately due and payable; and/or

- (iii) declare that all or any part of the outstanding Interim Loans be payable on demand, at which time they shall become immediately due and payable on demand by the Agent; and/or
- (iv) exercise or direct the Security Agent to exercise any or all of its rights, remedies, powers or discretions under the Security Documents.

Any such notice shall take effect in accordance with its terms.

## **6.2 Prepayment**

- (a) The Borrower may prepay the whole or any part of the outstanding Interim Loans, together with accrued but unpaid interest, at any time, on giving one Business Day's prior notice in writing to the Agent.
- (b) Amounts prepaid under the Interim Facility cannot be redrawn.

## **7 Interest**

### **7.1 Calculation of interest**

The rate of interest on each Interim Loan for an Interest Period is the percentage rate per annum equal to the aggregate of the:

- (a) Margin; and
- (b) Reference Rate.

### **7.2 Payment of interest**

- (a) The period for which an Interim Loan is outstanding shall be divided into successive interest periods (each an **Interest Period**), each of which will start on the expiry of the previous Interest Period or, in the case of the first Interest Period, on the Drawdown Date for that Interim Loan.
- (b) The Borrower shall select an Interest Period of one month (or any other period agreed with the Agent (acting on the instruction of the Interim Lenders)) in the Drawdown Request and thereafter no later than the Specified Time. If the Borrower does not select an Interest Period, the default Interest Period shall (subject to clause 7.2(d)) be one month.
- (c) The Borrower must pay accrued interest on each Interim Loan on the last day of each Interest Period and on any date on which such Interim Loan is repaid or prepaid.
- (d) Notwithstanding clauses 7.2(a) and 7.2(b), no Interest Period will extend beyond the Final Repayment Date.
- (e) If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period will instead end on the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not), provided that no Interest Period will extend beyond the Final Repayment Date.

### **7.3 Interest on overdue amounts**

If the Borrower fails to pay when due any amount payable by it under the Interim Documents, it must immediately on demand by the Agent pay interest on the overdue amount from its due date up to the date of actual payment, both before, on and after judgment. Interest on an overdue amount is payable at a rate determined by the Agent to be one per cent. per annum

above the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted an Interim Loan under the Interim Facility.

#### 7.4 Interest calculation

Interest shall be paid in the currency of the Interim Loan and shall accrue from day to day and be calculated on the basis of the actual number of days elapsed and 360 day year. The Agent must promptly notify each Party of the determination of a rate of interest under this Agreement.

#### 7.5 Break Costs

- (a) The Borrower shall, within three Business Days of demand by the Agent, pay to each relevant Interim Lender its Break Costs attributable to all or any part of the Interim Loan or Unpaid Sum being paid by the Borrower on a day other than the last day of an Interest Period for that Interim Loan or Unpaid Sum.
- (b) The relevant Interim Lender shall, as soon as reasonably practicable after a demand by the Borrower, provide a certificate confirming the amount of its Break Costs for any Interest Period in which they accrue.

### 8 Taxes

In this Agreement:

**Borrower DTTP Filing** means an HM Revenue & Customs' Form DTTP2 duly completed and filed by the Borrower, which:

- (a) in respect of a Treaty Lender or Transparent Lender that is an Original Interim Lender, contains the scheme reference number and jurisdiction of tax residence stated opposite that Original Interim Lender's name in Schedule 1 (*Original Interim Lenders*) (and with respect to a Transparent Lender, this should contain the scheme reference number and jurisdiction of tax residence of each Opaque Entity Partner), and is filed with HM Revenue & Customs within 30 days of the date of this Agreement; or
- (b) where it relates to a Treaty Lender or Transparent Lender that is not an Original Interim Lender, contains the scheme reference number and jurisdiction of tax residence stated in respect of that Interim Lender (and with respect to a Transparent Lender, this should contain the scheme reference number and jurisdiction of tax residence of each Opaque Entity Partner) in the documentation which it executes on becoming a Party as an Interim Lender, and is filed with HM Revenue & Customs within 30 days of the date on which that Treaty Lender or Transparent Lender becomes a Party as an Interim Lender.

**Cancelled Certificate** means shall mean any QPP Certificate in respect of which HM Revenue & Customs' has given a notification under regulation 7(5) of the QPP Regulations so that such QPP Certificate is a cancelled certificate for the purposes of the QPP Regulations.

**New Interim Lender** has the meaning given to that term in clause 18.2.

**Opaque Entity** means a person which is not treated as transparent for the purposes of UK taxation of income and which is a resident of the relevant Treaty State for the purposes of the relevant Treaty.

**QPP Certificate** means a valid creditor certificate for the purposes of the QPP Regulations, given in the form set out in Schedule 6 (*Form of QPP Certificate*).

**QPP Lender** means an Interim Lender that has delivered to the Borrower a QPP Certificate in respect of that Interim Lender or in the case of an Interim Lender that is treated as transparent for the purposes of the QPP Regulations, on behalf of each beneficial owner of interest paid to that Interim Lender, provided that no such QPP Certificate is a Withdrawn Certificate or a Cancelled Certificate.

**QPP Regulations** mean the Qualifying Private Placement Regulations 2015 (2015 No.2002).

**Qualifying Lender** means:

- (a) an Interim Lender which is beneficially entitled to interest payable to that Interim Lender in respect of an advance under an Interim Document and is:
  - (i) an Interim Lender:
    - (A) which is a bank (as defined for the purpose of section 879 of the ITA) making an advance under an Interim Document and is within the charge to United Kingdom corporation tax as respects any payments of interest made in respect of that advance or would be within such charge as respects such payment apart from section 18A of the CTA; or
    - (B) in respect of an advance made under an Interim Document by a person that was a bank (as defined for the purpose of section 879 of the ITA) at the time that that advance was made and within the charge to United Kingdom corporation tax as respects any payments of interest made in respect of that advance; or
  - (ii) an Interim Lender which is:
    - (A) a company resident in the United Kingdom for United Kingdom tax purposes;
    - (B) a partnership each member of which is:
      - (1) a company so resident in the United Kingdom; or
      - (2) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of part 17 of the CTA;
    - (C) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company; or
  - (iii) a Treaty Lender; or
  - (iv) a Transparent Lender; or
  - (v) a QPP Lender; or

- (b) an Interim Lender which is a building society (as defined for the purposes of Section 880 of the ITA) making an advance under an Interim Document.

**Tax Confirmation** means a confirmation by an Interim Lender that the person beneficially entitled to interest payable to that Interim Lender in respect of an advance under an Interim Document is either:

- (a) a company resident in the United Kingdom for United Kingdom tax purposes; or
- (b) a partnership each member of which is:
  - (i) a company so resident in the United Kingdom; or
  - (ii) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of part 17 of the CTA; or
- (c) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company.

**Transparent Lender** means an Interim Lender to which all of the following applies:

- (a) the Interim Lender is treated as transparent for the purposes of UK taxation of income;
- (b) interest payable to such an Interim Lender in respect of an advance under the Interim Documents is treated for the purposes of UK taxation of income as the income of its partners, members, unitholders or shareholders (as appropriate, and each hereinafter referred to as a "**Partner**") (or, in the case of a Partner which is itself fiscally transparent, its Partner), in each case, each such direct or indirect Partner of such Interim Lender is an Opaque Entity (being a "**Opaque Entity Partner**");
- (c) none of the Interim Lender and the Opaque Entity Partner (or Opaque Entity Partners, as the case may be) carries on a business in the United Kingdom through a permanent establishment with which that Interim Lender's participation in the Interim Loan (or the Opaque Entity Partner or Opaque Entity Partners' income, profits or gains derived from such participation) is effectively connected;
- (d) the Opaque Entity Partner (or each of the Opaque Entity Partners) is treated as a resident of a Treaty State for the purposes of the relevant Treaty; and
- (e) the Opaque Entity Partner meets (or each of the Opaque Entity Partners meets) all other conditions which must be met under the relevant UK Treaty for residents of the relevant UK Treaty State to obtain full exemption from tax on interest imposed by the United Kingdom on payments of interest paid to the Interim Lender in respect of its participation in the relevant Interim Loan, including the completion of any necessary procedural formalities.

**Treaty Lender** means, a person which is not a Transparent Lender or a QPP Lender and which:

- (a) is treated as a resident of a Treaty State for the purposes of the Treaty;

- (b) does not carry on a business in the United Kingdom through a permanent establishment with which that Interim Lender's participation in the Interim Loan is effectively connected; and
- (c) meets all other conditions in the relevant Treaty for full exemption from withholding tax imposed by the United Kingdom on payments of interest paid to it in respect of its participation in the Interim Loan, subject to the completion of necessary procedural formalities.

**Treaty State** means a jurisdiction having a double taxation agreement (a **Treaty**) with the United Kingdom which makes provision for full exemption from tax imposed by the United Kingdom on interest.

**UK Non-Bank Lender** means, where an Interim Lender becomes a Party after the date on which this Agreement is entered into, an Interim Lender which gives a Tax Confirmation in the document which it executes on becoming a Party to this Agreement.

**Withdrawn Certificate** shall mean a withdrawn certificate for the purposes of the QPP Regulations.

Unless a contrary indication appears, in this clause 8 a reference to **determines** or **determined** means a determination made in the discretion of the person making the determination acting reasonably and in good faith.

## 8.2 Gross-up

- (a) The Borrower must make all payments under the Interim Documents without any Tax Deduction, unless a Tax Deduction is required by law.
- (b) If the Borrower becomes aware that it must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) it shall promptly notify the Agent accordingly. Similarly, an Interim Lender shall notify the Agent on becoming so aware in respect of a payment payable to that Interim Lender and the Agent shall promptly notify the Borrower on becoming so aware.
- (c) Subject to the limitations and exclusions herein, if a Tax Deduction is required by law to be made by the Borrower, the amount of the payment due from the Borrower shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
- (d) A payment shall not be increased under clause 8.2(c) by reason of a Tax Deduction on account of Tax imposed by the United Kingdom, if on the date on which the payment falls due:
  - (i) the payment could have been made to the relevant Interim Lender without a Tax Deduction if the Interim Lender had been a Qualifying Lender, but on that date that Interim Lender is not or has ceased to be a Qualifying Lender other than as a result of any change after the date it became an Interim Lender under this Agreement in (or in the interpretation, administration, or application of) any law or Treaty or any published practice or published concession of any relevant taxing authority; or
  - (ii) the relevant Interim Lender is a Qualifying Lender solely by virtue of paragraph (a)(ii) of the definition of "**Qualifying Lender**" and:
    - (A) an officer of H.M. Revenue & Customs has given (and not revoked) a direction (a **Direction**) under section 931 of the ITA which relates to

the payment and that Interim Lender has received from the Borrower a certified copy of that Direction; and

- (B) the payment could have been made to the Interim Lender without any Tax Deduction if that Direction had not been made; or
- (iii) the relevant Interim Lender is a Qualifying Lender solely by virtue of paragraph (a)(ii) of the definition of "Qualifying Lender" and:
  - (A) the relevant Interim Lender has not given a Tax Confirmation to the Borrower; and
  - (B) the payment could have been made to the Interim Lender without any Tax Deduction if the Interim Lender had given a Tax Confirmation to the Borrower, on the basis that the Tax Confirmation would have enabled the Borrower to have formed a reasonable belief that the payment was an "excepted payment" for the purpose of section 930 of the ITA; or
- (iv) the relevant Interim Lender is a Treaty Lender or a Transparent Lender and the Borrower is able to demonstrate that the payment could have been made to the Interim Lender without the Tax Deduction had that Interim Lender complied with its obligations under clause 8.2(g) or 8.2(h) (as applicable).
- (e) If the Borrower is required by law to make a Tax Deduction, the Borrower shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed by law and in the minimum amount required by law.
- (f) Within 30 days after making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Borrower shall deliver to the Interim Finance Party entitled to the payment evidence reasonably satisfactory to such Interim Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant Tax authority.
- (g)
  - (i) Subject to clause 8.2(g)(ii), a Treaty Lender or a Transparent Lender (as applicable) and the Borrower shall co-operate in completing any procedural formalities necessary for the Borrower to obtain and maintain authorisation to make that payment without a Tax Deduction.
  - (ii)
    - (A) Each Original Interim Lender (to the extent that it holds a passport under the HMRC DT Treaty Passport scheme and which wishes that scheme to apply to this Agreement) shall confirm its scheme reference number and its jurisdiction of tax residence in Schedule 1 (*Original Interim Lenders*); and
    - (B) a Treaty Lender which is not an Original Interim Lender that holds a passport under the HMRC DT Treaty Passport scheme, and which wishes that scheme to apply to this Agreement, shall confirm its scheme reference number and its jurisdiction of tax residence in the document which it executes upon becoming a party to this Agreement as an Interim Lender,

and, having done so, that Interim Lender shall be under no obligation pursuant to clause 8.2(g)(i).

- (h) If the an Interim Lender has confirmed its scheme reference number and its jurisdiction of tax residence in accordance with clause 8.2(g)(ii) and:
  - (i) the Borrower has not made a Borrower DTTP Filing in respect of that Interim Lender; or
  - (ii) the Borrower has made a Borrower DTTP Filing in respect of that Interim Lender but:
    - (A) that Borrower DTTP Filing has been rejected by HM Revenue & Customs; or
    - (B) HM Revenue & Customs has not given the Borrower authority to make payments to that Interim Lender without a Tax Deduction within 60 days of the date of the Borrower DTTP Filing; or
    - (C) HM Revenue & Customs has given the Borrower authority to make payments to that Interim Lender without a Tax Deduction but such authority has subsequently been revoked or expired,

and in each case, the Borrower has notified that Interim Lender in writing, that Interim Lender and the Borrower shall co-operate in completing any additional procedural formalities necessary for the Borrower to obtain authorisation to make that payment without a Tax Deduction.

- (i) If an Interim Lender has not confirmed its scheme reference number and jurisdiction of tax residence in accordance with clause 8.2(g)(ii), the Borrower shall not make a Borrower DTTP Filing or file any other form relating to the HMRC DT Treaty Passport scheme in respect of that Interim Lender's Interim Commitment or its participation in any Interim Loan unless the Interim Lender otherwise agrees.
- (j) The Borrower shall, promptly on making a Borrower DTTP Filing, deliver a copy of that Borrower DTTP Filing to the relevant Interim Lender.
- (k) If the Borrower receives a notification from HM Revenue & Customs that a QPP Certificate given by a QPP Lender has no effect, the Borrower shall promptly deliver a copy of that notification to that QPP Lender.
- (l) A UK Non-Bank Lender shall promptly notify the Borrower and the Agent if there is any change in the position from that set out in the Tax Confirmation.
- (m) If there is any change to the identity or composition of the members of a QPP Lender that is treated as transparent for the purposes of the QPP Regulations or a member ceases to be beneficially entitled to its relevant share of interest payable to the QPP Lender or to be resident in a qualifying territory (as defined in the QPP Regulations) that QPP Lender shall as soon as is reasonably practicable notify the Agent. If the Agent receives such notification from an Interim Lender it shall as soon as is reasonably practicable notify the Borrower. If such QPP Lender gives a QPP Certificate that is given on behalf of the updated group of members, then it shall from that point continue to be treated as a QPP Lender.

### **8.3 Tax indemnity**

- (a) The Borrower shall (within five Business Days of demand by a Protected Party) pay (or procure to be paid) to a Protected Party an amount equal to the loss, liability or cost which that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of an Interim Document.



- (b) Clause 8.3(a) shall not apply:
- (i) to any Tax assessed on an Interim Finance Party under the law of the jurisdiction (including any political subdivision thereof) in which:
    - (A) that Interim Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Interim Finance Party is treated as, or deemed to be, resident for tax purposes;
    - (B) that Interim Finance Party has a permanent establishment to which income, profits or gains under an Interim Document is attributed in respect of amounts received or receivable in that jurisdiction; or
    - (C) that Interim Finance Party's Facility Office is located in respect of amounts received or receivable under the Interim Documents in that jurisdiction,

if that Tax is imposed on or calculated by reference to the net income, profits or gains received or receivable (but not any sum deemed to be received or receivable) by that Interim Finance Party or if that Tax is considered a franchise Tax (imposed in lieu of net income Tax) or a branch profits or similar Tax; or
  - (ii) to the extent a loss or liability or cost:
    - (A) is compensated for by an increased payment under clause 8.2 (*Gross-up*);
    - (B) would have been compensated for by an increased payment under clause 8.2 (*Gross-up*) but was not so compensated solely because one of the exclusions in clause 8.2 (*Gross-up*) applied;
    - (C) is compensated for by payment of an amount under clause 8.5 (*Stamp Taxes*) or clause 8.7 (*Value added taxes*) or would have been so compensated but was not so compensated solely because one of the exclusions in those clauses applied;
    - (D) is attributable to any Bank Levy (or any payment attributable to, or liability arising as a consequence of any Bank Levy); or
    - (E) relates to a FATCA Deduction required to be made by a Party.
  - (c) A Protected Party making, or intending to make a claim under clause 8.3(a) shall promptly notify the Borrower of the event which has given, or will give, rise to the claim.

#### 8.4 Tax Credit

If the Borrower pays an additional amount under clause 8.2 (*Gross-up*) or a payment under clause 8.3 (*Tax indemnity*) (a **Tax Payment**) and an Interim Finance Party determines in its sole discretion that it has obtained and utilised a Tax Credit, that Interim Finance Party shall pay an amount to the Borrower which that Interim Finance Party determines, acting reasonably and in good faith will leave it or an Affiliate (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by the Borrower.

## 8.5 Stamp Taxes

The Borrower shall pay (or procure to be paid), and within 5 Business Days of demand, indemnify (or procure to be indemnified) the Interim Lenders against all losses which the Interim Lenders suffer or incur in relation to any stamp duty, registration or other similar Tax payable in respect of any Interim Document, except:

- (a) any such Tax payable in respect of an assignment, novation, transfer or Sub-Participation or sub-contract of an Interim Loan (or part thereof) by that Interim Lender save where there is a continuing Major Event of Default; or
- (b) pursuant or to the extent that such stamp duty, registration or other similar Tax becomes payable upon a voluntary registration made by any Party if such registration is not required by any applicable law or not necessary to evidence, prove, maintain, enforce, compel or otherwise assert the rights of such Party or obligations of any Party under an Interim Document.

## 8.6 Interim Lender Status Confirmation

- (a) Each New Interim Lender shall indicate, in the document which it executes on becoming a Party and without liability to the Borrower, which of the following categories it falls in:
  - (i) not a Qualifying Lender;
  - (ii) a Qualifying Lender (other than a Treaty Lender, a Transparent Lender, or a QPP Lender); or
  - (iii) a Treaty Lender;
  - (iv) a Transparent Lender: or
  - (v) a QPP Lender.
- (b) If a New Interim Lender fails to indicate its status in accordance with this clause 8.6 then such New Interim Lender shall be treated for the purposes of this Agreement (including by the Borrower) as if it is not a Qualifying Lender until such time as it notifies the Borrower which category applies.

## 8.7 Value added taxes

- (a) All amounts expressed to be payable under an Interim Document by a Party to an Interim Finance Party which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply. Subject to clause 8.7(d), if VAT is or becomes chargeable on any supply made by any Interim Finance Party to any Party under an Interim Document such Interim Finance Party is required to account to the relevant tax authority for the VAT, the Party must pay to such Interim Finance Party (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of that VAT. Such Interim Finance Party shall promptly provide an appropriate VAT invoice to such Party.
- (b) If VAT is or becomes chargeable on any supply made by any Interim Finance Party (the **Supplier**) to any other Interim Finance Party (the **Recipient**) under an Interim Document, and any Party other than the Recipient (the **Relevant Party**) is required by the terms of any Interim Document to pay an amount equal to the consideration for that supply to the Supplier (rather than being required to reimburse or indemnify the Recipient in respect of that consideration):

- (i) (where the Supplier is the person required to account to the relevant tax authority for the VAT) the Relevant Party must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the VAT. The Recipient must (where this clause 8.7(b)(i) applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Recipient receives from the relevant tax authority which the Recipient reasonably determines relates to the VAT chargeable on that supply; and
  - (ii) (where the Recipient is the person required to account to the relevant tax authority for the VAT) the Relevant Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply but only to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.
- (c) Where an Interim Document requires any Party to reimburse or indemnify an Interim Finance Party for any costs or expenses, that Party shall also reimburse or indemnify (as the case may be) such Interim Finance Party for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that such Interim Finance Party reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.
- (d) Any reference in this clause 8.7 to any Party shall, at any time when such Party is treated as a member of a group for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the representative member of such group at such time (the term **representative member** to have the same meaning as in the United Kingdom *Value Added Tax Act 1994* or in the relevant legislation of any other jurisdiction having implemented Council Directive 2006/112/EC on the common system of VAT or such equivalent concept as may be provided under equivalent legislation of another jurisdiction).
- (e) In relation to any supply made by an Interim Finance Party to any Party under an Interim Document, if reasonably requested by such Interim Finance Party, that Party must promptly provide such Interim Finance Party with details of that Party's VAT registration and such other information as is reasonably requested in connection with such Interim Finance Party's VAT reporting requirements in relation to such supply.

## 8.8 FATCA Deduction

- (a) Each Party may make any FATCA Deduction it is required to make by FATCA, and any payment required in connection with that FATCA Deduction, and no Party shall be required to increase any payment in respect of which it makes such a FATCA Deduction or otherwise compensate the recipient of the payment for that FATCA Deduction.
- (b) Each Party shall promptly, upon becoming aware that it must make a FATCA Deduction (or that there is any change in the rate or the basis of such FATCA Deduction) notify the other Parties.

## 8.9 FATCA Information

- (a) Subject to clause 8.9(c), each Party shall, within ten Business Days of a reasonable request by another Party:
  - (i) confirm to that other Party whether it is:
    - (A) a FATCA Exempt Party; or

- (B) not a FATCA Exempt Party; and
  - (ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA; and
  - (iii) supply to that other Party such forms, documentation and other information relating to its status as that other Party reasonably requests for the purposes of that other Party's compliance with any law, regulation or exchange of information regime.
- (b) If a Party confirms to another Party pursuant to clause 8.9(a)(i) that it is a FATCA Exempt Party and it subsequently becomes aware that it is not, or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.
  - (c) Clause 8.9(a) shall not oblige an Interim Finance Party to do anything, and clause 8.9(a)(iii) shall not oblige any other Party to do anything, which would or might in its reasonable opinion constitute a breach of:
    - (i) any law or regulation;
    - (ii) any fiduciary duty; or
    - (iii) any duty of confidentiality.
  - (d) If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with clauses 8.9(a)(i) or 8.9(a)(ii) (including, for the avoidance of doubt, where clause 8.9(c) applies), then such Party shall be treated for the purposes of the Interim Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.

## 9 Change in circumstances

### 9.1 Increased Costs

- (a) If the introduction of, or a change in, or a change in the interpretation, administration or application of, any law, regulation or treaty occurring after the date on which an Interim Finance Party becomes party to this Agreement, or compliance with any law, regulation or treaty made after the date on which an Interim Finance Party becomes party to this Agreement results in an Interim Finance Party (a **Claiming Party**) or any Affiliate of it incurring any Increased Cost (as defined in clause 9.1(d)):
  - (i) the Claiming Party will notify the Borrower of the circumstances giving rise to that Increased Cost as soon as reasonably practicable after becoming aware of it and will as soon as reasonably practicable after a demand by the Borrower provide a certificate confirming the amount of that Increased Cost with appropriate supporting evidence; and
  - (ii) within five Business Days of demand by the Claiming Party, the Borrower will pay to the Claiming Party the amount of any Increased Cost incurred by it (or any Affiliate of it).
- (b) The Borrower will not be obliged to compensate any Claiming Party under clause 9.1(a) in relation to any Increased Cost:

- (i) compensated for by payment under clause 8.3 (*Tax indemnity*) or clause 8.5 (*Stamp Taxes*), or would have been compensated for under clause 8.3 (*Tax indemnity*) or clause 8.5 (*Stamp Taxes*) but was not so compensated because one of the exclusions in clause 8.3(b) or clause 8.5 (*Stamp Taxes*) applied;
  - (ii) attributable to a material breach by the Claiming Party of any law, regulation or treaty; or
  - (iii) attributable to a Tax Deduction required by law to be made by the Borrower;
  - (iv) attributable to a FATCA Deduction required to be made by a Party;
  - (v) attributable to any Bank Levy (or any payment attributable to, or liability arising as a consequence of, a Bank Levy);
  - (vi) attributable to the implementation or application or compliance with the "International Convergence of Capital Measurement and Capital Standards, a Revised Framework" published by the Basel Committee in June 2004 in the form existing on the date of this Agreement (**Basel II**) or any other law or regulation which implements Basel II (whether such implementation, application or compliance is by a government, regulator, the relevant Interim Lender or any of its Affiliates); or
  - (vii) attributable to the implementation or application or compliance with the Basel III Standards, CRD IV or CRD V to the extent the relevant Interim Finance Party was aware of (or could reasonably be expected to have been aware of) that Increased Cost as at the date of this Agreement or, if later, the date it became a Party.
- (c) If any Affiliate of an Interim Finance Party suffers a cost which would have been recoverable by that Interim Finance Party under this clause 9.1 if that cost had been imposed on that Interim Finance Party, that Interim Finance Party shall be entitled to recover the amount of that cost under this clause on behalf of the relevant Affiliate.
- (d) In this Agreement:

**Increased Cost** means:

- (a) an additional or increased cost;
- (b) a reduction in any amount due, paid or payable to the Claiming Party under any Interim Document; or
- (c) a reduction in the rate of return on the Claiming Party's (or its Affiliate's) overall capital,

suffered or incurred by a Claiming Party (or any Affiliate of it) as a result of it having entered into or performing its obligations under any Interim Document or making or maintaining its participation in an Interim Loan;

**Basel III Standards** means the Basel Committee on Banking Supervision's (the **Committee**) revised rules relating to capital requirements, a leverage ratio and liquidity standards set out in "Basel III: A global regulatory framework for more resilient banks and banking systems", "Guidance for national authorities operating the countercyclical capital buffer" and "Basel III: International framework for liquidity risk measurement, standards and monitoring" published by the Committee in December 2010, each as amended, supplemented and/or restated, "Revisions to the Basel II

market risk framework" published by the Committee in February 2011, the rules for global systemically important banks contained in "Global systemically important banks: assessment methodology and the additional loss absorbency requirement - Rules text" published by the Committee in November 2011, as amended, supplemented or restated, and any further guidance or standards published by the Committee in connection with these rules;

**CRD IV** means EU CRD IV and UK CRD IV;

**CRD V** means EU CRD V and UK CRD V;

**EU CRD IV** means:

- (a) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (the "**CRR**"); and
- (b) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (the "**CRD**"),

in each case as amended from time to time, including by EU CRD V;

**EU CRD V** means:

- (a) Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 575/2013 and Regulation (EU) No 648/2012; and
- (b) Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, **financial** holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures,

in each case as amended from time to time;

**UK CRD IV** means:

- (a) the CRR (as amended from time to time, including pursuant to CRD V) as it forms part of domestic law of the United Kingdom by virtue of the European Union (Withdrawal) Act 2018 (the "Withdrawal Act");
- (b) the law of the United Kingdom or any part of it, which immediately before IP completion day (as defined in the European Union (Withdrawal Agreement) Act 2020) (the "Withdrawal Agreement Act") implemented the CRD (as amended from time to time, including pursuant to CRD V) and its implementing measures;
- (c) direct EU legislation (as defined in the Withdrawal Act), which immediately before IP completion day (as defined in the Withdrawal Agreement Act) implemented EU CRD IV as it forms part of domestic law of the United Kingdom by virtue of the Withdrawal Act; and

- (d) any other law or regulation of the United Kingdom which introduces into the domestic law of the United Kingdom a provision equivalent to any provision set out in the CRR or the CRD and/or implements the agreements, rules and standards set out in Basel III from time to time; and

**UK CRD V** means the parts of EU CRDV which form retained EU law (as defined in the Withdrawal Act), as amended by the Financial Holding Companies (Approval etc.) and Capital Requirements (Capital Buffers and Macro-prudential Measures) (Amendment) (EU Exit) Regulations 2020, and any applicable laws, regulations, rules, guidance or other applicable implementing measures from time to time of the Financial Conduct Authority, Prudential Regulation Authority, or other relevant UK regulator (or their successor) relating to the capital requirements regime for banks in the United Kingdom.

## 9.2 Mitigation

- (a) If circumstances arise which entitle an Interim Finance Party:
  - (i) to receive payment of an amount under clause 8 (*Taxes*); or
  - (ii) to demand payment of any amount under clause 9.1 (*Increased Costs*); or
  - (iii) to require cancellation or prepayment to it of any amount under clause 9.3 (*Illegality*) (including for the avoidance of doubt if the relevant Interim Lender is not obliged to fund in circumstances where clause 4(a)(ii) applies),

then that Interim Finance Party will, at the request of the Borrower, take all reasonable steps to mitigate the effect of those circumstances (including by transferring its rights and obligations under the Interim Documents to an Affiliate or changing its Facility Office).

- (b) An Interim Finance Party will not be obliged to take any such steps or action if to do so is likely in its opinion (acting reasonably) to be unlawful, or to have an adverse or prejudicial effect on its business, operations or financial condition (other than any minor costs and expenses of an administrative or similar nature) or breach its banking policies or require it to disclose any confidential information.
- (c) The Borrower shall, within five Business Days of demand by an Interim Finance Party, indemnify (or procure to be indemnified) that Interim Finance Party for any costs or expenses reasonably incurred by it as a result of taking any steps or action under this clause.
- (d) This clause does not in any way limit, reduce or qualify the obligations of the Borrower under the Interim Documents.

## 9.3 Illegality

- (a) If after the date of this Agreement (or, if later, the date the relevant Interim Lender becomes a Party) it becomes unlawful in any applicable jurisdiction for an Interim Lender to participate in the Interim Facility, maintain its Interim Commitment or perform any of its obligations under any Interim Documents, then:
  - (i) that Interim Lender shall promptly so notify the Agent and the Agent shall notify the Borrower as soon as reasonably practicable after receiving such notice;
  - (ii) upon such notification to the relevant Borrower, that Interim Lender's Available Interim Commitment will be cancelled on the date specified by that

Interim Lender in such notice (being the last Business Day immediately prior to the illegality taking effect or the latest date otherwise allowed by the relevant law) to the extent necessary to cure the relevant illegality; and

- (iii) the Borrower shall prepay that Interim Lender's participation in the Interim Loans on the last day of the Interest Period for each Interim Loan occurring after that Interim Lender has notified the Agent or, if earlier, the date specified by that Interim Lender in the notice delivered to the Agent (being no earlier than the last day of any applicable grace period permitted by law).
- (b) If the Borrower becomes obliged to repay any amount in accordance with this clause 9.3, then the Borrower may, on not less than five Business Days' prior written notice to the Agent and such Interim Lender, replace such Interim Lender by requiring such Interim Lender to (and, to the extent permitted by law, such Interim Lender shall) transfer pursuant to clause 18.2 (*Transfers and assignments by the Interim Lenders*) all (and not part only) of its rights and obligations under this Agreement to a New Interim Lender selected by the Borrower, which is acceptable to the Agent (acting reasonably) and which confirms its willingness to assume and does assume all the obligations of the transferring Interim Lender in accordance with clause 18.2 (*Transfers and assignments by the Interim Lenders*) for a purchase price in cash payable at the time of transfer in an amount equal to (unless otherwise agreed between the transferring Interim Lender and the New Interim Lender) the outstanding principal amount of such Interim Lender's participation in the outstanding Interim Loans and all accrued interest and other amounts payable in relation thereto under the Interim Documents.
- (c) The replacement of an Interim Lender pursuant to this clause 9.3 shall be subject to the following conditions:
- (i) the Borrower shall have no right to replace the Agent or Security Agent;
  - (ii) neither the Agent nor the Interim Lender shall have any obligation to the Interim to find a New Interim Lender;
  - (iii) in no event shall the Interim Lender replaced under this clause be required to pay or surrender to such New Interim Lender any of the fees received by such Interim Lender pursuant to the Interim Documents;
  - (iv) the Interim Lender shall only be obliged to transfer its rights and obligations pursuant to clause 18.2 once the Agent is satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to that transfer; and
  - (v) the transfer must take place no later than the later of:
    - (A) ten Business Days after the Borrower notified the relevant Interim Lender that it required it to transfer its rights and obligations under this Agreement; and
    - (B) three Business Days after the Agent has confirmed that it has completed all necessary "know your customer" or similar checks under all applicable laws and regulations in relation to the New Interim Lender, the completion of which the Agent shall promptly notify to the Borrower and the New Interim Lender.



## 10 Payments

### 10.1 Currency of payment

Any amount payable by the Borrower under the Interim Documents shall be paid in the same currency as the Interim Loan.

### 10.2 No set-off or counterclaim

All payments made or to be made by the Borrower under the Interim Documents must be paid in full without set-off or counterclaim.

### 10.3 Business Days

- (a) If any payment would otherwise be due under any Interim Document on a day which is not a Business Day, that payment shall be due on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (b) During any such extension of the due date for payment of any principal or overdue amount, or any extension of an Interest Period, interest shall accrue and be payable at the rate payable on the original due date.

### 10.4 Application of monies

- (a) If the Agent or, where paragraph (d) applies, the Security Agent, receives a payment or, where paragraph (d) applies the Security Agent makes a recovery under the Security Documents, that is insufficient to discharge all amounts then due and payable by the Borrower under any Interim Document, the Agent or the Security Agent (as applicable) shall apply that payment towards the obligations of the Borrower under the Interim Documents in the following order:
  - (i) **first**, in payment pro rata of any fees, costs and expenses of the Security Agent and/or Agent due but unpaid under the Interim Documents;
  - (ii) **second**, in payment pro rata of any fees, costs and expenses of the Interim Lenders, due but unpaid under the Interim Documents;
  - (iii) **third**, in payment pro rata of any accrued interest in respect of the Interim Facility, due but unpaid under the Interim Documents;
  - (iv) **fourth**, in payment pro rata of any principal in respect of the Interim Facility, due but unpaid under the Interim Documents; and
  - (v) **fifth**, in payment pro rata of any other amounts due but unpaid under the Interim Documents.
- (b) The Interim Lenders may agree (and so instruct the Agent) to and, where clause (d) applies, the Security Agent shall, if directed by the Agent (on the direction of the Interim Lenders), vary the order set out in clauses 10.4(a)(ii) to 10.4(a)(v) (inclusive).
- (c) Any such application by the Agent or the Security Agent (as applicable) will override any appropriation made by an Obligor.
- (d) Any amount recovered under the Security Documents or clause 10.5 will be applied by the Security Agent as set out in clause 10.4(a).

## 10.5 Turnover by the Interim Lenders

If at any time prior to the repayment in full of all amounts owed to the Interim Lenders in respect of the Interim Facility, any Interim Lender receives or recovers:

- (a) any payment or distribution of, or on account of or in relation to, any of the amounts owed to the Interim Lenders under the Interim Documents which is not made in accordance with this Agreement;
- (b) notwithstanding paragraph (a) above, any amount:
  - (i) on account of, or in relation to, any of the amounts owed to the Interim Lenders under the Interim Documents:
    - (A) after the service of an Acceleration Notice; or
    - (B) as a result of any other litigation or proceedings against the Borrower (other than after the occurrence of any Major Event of Default); or
  - (ii) by way of set-off in respect of any of the amounts owed to it after the service of an Acceleration Notice;
- (c) the proceeds of any enforcement of any Transaction Security except in accordance with Clause 10.4 (*Application of Monies*); or
- (d) any distribution in cash or in kind or payment of, or on account of or in relation to, any of the amounts owed to the Interim Lenders under this Agreement which is not in accordance with Clause 10.4 (*Application of Monies*) and which is made as a result of, or after, the occurrence of any Major Event of Default,

that Interim Lender will hold all amounts received or recovered in accordance with the above paragraphs on trust for the Security Agent and promptly pay that amount to the Security Agent for application in accordance with the terms of this Agreement. If for any reason the trusts expressed to be created in this clause should fail or be unenforceable, the affected person shall promptly pay an amount equal to the relevant receipt or recovery to the Security Agent to be held on trust by the Security Agent for application in accordance with Clause 10.4 (*Application of Monies*).

## 11 Expenses

### 11.1 Costs and expenses

The Borrower must pay (or procure to be paid) to the Interim Finance Parties (subject to a prohibition on double recovery), within ten Business Days of demand, the amount of any costs and expenses (including legal fees subject to any agreed limits) reasonably incurred by any of them (or any of their Affiliates (including but not limited to Redding Ridge Asset Management LLC and Apollo Global Funding, LLC) and, in the case of the Security Agent, by any Receiver or Delegate) in connection with the negotiation, preparation, printing, execution and perfection of any Interim Document and other documents contemplated by the Interim Documents executed after the date of this Agreement (up to the amount of any limits agreed from time to time).

### 11.2 Enforcement costs

The Borrower must pay (or procure to be paid) to each Interim Finance Party (subject to a prohibition on double recovery), within five Business Days of demand, the amount of all costs and expenses (including reasonable legal fees) incurred by it in connection with the enforcement of, or the preservation of any rights under, any Interim Document and the

Transaction Security and any proceedings instituted by or against the Security Agent as a consequence of taking or holding the Transaction Security or enforcing these rights.

### 11.3 Amendment Costs

The Borrower shall, within ten Business Days of demand, reimburse (or procure to be reimbursed) each Interim Finance Party (subject to a prohibition on double recovery) for all reasonable and documented out of pocket costs and expenses (including reasonable legal fees) incurred by any of them (and, in the case of the Security Agent, by any Receiver or Delegate) in connection with responding to, evaluating, negotiating or complying with any amendment, waiver or consent requested or required by the Borrower, provided that if the Interim Facility is not drawn no such costs and expenses will be payable (other than reasonable and documented out of pocket legal costs up to a cap separately agreed in writing).

## 12 Indemnities

### 12.1 General indemnity

The Borrower shall indemnify (or procure to be indemnified) each Interim Finance Party (other than the Security Agent and subject to a prohibition on double recovery) within ten Business Days of demand against any loss or liability (not including loss of future Margin) which that Interim Finance Party incurs as a result of:

- (a) the occurrence of any Major Event of Default;
- (b) any failure by the Borrower to pay any amount due under an Interim Document on its due date;
- (c) any Interim Loan not being made for any reason (other than as a result of the fraud, default or negligence of that Interim Finance Party or where clauses 4(c) and/or 5.1(a) apply) on the Drawdown Date specified in the Drawdown Request requesting that Interim Loan; or
- (d) any Interim Loan or overdue amount under an Interim Document being repaid or prepaid otherwise than in accordance with a notice of prepayment given by the Borrower or otherwise than on the last day of the then current Interest Period relating to that Interim Loan or overdue amount,

including any loss on account of funds borrowed, contracted for or utilised to fund any Interim Loan or amount payable under any Interim Document.

### 12.2 Currency indemnity

- (a) If:
  - (i) any amount payable by the Borrower under or in connection with any Interim Document is received by a Secured Party in a currency (the **Payment Currency**) other than that agreed in the relevant Interim Document (the **Agreed Currency**), and the amount produced by such Secured Party converting the Payment Currency so received into the Agreed Currency is less than the required amount of the Agreed Currency; or
  - (ii) any amount payable by the Borrower under or in connection with any Interim Document has to be converted from the Agreed Currency into another currency for the purpose of making, filing, obtaining or enforcing any claim, proof, order or judgment,

then the Borrower will, as an independent obligation, within three Business Days of demand indemnify that Secured Party for any loss or liability incurred by it as a result.

- (b) Any conversion required will be made by the relevant Secured Party at the prevailing rate of exchange on the date and in the market determined by that Secured Party, acting reasonably, as being most appropriate for the conversion. The Borrower will also pay the reasonable costs of the conversion.
- (c) The Borrower waives any right it may have in any jurisdiction to pay any amount under any Interim Document in a currency other than that in which it is expressed to be payable in that Interim Document.

### **12.3 Indemnity to the Security Agent**

- (a) The Borrower shall promptly indemnify the Security Agent and every Receiver and Delegate against any cost, loss or liability (together with any applicable VAT) incurred by any of them as a result of:
  - (i) any failure by the Borrower to comply with its obligations under clause 11.1 (*Costs and expenses*);
  - (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
  - (iii) the taking, holding, protection or enforcement of the Transaction Security;
  - (iv) the exercise of any of the rights, powers, discretions, authorities and remedies vested in the Security Agent and each Receiver and Delegate by the Interim Documents or by law;
  - (v) any default by the Borrower in the performance of any of the obligations expressed to be assumed by it in the Interim Documents; or
  - (vi) acting as Security Agent, Receiver or Delegate under the Interim Documents or which otherwise relates to any of the Charged Property (otherwise, in each case, than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct).
- (b) The Security Agent and every Receiver and Delegate may, in priority to any payment to the Interim Finance Parties, indemnify itself out of the Charged Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this clause 12.3 and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all monies payable to it.

### **12.4 Indemnity to the Agent**

The Borrower shall promptly indemnify the Agent against any cost, loss or liability incurred by the Agent (acting reasonably) as a result of:

- (a) investigating any event which it reasonably believes is a Major Event of Default; or
- (b) acting or relying on any notice, request or instruction from any Obligor or any Interim Lender which it reasonably believes to be genuine, correct and appropriately authorised.

## **13 The Security Agent**

### **13.1 Security Agent as trustee**

- (a) The Security Agent declares that it holds the Charged Property on trust or, as applicable, as agent for the Interim Finance Parties on the terms contained in this Agreement and the Security Documents.
- (b) Each of the Interim Lenders authorises the Security Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Security Agent under or in connection with the Interim Documents together with any other incidental rights, powers, authorities and discretions.

### **13.2 Role of the Security Agent**

- (a) The Security Agent shall administer the Security Documents (and where appropriate hold the benefit of the Security Documents on trust) for itself and the other Interim Finance Parties and will apply all payments and other benefits received by it under the Security Documents in accordance with the Interim Documents.
- (b) The Security Agent shall not be liable for any failure, omission or defect in registering, protecting or perfecting any security interest constituted, created or evidenced by any Security Document.
- (c) The Security Agent has no duty or obligation to require the deposit with it of, or to hold, any title deeds, share certificates, transfer documents or other documents in connection with any asset charged or encumbered or purported to be charged or encumbered under any Security Document.
- (d) Each Interim Finance Party confirms its approval of each Security Document and authorises and directs the Security Agent (by itself or by such person(s) as it may nominate) to execute and enforce the same as trustee (or agent) or as otherwise provided (and whether or not expressly in the names of the Interim Finance Parties) on its behalf.
- (e) It is agreed that, in relation to any jurisdiction the courts of which would not recognise or give effect to the trust expressed to be created by this Agreement, the relationship of the Interim Finance Parties to the Security Agent shall be construed as one of principal and agent but, to the extent permissible under the laws of such jurisdiction, that all the other provisions of this Agreement shall have full force and effect between the parties hereto.
- (f) Each Interim Finance Party (other than the Security Agent) irrevocably authorises the Security Agent to realise such Security Documents in accordance with the terms thereof and this Agreement and agrees not to independently enforce or exercise any rights or powers arising under the Security Documents except through the Security Agent and in accordance with the Interim Documents.

### **13.3 Security Agent's Instructions**

The Security Agent shall:

- (a) subject to the terms of Clause 13.15 (*Enforcement of Security Documents*) and paragraphs (i) to (iii) below, act in accordance with any instructions given to it by the Agent or, if so instructed by the Agent, refrain from exercising any right, power, authority or discretion vested in it as Security Agent and shall be entitled to assume that (i) any instructions received by it from the Agent are duly given by or on behalf of

the Interim Lenders in accordance with the terms of the Interim Documents and (ii) unless it has received actual notice of revocation that any instructions or directions given by the Agent have not been revoked;

- (b) be entitled to request instructions, or clarification of any direction, from the Agent as to whether, and in what manner, it should exercise or refrain from exercising any rights, powers and discretions and the Security Agent may refrain from acting unless and until those instructions or clarifications are received by it; and
- (c) be entitled to, carry out all dealings with the Interim Lenders through the Agent and may give to the Agent any notice or other communication received to be given by the Security Agent to the Interim Lenders,

provided however that:

- (i) any instructions given to the Security Agent by the Agent shall override any conflicting instructions given by any other Parties;
- (ii) paragraphs (a) to (c) above shall not apply:
  - (A) where a contrary indication appears in this Agreement;
  - (B) where this Agreement requires the Security Agent to act in a specified manner or to take a specified action; or
  - (C) in respect of any provision which protects the Security Agent's own position in its personal capacity as opposed to its role of Security Agent for the Interim Finance Parties; and
- (iii) in giving instructions to the Security Agent under this Clause 13.3 (*Security Agent's Instructions*) the Agent shall act in accordance with the instructions of the Interim Lenders, acting in accordance with Clause 6.1(b) (*Repayment and Prepayment*).

#### **13.4 Security Agent's Actions**

Subject to the provisions of this Clause 13 and without prejudice to the provisions of Clause 13.3 (*Security Agent's Instructions*):

- (a) the Security Agent may, in the absence of any instructions to the contrary, take such action in the exercise of any of its powers and duties under the Interim Documents which in its absolute discretion it considers to be appropriate; and
- (b) at any time after receipt by the Security Agent of notice from the Agent directing the Security Agent to exercise all or any of its rights, remedies, powers or discretions under any of the Interim Documents, the Security Agent may, and shall if so directed by the Agent, take any action as in its sole discretion it thinks fit to enforce the Transaction Security.

#### **13.5 Security Agent's discretions**

The Security Agent may:

- (a) assume (unless it has received actual notice to the contrary from the Agent) that (i) no Major Event of Default has occurred and the Borrower is not in breach of or default under its obligations under any of the Interim Documents and (ii) any right, power, authority or discretion vested by any Interim Document in any person has not been exercised;

- (b) if it receives any instructions or directions from the Agent to take any action in relation to the Transaction Security, assume that all applicable conditions under the Interim Documents for taking that action have been satisfied;
- (c) engage, pay for and rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers (whether obtained by the Security Agent or by any other Interim Finance Party) whose advice or services may at any time seem necessary;
- (d) rely upon any communication or document believed by it to be genuine and, as to any matters of fact which might reasonably be expected to be within the knowledge of an Interim Finance Party or the Borrower, upon a certificate signed by or on behalf of that person; and
- (e) refrain from acting in accordance with the instructions of any Party (including bringing any legal action or proceeding arising out of or in connection with the Interim Documents) until it has received any indemnification and/or security that it may in its absolute discretion require (whether by way of payment in advance or otherwise) for all costs, losses and liabilities which it may incur in bringing such action or proceedings.

### 13.6 Security Agent's Obligations

- (a) The Security Agent shall:
  - (i) promptly inform the Agent of the contents of any notice or document received by it in its capacity as Security Agent from the Borrower under any Interim Document;
  - (ii) forward to a Party the original or a copy of any document which is delivered to the Security Agent for that Party by any other Party **provided that**, except where an Interim Document expressly provides otherwise, the Security Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party; and
  - (iii) inform the Agent of the occurrence of any Major Event of Default or any default by the Borrower in the due performance of or compliance with its obligations under any Interim Document of which the Security Agent has received notice from any other Party.
- (b) Notwithstanding any provision of any Interim Document to the contrary, the Security Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

### 13.7 Excluded Obligations

The Security Agent shall not:

- (a) be bound to enquire as to the occurrence or otherwise of any Major Event of Default or the performance, default or any breach by the Borrower of its obligations under any of the Interim Documents;
- (b) be bound to account to any other Party for any sum or the profit element of any sum received by it for its own account;

- (c) be bound to disclose to any other person (including any Interim Finance Party) (i) any confidential information or (ii) any other information if disclosure would, or might in its reasonable opinion, constitute a breach of any law or be a breach of fiduciary duty;
- (d) be under any obligations other than those which are specifically provided for in the Interim Documents; or
- (e) have or be deemed to have any duty, obligation or responsibility to, or relationship of trust or agency with, or be a fiduciary of, the Borrower.

### **13.8 Exclusion of Security Agent's liability**

- (a) Unless caused directly by its gross negligence or wilful misconduct, none of the Security Agent, any Receiver or any Delegate shall accept responsibility or be liable for:
  - (i) the adequacy, accuracy and/or completeness of any information (whether oral or written) supplied by the Security Agent or any other person in connection with the Interim Documents or the transaction contemplated in the Interim Documents, or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with the Interim Documents;
  - (ii) the legality, validity, effectiveness, adequacy or enforceability of any Interim Document or the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Interim Document or the Transaction Security;
  - (iii) any determination as to whether any information provided or to be provided to any Interim Finance Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise;
  - (iv) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or refraining from taking any action in relation to any of the Interim Documents or the Transaction Security or otherwise, whether in accordance with an instruction from the Agent or otherwise;
  - (v) the exercise of, or the failure to exercise, any judgment, discretion or power given to it by or in connection with any of the Interim Documents, the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with the Interim Documents or the Transaction Security; or
  - (vi) any shortfall which arises on the enforcement or realisation of the Transaction Security.
- (b) Without prejudice to any provision of any Interim Document excluding or limiting the liability of the Security Agent, any Receiver or Delegate, any liability of the Security Agent, any Receiver or Delegate arising under or in connection with any Interim Document or the Charged Property shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (as determined by reference to the date of default of the Security Agent, receiver or delegate (as the case may be) or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Security Agent, Receiver or Delegate (as the case may be) at any time which increase the amount of that loss. In no event shall the Security Agent, any receiver or



delegate be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Security Agent, receiver or delegate (as the case may be) has been advised of the possibility of such loss or damages.

### **13.9 No proceedings**

No Party (other than the Security Agent, that Receiver or Delegate ) may take any proceedings against any officer, employee or agent of the Security Agent, a receiver or a delegate in respect of any claim it might have against the Security Agent, a receiver or a delegate or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Interim Document or any Transaction Security and any officer, employee or agent of the Security Agent, a receiver or a delegate may rely on this Clause subject to Clause 20.6 (*Third Party Rights*) and the provisions of the Contracts (Rights of Third Parties) Act 1999.

### **13.10 Responsibility**

The Security Agent is not liable or responsible to any other Interim Finance Party for:

- (a) any failure in registering, perfecting or otherwise protecting the security interest created by any Security Document; or
- (b) any other action taken or not taken by it in connection with any Security Document.

### **13.11 Title**

- (a) The Security Agent may accept, without enquiry, the title (if any) any person granting the relevant security may have to any asset over which security is intended to be created by any Security Document.
- (b) The Security Agent has no obligation to insure any such asset or the interests of the Interim Finance Parties in any such asset.

### **13.12 Possession of documents**

The Security Agent is not obliged to hold in its own possession any Security Document, title deed or other document in connection with any asset over which security is intended to be created by a Security Document. Without prejudice to the above, the Security Agent may allow any bank providing safe custody services or any professional adviser to the Security Agent to retain any of those documents in its possession.

### **13.13 Investments**

Except as otherwise provided in any Security Document, all moneys received by the Security Agent under the Interim Documents may be:

- (a) invested in the name of, or under the control of, the Security Agent in any investment selected by the Security Agent with the consent of the Interim Lenders; or
- (b) placed on deposit in the name of, or under the control of, the Security Agent at such bank or institution (including any other Interim Finance Party) and upon such terms as the Security Agent may think fit.

### **13.14 Conflict with Security Documents**

If there is any conflict between the provisions of this Agreement and any Security Document with regard to instructions to or other matters affecting the Security Agent, this Agreement will prevail.

### 13.15 Enforcement of Security Documents

- (a) The security interests granted pursuant to the Security Documents may only be enforced if an Acceleration Notice has been given to the Borrower and remains outstanding.
- (b) Each Interim Finance Party (other than the Security Agent) agrees not to enforce independently or exercise any rights or powers arising under a Security Document except through the Security Agent and in accordance with the Interim Documents.
- (c) The Transaction Security shall be enforced by the Security Agent for the account of the Interim Finance Parties. To the extent that any Transaction Security subject to this Agreement is not held by the Security Agent but by an Interim Finance Party, then such Transaction Security shall be enforced through the Security Agent on behalf of the Interim Finance Party in accordance with the terms of this Agreement and the relevant Security Document as if that Transaction Security had been held by the Security Agent.
- (d) On any enforcement of any Transaction Security and notwithstanding any other term of this Agreement, the proceeds of such enforcement (along with all other amounts from time to time received or recovered by the Security Agent in its capacity as such following an Acceleration Notice given to the Borrower and/or enforcement of any Transaction Security) shall first be applied in paying the costs and expenses of such enforcement and thereafter be applied in the manner set out in clause 10.4 (*Application of moneys*).

### 13.16 Release of security

- (a) If:
  - (i) a disposal to a person or persons outside the Group of any asset over which security has been created by any Security Document is:
    - (A) being effected at the request of the Interim Lenders in circumstances where any of the security created by the Security Documents has become enforceable; or
    - (B) being effected by enforcement of the Security Documents; or
  - (ii) the Interim Liabilities are irrevocably and unconditionally discharged and repaid in full; or
  - (iii) there is a disposal of any asset over which security has been created by any Security Document and which is permitted or not prohibited by the Interim Documents (but excluding any disposals specified in clause 13.16(a)(i)),

the Security Agent is irrevocably authorised to execute on behalf of each Interim Finance Party and each person which has granted the relevant security (and at the cost of the Borrower) the releases referred to in clause 13.16(b).

- (b) The releases referred to in clause 13.16(a) are:
  - (i) any release of the security created by the Security Documents over that asset; and
  - (ii) if that asset comprises all of the shares in the capital of any Group Company (or any direct or indirect holding company of any Group Company) held by any other Group Company, a release of that Group Company (or any direct

or indirect holding company of any Group Company) and its Subsidiaries from all present and future liabilities (both actual and contingent and including any liability to any other Group Company under the Interim Documents by way of contribution or indemnity) (but, except in the circumstances referred to in clauses 13.16(a)(i)(A) or 13.16(a)(i)(B), not as a borrower) under the Interim Documents and a release of all security interests granted by that Group Company (or any direct or indirect holding company of any Group Company) and its Subsidiaries under the Security Documents.

- (c) In the case of clauses 13.16(a)(i)(A) or 13.16(a)(i)(B), the net cash proceeds of the disposal must be applied in accordance with Clause 13.15 (*Enforcement of Security Documents*).
- (d) If the Security Agent is satisfied that a release is allowed under this Clause 13.16 (*Release of Security*), each Interim Finance Party must execute (at the cost of the Borrower) any document which is reasonably required to achieve that release. Each other Interim Finance Party irrevocably authorises the Security Agent to execute any such document. Any release will not affect the obligations of any other Group Company under the Interim Documents.
- (e) If the Security Agent is satisfied that a release is allowed under this clause 13.16, each Interim Finance Party and the Borrower must execute (at the cost of the Borrower) any document which is reasonably required to achieve that release. Each other Interim Finance Party and the Borrower irrevocably authorises the Security Agent to execute any such document. Any release will not affect any other right of the Interim Finance Parties under the Interim Documents.

### **13.17 Refrain from Illegality**

Notwithstanding anything to the contrary expressed or implied in the Interim Documents, the Security Agent may refrain from doing anything which in its opinion will or may be contrary to any relevant law, directive or regulation of any jurisdiction which would or might otherwise render it liable to any person, and the Security Agent may do anything which is, in its opinion, necessary to comply with any law, directive or regulation.

### **13.18 Business with the Borrower**

The Security Agent may accept deposits from, lend money to, and generally engage in any kind of banking or other business with the Borrower.

### **13.19 Winding up of Trust**

- (a) If the Security Agent, with the approval of the Agent, determines that (i) all of the obligations secured by the Security Documents have been fully and finally discharged and (ii) none of the Interim Finance Parties is under any commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation to the Borrower pursuant to the Interim Documents, the trusts set out in this Agreement shall be wound up and the Security Agent shall release, without recourse or warranty, all of the Transaction Security and the rights of the Security Agent under the Security Documents.
- (b) Any Retiring Security Agent (as defined in clause 13.23) shall release, without recourse or warranty, all of its rights under the Security Documents.

### **13.20 Powers Supplemental**

The rights, powers and discretions conferred upon the Security Agent by this Agreement shall be supplemental to the Trustee Acts 1925 and 2000 and in addition to any which may be vested in the Security Agent by general law or otherwise.

### 13.21 Agent division separate

In acting as agent for the Interim Finance Parties, the Security Agent shall be regarded as acting through its agent division which shall be treated as a separate entity from any of its other divisions or departments and any information received by any other division or department of the Security Agent may be treated as confidential and shall not be regarded as having been given to the Security Agent's agent division and the Security Agent shall not be deemed to have notice of it.

### 13.22 Misapplications

Section 1 of the Trustee Act 2000 shall not apply to the duties of the Security Agent in relation to the trusts constituted by this Agreement. Where there are any inconsistencies between the Trustee Acts 1925 and 2000 and the provisions of this Agreement, the provisions of this Agreement shall, to the extent allowed by law, prevail and, in the case of any inconsistency with the Trustee Act 2000, the provisions of this Agreement shall constitute a restriction or exclusion for the purposes of that Act.

### 13.23 Resignation of Security Agent

- (a) The Security Agent may resign and appoint, at its own cost, one of its Affiliates as successor by giving notice to the other Parties (or to the Agent on behalf of the Interim Lenders).
- (b) Alternatively the Security Agent may (subject to paragraph (h) below) resign by giving 30 days' notice to the other Parties (or to the Agent on behalf of the Interim Lenders) in which case the Interim Lenders (after consultation with the Borrower) may appoint, at their own cost or at the cost of the Security Agent, a successor Security Agent.
- (c) If the Interim Lenders have not appointed a successor Security Agent in accordance with paragraph (b) above within thirty (30) days after the notice of resignation was given, the Security Agent (after consultation with the Agent and the Borrower) may, at its own cost, appoint a successor Security Agent.
- (d) The retiring Security Agent (the "**Retiring Security Agent**") shall, at its own cost, make available to the successor Security Agent such documents and records and provide such assistance as the successor Security Agent may reasonably request for the purposes of performing its functions as Security Agent under the Interim Documents.
- (e) The Security Agent's resignation notice shall only take effect upon (a) the appointment of a successor and (b) the transfer of all of the Transaction Security to that successor.
- (f) Upon the appointment of a successor, the Retiring Security Agent shall be discharged from any further obligation in respect of the Interim Documents (other than its obligations under Clause 13.19 (*Winding up of Trust*) and under paragraph (d) above) but shall remain entitled to the benefit of Clause 12.3 (*Indemnity to the Security Agent*) of this Agreement and this Clause 13 (*Security Agent*). Its successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- (g) The Interim Lenders may, by notice to the Security Agent, require it to resign in accordance with paragraph (b) above. In this event, the Security Agent shall resign in accordance with paragraph (b) above but the cost referred to in paragraph (d) above shall be for the account of the Borrower.
- (h) Notwithstanding any other provision of this document the Interim Lenders shall use all reasonable endeavours to appoint a third party Security Agent (after consultation with

the Borrower) to replace the Security Agent on or prior to the first Drawdown Date and in such a case the Interim Lenders will by notice to the Security Agent require it to resign in accordance with paragraph (b) above, but as if the notice period therein was reduced to 1 days' notice. In such an event, the Security Agent shall resign in accordance with paragraph (b) above but the cost referred to in paragraph (d) above shall be for the account of the Borrower. Such resignation shall be subject to consultation with the Borrower and take effect upon the appointment of the successor Security Agent and the transfer of all of the Transaction Security to that successor.

#### **13.24 Delegation**

- (a) The Security Agent, any receiver and any delegate may, at any time, delegate by power of attorney or otherwise to any person for any period, all or any of the rights, powers and discretions vested in it by any of the Interim Documents.
- (b) The delegation may be made upon any terms and conditions (including the power to sub-delegate) and subject to any restrictions as the Security Agent, any receiver and any delegate (as the case may be) may in its discretion think fit having regard to the interests of the Interim Finance Parties and it shall not be bound to supervise, or be in any way responsible for any damages, costs and losses incurred by reason of any act, misconduct or default on the part of any delegate or sub-delegate.

#### **13.25 Additional agents**

- (a) The Security Agent may at any time appoint (and subsequently remove) any person to act as a separate agent or as a co-agent jointly with it (i) if it considers that appointment to be in the interests of the Interim Finance Parties or (ii) for the purposes of conforming to any legal requirements, restrictions or conditions which the Security Agent deems to be relevant or (iii) for obtaining or enforcing any judgment in any jurisdiction, and the Security Agent shall give prior notice to the Borrower and the Agent of that appointment.
- (b) Any person so appointed shall have the rights, powers and discretions (not exceeding those conferred on the Security Agent by this Agreement) and the duties and obligations that are conferred or imposed by the instrument of appointment.
- (c) The remuneration that the Security Agent may pay to any person, and any costs and expenses (together with any irrecoverable VAT) incurred by that person in performing its functions pursuant to that appointment shall, for the purposes of this Agreement, be treated as costs and expenses incurred by the Security Agent.

### **14 Set Off**

A Interim Finance Party may (to the extent beneficially owned by such Interim Finance Party) at any time following the service of an Acceleration Notice set off any matured obligation due and payable to it by the Borrower to it under an Interim Document against any matured obligation owed by it to the Borrower, regardless of currency, place of payment or booking branch of either obligation. If the obligations are in different currencies, the Interim Finance Parties may convert either obligation at a market rate of exchange in its ordinary course of business in order to effect such set-off.

### **15 Notices**

#### **15.1 Mode of service**

- (a) Any notice, demand, consent or other communication (a **Notice**) made under or in connection with any Interim Document must be in writing and made by letter or by any other electronic communication approved by the Agent.

- (b) An electronic communication will be treated as being in writing for the purposes of this Agreement.
- (c) The address and email address of each Party (and person for whose attention the Notice is to be sent) for the purposes of Notices given under or in connection with the Interim Documents are:
  - (i) in the case of the Borrower;
  - (ii) in the case of the Agent and the Security Agent; and
  - (ii) in the case of any person which is a Party on the date of this Agreement,
 

the address and email address set out beneath its name in the signature pages to this Agreement or any other address and/or email address notified in writing by that Party for this purpose to the Agent (or notified by the Agent to the other Parties, if a change is made by the Agent) by not less than five Business Days' notice.
- (d) Any Notice given to the Interim Finance Parties will be effective only:
  - (i) if it is marked for the attention of the department or officer specified by the relevant Interim Finance Party for receipt of Notices; and
  - (ii) subject to clause 15.2(b), when actually received by the relevant Interim Finance Party.
- (e) All notices to or from the Borrower shall be sent through the Agent.
- (f) Any Interim Lender may by notice to the Agent appoint a person to receive on its behalf all notices, communications, information and documents to be made or despatched to that Interim Lender under the Interim Documents. Such notice shall contain the address and (where communication by electronic mail or other electronic means is permitted under Clause 15.3 (*Electronic communication*)) electronic mail address and/or any other information required to enable the transmission of information by that means (and, in each case, the department or officer, if any, for whose attention communication is to be made) and be treated as a notification of a substitute address, electronic mail address (or such other information), department and officer by that Interim Lender for the purposes of this Clause 15 (*Notices*) and the Agent shall be entitled to treat such person as the person entitled to receive all such notices, communications, information and documents as though that person were that Interim Lender.

## 15.2 Deemed service

- (a) Subject to clause 15.2(b), a communication or document made or delivered by one person to another under or in connection to the Interim Documents will be deemed to be given as follows:
  - (i) if by letter delivered personally, when delivered;
  - (ii) if by letter sent by post, five days after posting (first class or equivalent postage prepaid in a correctly addressed envelope);
  - (iii) if by e-mail or any other electronic communication, when received in legible form; and

- (iv) if by posting to an electronic website, at the time of notification to the relevant recipient of such posting or (if later) the time when the recipient was given access to such website.
- (b) A Notice given in accordance with clause 15.2(a) but received on a day that is not a Business Day or after business hours in the place of receipt will only be deemed to be given on the next Business Day in that place.

### **15.3 Electronic communication**

- (a) Any communication to be made between any two parties under or in connection with the Interim Documents may be made by electronic mail or other electronic means (including, without limitation, by way of posting to a secured website), if those two parties:
  - (i) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;
  - (ii) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and
  - (iii) notify each other of any change to their address or any other such information supplied by them.
- (b) Any electronic communication made between those two parties will be effective only when actually received (or made available) in readable form and in the case of any electronic communication made by a party to an Interim Finance Party only if it is addressed in such a manner as such Interim Finance Party shall specify for this purpose.
- (c) Any reference in an Interim Document to a communication being sent or received shall be construed to include that communication being made available in accordance with this clause 15.3.

### **15.4 Language**

- (a) Any notice given under or in connection with any Interim Document must be in English.
- (b) All other documents provided under or in connection with any Interim Document must be:
  - (i) in English; or
  - (ii) if not in English, and if so required by an Interim Finance Party, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

## **16 Confidentiality**

- (a) Each Interim Finance Party will keep the Interim Documents and any information supplied to it by or on behalf of the Borrower or any other Group Company under the Interim Documents confidential, provided that it may disclose any such document or information:

- (i) to any person to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Interim Documents, provided that such person has entered into a confidentiality undertaking substantially in Loan Market Association standard form, capable of being relied on by the Borrower and such confidentiality undertaking may not be materially amended without the consent of the Borrower (a copy of each confidentiality undertaking and any amendments thereto shall be provided to the Borrower as soon as reasonably practicable following its request for the same);
  - (ii) to any person with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any Sub-Participation in relation to one or more Interim Documents, provided that such person has entered into a confidentiality undertaking substantially in Loan Market Association standard form, capable of being relied on by the Borrower and such confidentiality undertaking may not be materially amended without the consent of the Borrower (a copy of each confidentiality undertaking and any amendments thereto shall be provided to the Borrower as soon as reasonably practicable following its request for the same);
  - (iii) which is publicly available (other than by virtue of a breach of this clause 16);
  - (iv) if and to the extent required by law or regulation or at the request of an administrative authority or body (including any tax or bank supervisory authority), in which case, to the extent permitted by law, each Interim Finance Party agrees to use commercially reasonable efforts to inform the Borrower promptly thereof to the extent lawfully permitted to do so, or any applicable stock exchange (including pursuant to the provisions of the City Code or any guidance or practice statements issued by the Panel in connection therewith);
  - (v) to its auditors and professional advisers on a confidential basis;
  - (vi) to the extent reasonably necessary in connection with any legal, judicial, administrative or arbitration proceedings to which it is a party, in which case, to the extent permitted by law, each Interim Finance Party agrees to use commercially reasonable efforts to inform the Borrower promptly thereof to the extent lawfully permitted to do so;
  - (vii) for the purpose of obtaining any consent, making any filing, registration or notarisation or paying any stamp or registration tax or fee in connection with any of the Interim Documents;
  - (viii) with the agreement of the Borrower;
  - (ix) subject to the Borrower's prior approval of the information to be disclosed, information supplied on a customary basis to rating agencies in connection with obtaining a rating required (if any) pursuant to the Interim Documents; or
  - (x) to any Affiliate and Related Funds and any of their officers, directors, employees, professional advisers, auditors, attorneys, agents, partners and representatives) in connection with the transactions contemplated hereby, on an as needed and confidential basis.
- (b) This clause 16 replaces any previous confidentiality undertaking given by an Interim Finance Party in connection with this Agreement prior to it becoming a Party.



## 17 Representations and Warranties, Undertakings

- (a) Except as otherwise provided in Part 1 (*Major Representations*) of Schedule 4 (*Major Representations, Major Undertakings and Major Events of Default*), the Borrower makes the representations and warranties set out in Part 1 (*Major Representations*) of Schedule 4 (*Major Representations, Major Undertakings and Major Events of Default*) to the Interim Finance Parties on the date of this Agreement, on the date of the Drawdown Request and on the first day of each Interest Period by reference to the facts and circumstances existing at the relevant time and acknowledges that each Interim Finance Party is relying on such representations and warranties; provided that the representation and warranty set out in paragraph 5 (*Holding Companies*) of Part 1 (*Major Representations*) of Schedule 4 (*Major Representations, Major Undertakings and Major Events of Default*) shall only be made by the Borrower on the date of this Agreement and on the date of the Drawdown Request relating to the first utilisation under the Interim Facility.
- (b) The Borrower agrees to be bound by the Major Undertakings that it is subject to under the terms of Part 2 (*Major Undertakings*) of Schedule 4 (*Major Representations, Major Undertakings and Major Events of Default*).
- (c) The Borrower shall notify the Agent of any Major Event of Default (and the steps, if any, being taken to remedy it) upon becoming aware of its occurrence.

## 18 Changes to Parties

### 18.1 Assignment and transfers by the Borrower

The Borrower may not assign, novate or transfer all or any part of its rights and obligations under any Interim Documents.

### 18.2 Transfers and assignments by the Interim Lenders

- (a) Subject to the provisions of this clause 18.2 and clause 18.3 (*Increased Costs*), an Interim Lender (the **Existing Interim Lender**) may:
  - (i) assign any of its rights or transfer by novation any of its rights and obligations under any Interim Document; or
  - (ii) enter into any Sub-Participation or any sub-contract,to or with:
  - (A) a bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets; or
  - (B) a Related Fund;
  - (C) another Interim Lender; or
  - (D) an Affiliate of the Existing Interim Lender,(the **New Interim Lender**).
- (b) On and prior to the expiry of the Certain Funds Period, no Existing Interim Lender may assign any of its rights or transfer by novation any of its obligations, nor enter

into any Sub-Participation or sub-contract in respect of the same, without the prior written consent of the Borrower (in its sole and absolute discretion).

- (c) After the expiry of the Certain Funds Period, an Existing Interim Lender may assign or transfer by novation to, or enter into any Sub-Participation or any sub-contract with, a New Interim Lender only with the prior written consent of the Borrower (which shall be deemed to be given if not expressly refused within 15 Business Days following the date of request), provided that prior written consent shall not be required if the assignment or transfer or Sub-Participation or sub-contract is:
  - (i) made to another Interim Lender;
  - (ii) made to an Affiliate of the Existing Interim Lender or Related Fund (other than, in each case, to an Affiliate or Related Fund whose principal investment strategy is investing in distressed debt or the pursuance of loan to own strategies); or
  - (iii) effected at a time when a Major Event of Default under paragraph 1 (*Payment default*) (but excluding any non-payment in respect of any indemnity or costs or expenses reimbursement obligations), 5 (*Insolvency*) or paragraph 6 (*Insolvency proceedings*) of Part 3 (*Major Events of Default*) of Schedule 4 (*Major Representations, Major Undertakings and Major Events of Default*) is continuing.
- (d) Notwithstanding anything to the contrary in this Agreement, no assignment or transfer or Sub-Participation or sub-contract shall be permitted at any time to any person that:
  - (i) is a Defaulting Lender (or would, upon becoming an Interim Lender, be a Defaulting Lender); or
  - (ii) is an entity which is engaged in trading or acquiring, or whose principal investment strategy is investing in, distressed debt or the pursuance of "loan to own" investment strategies, unless a Major Event of Default under paragraph 1 (*Payment default*) (but excluding any non-payment in respect of any indemnity or costs or expenses reimbursement obligations), 5 (*Insolvency*) or paragraph 6 (*Insolvency proceedings*) of Part 3 (*Major Events of Default*) of Schedule 4 (*Major Representations, Major Undertakings and Major Events of Default*) is continuing.
- (e) Notwithstanding any assignment, transfer, Sub-Participation or sub-contract by an Existing Interim Lender which is an Original Interim Lender, if the assignee or transferee (or any subsequent assignee or transferee) defaults in its obligation to fund its pro rata portion of an Interim Loan during the Certain Funds Period by the required time on the applicable Drawdown Date (or has confirmed that it will not be able to fund), that Existing Interim Lender shall, by 9:30am on that Drawdown Date, fund an amount of proceeds to the Borrower equal to the amount the defaulting assignee/transferee was required to fund in respect of the Interim Loan on that Drawdown Date and (i) the Interim Commitment of the Existing Interim Lender under the Available Interim Facility shall be increased by an amount equal to the additional amount that it funded on the relevant Drawdown Date in accordance with this paragraph and (ii) the Interim Commitment under the Available Interim Facility of any such Interim Lender defaulting in its obligation to fund on that Drawdown Date shall be reduced by an equivalent amount for all purposes of this Agreement.
- (f) Except as set out in this clause 18.2, no consent will be required from any Party other than the transferor and the transferee to effect any assignment or transfer or Sub-Participation or sub-contract of rights and/or obligations under any Interim Document.

- (g) If any assignment, transfer, Sub-Participation or sub-contract is carried out in breach of this clause 18.2 and clause 18.3 (*Increased Costs*), such assignment, transfer, Sub-Participation or sub-contract shall be void and deemed to have not occurred.
- (h) If an Existing Interim Lender has consented to a waiver or amendment under any Interim Document then the relevant New Interim Lender shall be deemed to have consented to that waiver or amendment.
- (i) If:
  - (i) an Interim Lender assigns, transfers, sub-Participates or sub-contracts any of its rights or obligations under the Interim Documents to a New Interim Lender or changes its Facility Office; and
  - (ii) as a result of circumstances existing at the date the assignment, transfer, Sub-Participation, sub-contract or change occurs, the Borrower would be obliged to make a payment to the New Interim Lender or Interim Lender acting through its new Facility Office under clause 8 (*Taxes*) or clause 9.1 (*Increased Costs*),

then the New Interim Lender or Interim Lender acting through its new Facility Office is only entitled to receive payment under those clauses to the same extent as the Existing Interim Lender or Interim Lender acting through its previous Facility Office would have been if the assignment, transfer, Sub-Participation, sub-contract or change had not occurred.

- (j) The Agent, acting for this purpose as a non-fiduciary agent of the Borrower, shall maintain, or cause to be maintained, a register (the **Register**) for the recordation of the names and addresses of the Interim Lenders and the principal amount of and stated interest on the Interim Loans owing to each Interim Lender pursuant to the terms hereof from time to time. The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Agent and the Interim Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as an Interim Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Interim Lender, at any reasonable time and from time to time upon reasonable prior notice. This clause shall be construed so that the Interim Loans are at all times maintained in “registered form” within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code and any related regulations (and any successor provisions).
- (k) Each Interim Lender that enters into a Sub-Participation or sub-contract shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each counterparty and the principal amounts of (and stated interest on) each counterparty’s interest in the Interim Loans or other obligations under the Interim Documents (the **Participant Register**), provided that no Interim Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any counterparty or any information relating to a counterparty’s interest in any commitments, loans, or its other obligations under any Interim Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Interim Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such Sub-Participation or sub-contract for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Agent (in its capacity as Agent) shall have no responsibility for maintaining a Participant Register.

### **18.3 Increased Costs**

- (a) The Obligors shall not bear any notarial or perfection fees, Taxes and costs, gross-up or increased costs that result from an assignment, transfer, Sub-Participation or other similar back-to-back arrangements.
- (b) An Existing Interim Lender may not transfer or assign its rights or obligations under the Interim Documents or change its Facility Office if the transfer or assignment would give rise to a requirement to prepay on illegality in relation to the New Interim Lender or Existing Interim Lender acting through the new Facility Office.

### **18.4 Limitation of responsibility of Existing Interim Lenders**

- (a) Unless expressly agreed to the contrary, an Existing Interim Lender makes no representation or warranty and assumes no responsibility to a New Interim Lender for:
  - (i) the legality, validity, effectiveness, adequacy or enforceability of the Transaction Documents or any other documents;
  - (ii) the financial condition of the Borrower;
  - (iii) the performance and observance by the Borrower or any other Group Company of its obligations under the Interim Documents or any other documents; or
  - (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Transaction Document or any other document,  
and any representations or warranties implied by law are excluded.
- (b) Each New Interim Lender confirms to the Existing Interim Lender that it:
  - (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of the Borrower and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Interim Lender in connection with any Transaction Document or the Transaction Security; and
  - (ii) will continue to make its own independent appraisal of the creditworthiness of the Borrower and its related entities whilst any amount is or may be outstanding under the Interim Documents or any Interim Commitment is in force.
- (c) Nothing in any Interim Document obliges an Existing Interim Lender to:
  - (i) accept a re-transfer from a New Interim Lender of any of the rights and obligations assigned or transferred under this clause 18; or
  - (ii) support any losses directly or indirectly incurred by the New Interim Lender by reason of the non-performance by the Borrower of its obligations under the Interim Documents or otherwise.

### **18.5 Assignment and transfers by the Security Agent**

The Security Agent may not assign, novate or transfer all or any part of its rights and obligations under any Interim Documents.

## 19 Amendments and waivers

Any term of this Agreement may be amended or waived only with the written consent of all Parties and any such amendment or waiver will be binding on all Parties.

## 20 Incorporation of the LMA Agreement

The provisions of:

- (a) clause 33 (*Role of the Agent, the Arranger, the Issuing Bank and Others*) (other than clauses 33.4 (*Role of the Arranger*) and 33.17 (*Agent's management time*) and, accordingly, clauses 33.5 (*No fiduciary duty*) to 33.21 (*Third Party Reference Banks*) shall be re-numbered accordingly);
- (b) clause 34 (*Conduct of business by the Finance Parties*);
- (c) clause 35 (*Sharing Among the Finance Parties*) (other than clause 35.6 (*Ancillary Lenders*));
- (d) clause 36 (*Payment Mechanics*) (other than clauses 36.3 (*Partial payments*), 36.8 (*Business Days*) and 36.9 (*Currency of account*)); and
- (e) clause 39 (*Calculations and Certificates*) (other than clause 39.3 (*Day Count Convention*)); and

of the LMA Agreement, and in each case the relevant definitions contained in the LMA Agreement utilised in such clauses, shall be incorporated, *mutatis mutandis*, into this Agreement **provided that**:

- (i) any reference to the Parent or to the Company shall be to the Borrower, any reference to a Finance Document shall be to an Interim Document, any reference to a Finance Party shall be to an Interim Finance Party, any reference to a Lender shall be to an Interim Lender, any reference to the Majority Lenders or to the Super Majority Lenders shall be to the Interim Lenders, any reference to a Transaction Security Document shall be to the Security Documents, any reference to a Utilisation Request shall be to a Drawdown Request and any reference to Total Commitments shall be to Total Interim Commitments;
- (ii) any references to particular clauses shall be to the direct equivalent thereof in this Agreement (or if there is no direct equivalent thereof in this Agreement, the relevant references shall be disregarded together with any related wording that relates solely to any such references);
- (iii) any capitalised terms used in such clauses shall, if defined in this Agreement, have the meanings given to such terms in this Agreement and not in the LMA Agreement and such defined terms in the LMA Agreement shall not be deemed incorporated into this Agreement (but, for the avoidance of doubt, any capitalised terms not so defined in this Agreement shall have the meanings given to such terms in the LMA Agreement and shall be deemed incorporated into this Agreement as amended (if applicable) by this Clause 20);
- (iv) save to the extent otherwise interpreted in this Clause 20, any reference to the Arranger, the Issuing Bank, an Increase Confirmation, an Ancillary Lender, an Ancillary Document, a Selection Notice, a Transaction Document, a Notifiable Debt Purchase Transaction, and the Information Memorandum

shall be disregarded, together, in each case, with any related wording, square brackets and footnotes that relate solely to any such references;

- (v) for the purposes of the incorporation of:
- (A) clause 33 (*Role of the Agent, the Arranger, the Issuing Bank and Others*) (other than clause 33.17 (*Agent's management time*)) of the LMA Agreement (and all related definitions):
- (1) paragraphs (a)(i)(B), (a)(i)(C) and (a)(i)(D) of clause 33.2 (*Instructions*) shall be deleted;
  - (2) paragraph (a)(i)(A) of clause 33.2 (*Instructions*) shall be included without the language "if the relevant Finance Document stipulates the matter is an all Lender decision";
  - (3) paragraph (c) of clause 33.3 (*Duties of the Agent*) shall be deleted and all references to this paragraph elsewhere in clause 33.3 (*Duties of the Agent*) shall also be deleted;
  - (4) the wording in brackets in paragraph (a)(i) of clause 33.7 (*Rights and discretions*) shall be deleted;
  - (5) the reference to clause 29.1 (*Non-payment*) in paragraph (b)(i) of clause 33.7 (*Rights and discretions*) shall be a reference to paragraph 1 in Part 3 (*Major Events of Default*) of Schedule 4 (*Major Representations, Major Undertakings and Major Events of Default*);
  - (6) paragraphs (b)(iii), (b)(iv) and (h) of clause 33.7 (*Rights and discretions*) shall be deleted;
  - (7) paragraph (c) of clause 33.8 (*Responsibility for documentation*) of the LMA Agreement shall be included and the square brackets relating directly to that choice of drafting option shall be deleted;
  - (8) in paragraph (a) of clause 33.10 (*Exclusion of liability*) of the LMA Agreement, the drafting option "(including, without limitation, for negligence or any other category of liability whatsoever)" shall be included and in paragraph (b) of such clause 33.10 (*Exclusion of liability*), the reference to the Third Parties Act shall be included with the related cross-reference being replaced with a cross-reference to Clause 20.6 (*Third Party Rights*) of this Agreement and the square brackets and footnotes relating directly to each such choice of drafting option shall be deleted;
  - (9) in paragraph (a) of clause 33.11 (*Lenders' indemnity to the Agent*) of the LMA Agreement, the drafting option "(including, without limitation, for negligence or any other category of liability whatsoever)" and the drafting option "(or, in the case of any cost, loss or liability pursuant to clause 36.11 (*Disruption to Payment Systems etc.*), notwithstanding the Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent)" shall be included (with, in the latter case, definitions and cross-references interpreted in

accordance with this Clause 20 and the square brackets and footnotes relating directly to each such choice of drafting option shall be deleted);

- (10) clause 33.11 (*Lenders' indemnity to the Agent*) of the LMA Agreement (as amended by sub-paragraph (iii) above) shall be deemed to be replicated in full and amended such that references to "the Agent" will be read as references to the Security Agent and all wording in square brackets shall be included;
  - (11) in clause 33.12 (*Resignation of the Agent*) of the LMA Agreement, all wording in square brackets in the LMA Agreement shall be included with the deletion of such square brackets and all references therein to clause 19.8 (*FATCA information*) shall be references to Clause 8.9 (*FATCA information*), provided that notwithstanding any other provision of this document the Interim Lenders shall use all reasonable endeavours to appoint a third party Agent (after consultation with the Borrower) to replace the Agent on or prior to the first Drawdown Date and in such a case the Interim Lenders will by notice to the Agent require it to resign in accordance with paragraph (b) of clause 33.12 of the LMA Agreement but as if the notice period therein was reduced to 1 days' notice. In such an event, the Agent shall resign. Such resignation shall take effect upon the appointment of the successor Agent and subject to consultation with the Borrower;
  - (12) in clause 33.13 (*Replacement of the Agent*) of the LMA Agreement, all wording in square brackets in the LMA Agreement shall be included with the deletion of such square brackets and the reference to clause 21.3 (*Indemnity to the Agent*) shall be deemed to be a reference to Clause 12.4 (*Indemnity to the Agent*); and
  - (13) in clause 33.15 (*Relationship with the Lenders*) of the LMA Agreement, (A) the drafting options relating to pro rata interest settlement shall be deleted together with the related square brackets, (B) the square brackets around "[The]" in paragraph (a) shall be deleted, (C) paragraph (a)(i) of such clause shall be included with the deletion of the related square brackets and (D) paragraph (b) shall be deleted.
- (B) clause 36 (*Payment Mechanics*) of the LMA Agreement (and all related definitions):
- (1) all wording in square brackets in the LMA Agreement shall be included with the deletion of such square brackets and related footnotes (including for the avoidance of doubt clause 36.11 (*Disruption to payment systems etc.*) of the LMA Agreement); and
  - (2) for the purposes of the definition of Acceptable Bank as included in clause 36.5 (*Impaired Agent*) of the LMA Agreement, the relevant credit ratings shall be A- or higher with respect to Standard & Poor's Rating Services or Fitch

Ratings Ltd and A3 or higher with respect to Moody's Investors Service Limited;

- (3) for the purposes of clause 36.11 (*Disruption to payment systems etc.*) (A) all references to "Facilities" shall be deemed to be references to the Interim Facility and (B) all references to clause 42 (*Amendments and Waivers*) shall be deemed to be references to 19 (*Amendments and Waivers*);
  - (ii) all footnotes in the LMA Agreement shall be disregarded; and
  - (iii) in the event of a conflict, the provisions of this Agreement shall apply.

## **21 Miscellaneous**

### **21.1 Partial invalidity**

If any provision of the Interim Documents is or becomes illegal, invalid or unenforceable in any jurisdiction that shall not affect the validity or enforceability in that jurisdiction of any other term of the Interim Documents or the validity or enforceability in other jurisdictions of that or any other term of the Interim Documents.

### **21.2 Counterparts**

This Agreement may be executed in any number of counterparts and all of those counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of a signed counterpart of this Agreement by email attachment or telecopy shall be an effective mode of delivery.

### **21.3 Remedies and waivers**

No failure to exercise, nor any delay in exercising, on the part of the Interim Lender or the Security Agent, any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise thereof or the exercise of any other right or remedy. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law.

### **21.4 Complete agreement**

The Interim Documents contain the complete agreement between the Parties on the matters to which they relate.

### **21.5 Third Party Rights**

Unless expressly provided to the contrary in an Interim Document a person who is not a party to an Interim Document may not enforce any of its terms under the *Contracts (Rights of Third Parties) Act 1999*.

Notwithstanding any term of any Interim Document, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.

### **21.6 Segregated Liabilities**

For the avoidance of doubt, each Party hereto acknowledges that the ICAV is established as an umbrella fund with segregated liability between sub-funds pursuant to the Irish Collective Asset-management Vehicles Act 2015 (as amended), including any regulations made



thereunder by ministerial order and any conditions that may from time to time be imposed thereunder by the Central Bank of Ireland whether by notice or otherwise affecting the ICAV (the "**ICAV Act**") and, notwithstanding any provision of any other agreement to the contrary:

- (a) no Party shall seek, whether in any proceedings or by any other means whatsoever or wheresoever to have recourse to any assets of any Other Sub-Fund in the discharge of all or any part of a liability which was not incurred on behalf of that Other Sub-Fund, where "Other Sub-Fund" means any sub-fund of the ICAV other than the Sub-Fund;
- (b) if a Party succeeds in seizing or attaching by any means, or otherwise levying execution against, any assets of any Other Sub-Fund in respect of a liability which was not incurred on behalf of that Other Sub-Fund, such Party shall hold those assets or the direct or indirect proceeds of the sale of such assets on trust for the Other Sub-Fund and shall keep those assets or proceeds separately and identifiable as such property; and
- (c) if a Party succeeds by any means whatsoever or wheresoever in having recourse to any assets of any Other Sub-Fund in the discharge of all or any part of a liability which was not incurred on behalf of that Other Sub-Fund, such Party shall be liable to the Other Sub-Fund to pay a sum equal to the value of the benefit thereby obtained by it;
- (d) nothing herein shall create any liability on the part of any Other Sub-Fund and any reference to or representation made by the ICAV in this Agreement shall be construed to be made to or by the ICAV acting solely in its capacity as an umbrella fund with segregated liability between its sub-funds acting on behalf of the Sub-Fund,

provided that nothing in paragraphs 21.6(a)–(d) above shall prevent the application of the assets of any Other Sub-Fund in discharge of some or all of the liabilities of the ICAV acting solely in respect of the Sub-Fund on the grounds of fraud or misrepresentation as set out in Section 37(2) of the ICAV Act.

## **22 Governing Law**

This Agreement (including any non-contractual obligations arising out of or in relation to this Agreement) and any Dispute shall be governed by English law.

## **23 Jurisdiction**

### **23.1 Submission to jurisdiction**

For the benefit of the Interim Finance Parties, the Borrower agrees that the courts of England have exclusive jurisdiction to hear, decide and settle any dispute or proceedings arising out of or relating to this Agreement (including as to existence, validity or termination or any non-contractual obligation arising out of or in connection with any Interim Document) (a **Dispute**). The Borrower irrevocably submits to the jurisdiction of the English courts.

### **23.2 Forum**

The Borrower agrees that the courts of England are the most appropriate and convenient courts to settle any Dispute and waives any objection to the courts of England on grounds of inconvenient forum or otherwise.

This Agreement has been entered into on the date stated at the beginning of this Agreement.

## Schedule 1 Original Interim Lenders

Name	Commitment (USD)
ABF Residual Interests Sub-Aggregator VIII, L.P.	102,000,000
ACMP Holdings, LLC	400,000,000
WHCO INVESTMENTS A HOLDINGS ICAV, an Irish Collective Asset-Management Vehicle and an umbrella fund with segregated liability between sub-funds incorporated in accordance with Irish laws, whose registered office is located at 32 Molesworth Street, Dublin 2, Ireland and registered with the Central Bank of Ireland with number C515732 (the " <b>ICAV</b> "), acting solely in respect of its sub-fund <b>WHCO INVESTMENTS 1-A HOLDINGS SUB-FUND</b> (the " <b>Sub-Fund</b> ")	935,000,000
Apollo Accord+ Aggregator B, L.P., a Cayman Islands exempted limited partnership acting by its general partner, Apollo Accord+ Advisors, L.P., itself a Cayman Islands exempted limited partnership acting by its general partner, Apollo Accord+ Advisors GP, LLC, a Cayman Islands limited liability company	77,000,000

## Schedule 2 Form of Drawdown Request

To: [\*\*\*\*] as Agent

From: Concord Chorus Limited

Date: [\*\*\*\*]

### **Interim Facility Agreement dated \_\_\_\_\_ 2024 (the Interim Facility Agreement)**

- 1** We refer to the Interim Facility Agreement. This is a Drawdown Request. Words and expressions defined in the Interim Facility Agreement shall have the same meanings when used in this Drawdown Request.
- 2** We wish to borrow an Interim Loan on the following terms:
  - (a) Drawdown Date: [\*\*\*\*]
  - (b) Amount: USD [\*\*\*\*]
  - (c) Interest Period: one month
- 3** Our payment instructions are:
  - (a) [[\*\*\*\*] is to be retained by the Agent from the Interim Loan to pay the Structuring Fee; and]
  - (b) [\*\*\*\*] is to be remitted to [\*\*\*\*].
- 4** We confirm that each condition precedent which must be satisfied in order to draw down the Interim Loan is (or will be on the proposed Drawdown Date) so satisfied or waived.
- 5** Save as set out in clause 5.1(a), this Drawdown Request is irrevocable.

By:

Concord Chorus Limited

# Schedule 3 Conditions Precedent

## Part 1 Conditions Precedent to Signing

### 1 The Borrower and the Guarantors

- (a) A copy of the constitutional documents of the Obligors.
- (b) Resolutions of:
  - (i) the board of directors and shareholders of the Borrower; and
  - (ii) the board of directors of the sole member of each Guarantor,approving the terms of, and the transactions contemplated by the Interim Documents to which it is a party, authorising a specified person (or persons) to execute the Interim Documents to which it is a party on its behalf and authorising such persons to sign and/or despatch all documents and notices (including any Drawdown Request) to be signed under or in connection with the Interim Documents to which it is a party.
- (c) A specimen of the signature of each person authorised as referred to in paragraph 1(b).
- (d) A certificate of each of the Obligors (signed by an authorised signatory) addressed to the Agent:
  - (i) confirming that borrowing, guaranteeing or securing (as appropriate) the total amount of the Interim Facility would not cause any borrowing, guaranteeing, securing or similar limit binding on it to be exceeded; and
  - (ii) certifying that each copy document relating to it in paragraphs 1(a) and 1(b) is correct, complete and in full force and effect as at a date no earlier than the original date of this Agreement.

### 2 Security Documents

A copy of:

- (a) an English law governed security agreement granted by the Shareholder over all the shares in the Borrower and all intercompany loans owing to it from the Borrower;
- (b) an English law governed debenture granted by the Borrower over all its assets; and
- (c) an English law governed guarantee granted by each Guarantor.

### 3 Acquisition Documents

A copy of the near final draft of the first Rule 2.7 Announcement.

### 4 Other Documents and Evidence

- (a) The Reports on a non-reliance basis (subject to the Interim Lenders' entry into customary non-reliance letters), save that, for the avoidance of doubt, any Report may be revised, updated and/or amended to incorporate such other changes or additions approved by the Interim Lenders (such approval not to be unreasonably withheld, conditioned or delayed).

- (b) Evidence of the satisfaction of required “know your customer” checks or other similar checks under all applicable laws and regulations pursuant to the Interim Documents in respect of the Borrower.

**5 Legal opinion**

- (a) A legal opinion from Milbank LLP, legal advisers to the Original Interim Lenders as to English law.
- (b) A legal opinion from DLA Piper LLP (US), special New York counsel to the Guarantors as to the capacity of the Guarantors to enter into the Security Documents to which they are a party.

**Part 2 Conditions Precedent to the Initial Closing Date**

**1 Acquisition**

- (a) A certificate from the Borrower (signed by an authorised signatory) addressed to the Interim Lenders confirming that in the case of a Scheme, the Scheme Effective Date has occurred and attaching a copy of the Court Order or, in the case of an Offer, the Offer has become or has been declared unconditional in all respects.
- (b) A copy of the final Rule 2.7 Announcement (to be provided for information purposes only and without any right of comment or requirement for approval).

**2 Funds Flow**

A sources and uses statement (to be provided for information purposes only and without any right of comment or requirement for approval) showing the proposed movement of funds on the Initial Closing Date.

**3 Fees**

Evidence that the Structuring Fee has been or will be paid on or before the first Drawdown Date (provided that this condition may be satisfied by reference to the payment of such fee in the sources and uses statement and/or the issuance of appropriate utilisation requests).

# Schedule 4 Major Representations, Major Undertakings and Major Events of Default

## Part 1 Major Representations

### 1 Status

It is a limited liability company duly incorporated and validly existing under the laws of its jurisdiction of incorporation.

### 2 Power and authority

- (a) It has (or, by the time of entry into each Interim Document to which it will be party, will have) the power to enter into and deliver, and to exercise its rights and perform its obligations under, each Interim Document to which it is or will be a party.
- (b) It has the power to own its material assets and carry on its business as it is being conducted, save to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.
- (c) It has (or, by the time of entry into each Interim Document to which it will be a party, will have) taken all necessary corporate action to authorise the entry into and delivery of and the performance by it of its obligations under each Interim Document to which it is or will be a party.

### 3 No conflict

Subject to the Reservations, the entry into, delivery of and the performance of its obligations under, each Interim Document to which it is a party does not and will not:

- (a) contravene any law or regulation applicable to it in any material respect; or
- (b) conflict with its constitutional documents in any material respect; or
- (c) breach any agreement or document binding upon it or any of its assets, or result in a default or right of any person to terminate any such agreement or document, in each case in a manner which would have a Material Adverse Effect.

### 4 Obligations binding

Subject to the Reservations and the Perfection Requirements (as applicable):

- (a) the obligations expressed to be assumed by it under each Interim Document to which it is a party constitute its legal, valid, binding and enforceable obligations; and
- (b) each Security Document to which it is a party creates the security interests which that Security Document purports to create and those security interests are valid and effective.

### 5 Holding Companies

Except as may arise under or in connection with the Transaction Documents or any Permitted Holding Company Activity, before the Initial Closing Date, the Borrower has not traded or incurred any liabilities or commitments (actual or contingent, present or future).

## **6 Authorisations**

Subject to the Reservations and the Perfection Requirements, all material Authorisations required:

- (a) to enable it lawfully to enter into, deliver, exercise its rights and comply with its obligations under the Interim Documents to which it is a party; and
- (b) to make the Interim Documents to which it is a party admissible in evidence in its Relevant Jurisdictions,

have been (or will at the required date be) obtained or effected and are (or will be) in full force and effect.

## **Part 2 Major Undertakings**

### **1 Financial Indebtedness**

The Borrower shall not incur or allow to remain outstanding any Financial Indebtedness (excluding, for the avoidance of doubt, any performance bonds, advance payment bonds or other bonds incurred in the ordinary course of business) unless it is Permitted Financial Indebtedness or a Permitted Transaction.

### **2 Disposals**

The Borrower shall not enter into a single transaction or a series of transactions to (voluntarily or otherwise) sell, lease, transfer or otherwise dispose of any asset unless it is a Permitted Disposal or a Permitted Transaction.

### **3 Negative pledge**

The Borrower shall not create or permit to subsist any security over any of its assets unless such security is a Permitted Security or a Permitted Transaction.

### **4 Holding Companies**

The Borrower shall not trade, carry on any business, own any assets or incur any liabilities except for any Permitted Holding Company Activity.

### **5 Dividends and share redemptions**

The Borrower shall not:

- (a) declare, make or pay, directly or indirectly, any dividend, charge or fee, or make any other distribution, or pay any interest or other amounts, whether in cash or otherwise, on or in respect of its share capital or any class of its share capital, or repay or distribute any share premium reserve; or
- (b) redeem or purchase any of its share capital; or
- (c) pay any management, advisory or other fee (or make any similar payment) to any of its Holding Companies or their Affiliates (excluding Group Companies),

in each case otherwise than by way of a Permitted Payment or a Permitted Transaction.

## 6 Acquisitions and mergers

Save as contemplated by the Acquisition Documents or in respect of any other acquisition of Target Shares by the Borrower whether on market or off market:

- (a) the Borrower will not acquire or subscribe for any shares, securities (including securities convertible into share capital) or ownership interests in any person, or acquire any business, or incorporate any company; and
- (b) the Borrower will not enter into any amalgamation, consolidation, merger, demerger or reconstruction.

## 7 Conduct of Offer and/or Scheme

- (a) Subject to any confidentiality, regulatory, legal or other restrictions relating to the supply of such information, the Borrower will keep the Agent informed as to any material developments in relation to the Acquisition and, in particular will from time to time if the Agent reasonably requests, give the Agent reasonable details as to the current level of acceptances for any Offer.
- (b) The Borrower shall not waive, amend or treat as satisfied any material term or condition relating to the Acquisition from that set out in the draft Rule 2.7 Announcement delivered to the Interim Lenders as a condition precedent to signing where it would be materially adverse to the interests of the Interim Lenders under the Interim Documents except:
  - (i) to the extent required by, or reasonably determined by the Borrower as being necessary or desirable to comply with the requirements or requests (as applicable) of, the City Code, the Panel or the Court or any applicable law, regulation or regulatory body;
  - (ii) any change in the purchase price (or amendment to any written agreement related thereto) in connection with the Acquisition, provided that (i) there may not be any change to the form of consideration from cash and (ii) any increase is funded from additional equity contributions and/or the Equity Loans;
  - (iii) extending the period in which holders of the shares in Target may accept the terms of the Scheme or, as the case may be, the Offer (including by reason of the adjournment of any meeting or court hearing);
  - (iv) to the extent that it relates to any terms or conditions to the Acquisition which the Borrower reasonably considers (having been advised in writing by its legal counsel and/or financial adviser) that it would not be entitled, in accordance with Rule 13.5(a) of the City Code, to invoke so as to cause the Acquisition not to proceed, to lapse or be withdrawn provided that the remaining conditions to the Acquisition (save for any conditions relating to the Court's approval of the Scheme or delivery of the order of the Court to the Guernsey Registry) have been, or will contemporaneously be, satisfied or waived; and/or
  - (v) to the extent required to allow the Acquisition to switch from being effected by way of an Offer to a Scheme or, subject always to the Minimum Acceptance Threshold, from a Scheme to an Offer.
- (c) Unless otherwise agreed by the Interim Lenders, if the Acquisition is effected by way of the Offer, the Borrower shall not reduce the Minimum Acceptance Threshold.



- (d) The Borrower shall comply in all material respects with the City Code, subject to waivers granted by or requirements of the Panel or the requirements of the Court, and all relevant laws and regulations relating to the Acquisition, save where non-compliance would not be materially prejudicial to the interests of the Interim Lenders under the Interim Documents.
- (e) The Borrower shall not take any steps as a result of which any member of the Group is obliged to make a mandatory offer under Rule 9 of the City Code.
- (f) The Borrower shall:
  - (i) if the Acquisition is being effected by way of the Scheme, procure (except to the extent prevented by law, regulation or a court) that the Target is de-listed from the Official List of the Financial Conduct Authority (the **FCA**) within 10 Business Days of the date on which the Scheme has become effective;
  - (ii) if the Acquisition is being effected by way of an Offer, procure (except to the extent prevented by law, regulation or a court) that the Target is delisted from the Official List of the FCA within 20 Business Days of the later of (i) the initial Drawdown Date and (ii) the date on which the Offer is declared or becomes unconditional in all respects provided that the Borrower has at that time acquired Target Shares carrying 75% or more of the voting rights attributable to the capital of the Target which are then exercisable at a general meeting of the Target; and
  - (iii) if the Acquisition is being effected by way of an Offer, and to the extent the Borrower owns or controls not less than 90% of the voting rights of the Target Shares the subject of the Offer, promptly (and in any event within the maximum time period prescribed for such actions) complete a Squeeze-out.
- (g) Except to the extent required by the City Code, the Panel or the Court, the Borrower shall not, without the prior consent of the Agent, modify the Rule 2.7 Announcement (except as permitted by paragraph 7(b) unless prohibited by paragraph 7(c)) from the latest draft/version delivered to the Interim Lenders as a condition precedent to signing or the Initial Closing Date (as applicable) in any manner which would be materially adverse to the interests of the Interim Lenders (taken as a whole) under the Interim Documents or otherwise contrary to the terms of this Agreement.
- (h) The Borrower shall not make any press release or public statement which refers to any Interim Documents or the financing of the Scheme or Offer which would be materially prejudicial to the interests of the Interim Lender (taken as a whole) under the Interim Documents (other than any Rule 2.7 Announcement, any Scheme Document or any Offer Document), without the consent of the Interim Lenders (not to be unreasonably withheld or delayed) unless required to do so by law or regulation or by the City Code, the Panel or the Court. For the avoidance of doubt, this paragraph shall not restrict the Borrower from making any disclosure that is required or customary in relation to the Interim Documents or the identity of the Interim Lenders in any Rule 2.7 Announcement, any Scheme Document or any Offer Document or making any filings as required by law or its auditors or in its audited financial statements or in accordance with or in order to satisfy or comply with the terms of the Interim Documents.
- (i) The Borrower shall provide the Agent with a copy of (i) each Scheme Document or (ii) as the case may be, each Offer Document dispatched to the shareholders of the Target by or on behalf of the Borrower promptly following such dispatch.
- (j) The Borrower will not extend the Long Stop Date without the Interim Lenders' prior written consent.

## 8 Guarantee

The Borrower shall not incur or allow to remain outstanding any guarantee in respect of any obligation of any person other than as may arise under a Permitted Guarantee, a Permitted Holding Company Activity or a Permitted Transaction.

## 9 Loans Out

Save for any Permitted Transaction and as envisaged by clause 3(a), the Borrower shall not be a creditor in respect of Financial Indebtedness other than:

- (a) a loan made by the Borrower to a member of the Group for so long as such loan is repayable on demand;
- (b) any loan made for the purpose of, or to facilitate the making of, a Permitted Payment; or
- (c) or any loan otherwise permitted by the Agent (acting on the direction of the Interim Lenders).

## 10 Conditions Subsequent

- (a) The Borrower shall, on or prior to the date occurring 20 Business Days after the date of Completion:
  - (i) enter into a Guernsey law governed share security interest agreement over the Target Shares owned by it, in favour of the Security Agent (the **Target Share SIA**);
  - (ii) deliver to the Security Agent all original certificates of title together with undated and signed duly completed share transfer forms in relation to the Target Shares; and
  - (iii) give notice to the Target of the assignment made by the Borrower under the Target Share SIA and procure that the Target acknowledges such notice on such date.

Such entry into the Guernsey law governed share security interest agreement shall be subject to delivery to the Agent of:

- (i) a legal opinion from the legal advisers to the Original Interim Lenders as to Guernsey law, as to the enforceability of the Target Share SIA; and
  - (ii) a legal opinion from Milbank LLP, legal advisers to the Original Interim Lenders as to English law, as to the capacity of the Borrower to enter into the Target Share SIA.
- (b) The Borrower shall procure that, where an Interim Loan has been drawn for the purposes of paying the Acquisition Consideration, all existing Financial Indebtedness of the Target (excluding any Financial Indebtedness between members of the Target Group) is refinanced (and any related commitments cancelled) in full (and any related security is released) on or before the date falling 1 Business Day after the Initial Closing Date.

## Part 3 Major Events of Default

### 1 **Payment default**

The Borrower does not pay on the due date any amount payable by it under the Interim Documents in the manner required under the Interim Documents unless payment is made within five Business Days of the due date.

### 2 **Breach of other obligations**

The Borrower does not comply with any Major Undertaking and, if capable of remedy, the same is not remedied within 20 Business Days of the earlier of it (i) becoming aware of a failure to comply and (ii) receiving written notice from the Agent notifying it of non-compliance.

### 3 **Misrepresentation**

A Major Representation is incorrect or misleading in any material respect (or if qualified by materiality, in any respect) when made or deemed to be made and, if capable of remedy, the circumstances giving rise to such misrepresentation are not remedied within 20 Business Days of the earlier of the Borrower: (a) becoming aware of such failure and (b) receiving written notice from the Agent notifying it of that failure.

### 4 **Invalidity/repudiation**

Any of the following occurs:

- (a) subject to the Reservations and the Perfection Requirements, any material obligation of any Obligor under any Interim Document is or becomes invalid or unenforceable or ceases to be a legally binding and enforceable obligation of such party, in each case in a manner which is materially adverse to the interests of the Interim Lenders under the Interim Documents; or
- (b) subject to the Reservations and the Perfection Requirements, it is or becomes unlawful in any applicable jurisdiction for an Obligor to perform any of its material obligations under any Interim Document or any material provision of any Interim Document otherwise ceases to be in full force and effect, in each case in a manner which is materially adverse to the interests of the Interim Lenders under the Interim Documents; or
- (c) an Obligor repudiates or rescinds an Interim Document in a manner which is materially adverse to the interests of the Interim Lenders,

and in each case, where capable of remedy, the circumstance(s) are not remedied within 20 Business Days of the earlier of (a) becoming aware of a failure to comply and (b) receiving a written notice from the Agent notifying it of that failure.

### 5 **Insolvency**

An Obligor:

- (a) stops or suspends, or announces an intention to stop or suspend, payment of its debts or is unable or admits in writing its inability to pay its debts (other than in respect of debts due to another Group Company) as they fall due or a moratorium is declared in relation to any of its indebtedness; or
- (b) by reason of actual or anticipated financial difficulties, proposes or makes any arrangement or composition with, or any assignment for the benefit of, its creditors generally.

## **6 Insolvency proceedings**

Any of the following occurs in respect of any Obligor:

- (a) any liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, examiner, receiver, administrative receiver, administrator or similar officer is appointed in respect of it or any of its material assets;
- (b) a petition is presented, a meeting is convened, an application to court is made, or documents are filed with a court, or any other step is taken by any person, for the purpose of appointing a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, examiner, receiver, administrative receiver, administrator or other similar officer in respect of it or any of its material assets, provided that no Major Event of Default will occur if the petition is presented by a creditor and it is being contested in good faith and due diligence and the relevant entity demonstrates to the Agent (acting reasonably and in good faith) that it has sufficient financial means to meet the amount of the claim requested by the creditor;
- (c) any corporate action, or other formal step or formal procedure is taken or commenced with a view to a composition, assignment or arrangement with its creditors generally; or
- (d) an order is made for its administration, liquidation, winding-up or other relief under any applicable insolvency law,

unless any such action, meeting, petition, procedure, filing, application, step or proceeding referred to in paragraph 6(b) is made or taken by a creditor or group of creditors and is (in the opinion of the Agent, acting reasonably and in good faith) frivolous or vexatious and is discharged, stayed or dismissed within 20 Business Days of commencement.

## **7 Creditors Process**

Any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of any Obligor having an aggregate value of USD 10,000,000 (or its equivalent) that is not discharged or dismissed within 20 Business Days.

## Schedule 5 Timetables

Delivery of a duly completed Drawdown Request (clause 5.1 ( <i>Giving of Drawdown Requests</i> )) or as selected pursuant to clause 7.2(b)	3:00pm (New York time) U-11 Business Days
Time for selection of Reference Rate	3:00pm (New York time) U-11 Business Days

U = date of drawdown or, if applicable, in the case of an Interim Loan that has already been borrowed, the first day of the relevant Interest Period for that Interim Loan.

## Schedule 6 Form of QPP Certificate

To: Concord Chorus Limited as the Borrower

From: *[Name of Interim Lender]*

Dated:

### **Project Chorus US Dollar Interim Facilities Agreement dated [ ] April 2024 (the “Facilities Agreement”)**

- 1 We refer to the Facilities Agreement. This is a QPP Certificate. Terms defined in the Facilities Agreement has the same meaning in this QPP Certificate unless given a different meaning in this QPP Certificate.
- 2 We confirm that [on behalf of [ ] as the ultimate beneficial owner[s] of interest paid to us]:
  - (a) we are beneficially entitled to [our relevant share of any][all] interest payable to the Interim Lender under the Loan;
  - (b) we are a resident of a qualifying territory; and
  - (c) we are beneficially entitled to the interest which is payable to us on the Loan for genuine commercial reasons, and not as part of a tax advantage scheme.

These confirmations together form a creditor certificate.

- 3 In this QPP Certificate the terms “resident” , “qualifying territory” , “scheme” , “tax advantage scheme” and “creditor certificate” have the meaning given to them in the Qualifying Private Placement Regulations 2015 (2015 No. 2002).

*[Name of Interim Lender]*

By:

*[This QPP Certificate is required where a lender is a person eligible for the UK withholding tax exemption for qualifying private placements; a separate QPP Certificate should be provided by each such lender.]*

# Signature page

**The Borrower**  
**Concord Chorus Limited**

By: REDACTED  
(REDACTED, Director)

## **Notice Details**

Address: REDACTED

Email: REDACTED

Attention: REDACTED

**The Agent**

By:

**Atlas Securitized Products Advisors, L.P.**

By: Atlas Securitized Products GP, LLC, its  
general partner

~~By: Atlas Securitized Products Holdings, L.P.,  
its sole member~~

~~By: Atlas Securitized Products Advisors GP,  
LLC, its general partner~~

By: \_\_\_\_\_ REDACTED \_\_\_\_\_

Name: REDACTED

Title: Chief Legal and Compliance Officer

**Address** REDACTED

**Email** REDACTED

**Attention** REDACTED



**The Security Agent**

By:

**Atlas Securitized Products Advisors, L.P.**

By: Atlas Securitized Products GP, LLC, its general partner

~~By: Atlas Securitized Products Holdings, L.P., its sole member~~

~~By: Atlas Securitized Products Advisors GP, LLC, its general partner~~

By: \_\_\_\_\_ REDACTED

Name: REDACTED

Title: Chief Legal and Compliance Officer

**Notice Details**

<b>Address</b>	REDACTED
<b>Email</b>	REDACTED
<b>Attention</b>	REDACTED

**The Interim Lenders**

By:

**ABF RESIDUAL INTERESTS SUB-  
AGGREGATOR VIII, L.P.**

By: Apollo Asset-Backed Finance Advisors,  
L.P., its general partner

By: Apollo ABF Advisors GP, LLC, its general  
partner

REDACTED

By: \_\_\_\_\_

Name: REDACTED

Title: Vice President

**Notice Details**

**Address**

**Email**

**Attention**

By:

**ACMP HOLDINGS, LLC**

By: \_\_\_\_\_ REDACTED

Name: REDACTED

Title: Vice President

**Notice Details**

**Address**

**Email**

**Attention**

By:

**WHCO INVESTMENTS A HOLDINGS ICAV,  
acting solely with respect to its sub-fund:**

**WHCO INVESTMENTS 1-A HOLDINGS SUB-  
FUND**

By: \_\_\_\_\_

Name: REDACTED

Title: Director

**Notice Details**

**Address** REDACTED

**Email** REDACTED

**Attention** REDACTED

By:

**APOLLO ACCORD+ AGGREGATOR B, L.P.**

By: Apollo Accord+ Advisors, L.P., its general partner

By: Apollo Accord+ Advisors GP, LLC, its general partner

By: \_\_\_\_\_ REDACTED

Name: REDACTED

Title: Vice President

**Notice Details**

**Address**

**Email**

**Attention**