EXHIBIT II-A
to 2006 ISDA Definitions

Additional Provisions for a
Confirmation of a Swap Transaction that is a
Rate Swap Transaction or Cross-Currency Rate Swap Transaction hedging a loan facility incorporating the LSTA Term SOFR Fallbacks

***This template is based on the 2006 ISDA Definitions incorporating all supplements including Supplement 91, published on December 16, 2021. This template has been drafted for use with the LSTA Term SOFR Concept Document dated December 17, 2021 in order to align with the fallbacks set out therein (the “LSTA Term SOFR Fallbacks”). Parties should check that there are no bespoke amendments to the Credit Agreement (particularly the LSTA Term SOFR Fallbacks) that need to be reflected in this Confirmation.***

***This template and the LSTA Term SOFR Fallbacks in Appendix 1 have been included to assist parties entering into swaps hedging loans incorporating the LSTA Term SOFR Fallbacks. ISDA accepts no responsibility for the content of the LSTA Term SOFR Fallbacks.***

THIS ANNOTATED TEMPLATE DOES NOT PURPORT TO BE AND SHOULD NOT BE CONSIDERED A GUIDE TO, OR AN EXPLANATION OF, ALL RELEVANT ISSUES OR CONSIDERATIONS IN CONNECTION WITH MAKING THE BELOW AMENDMENTS IN A SWAP HEDGING A LOAN FACILITY. PARTIES SHOULD CONSULT WITH THEIR LEGAL ADVISERS AND ANY OTHER ADVISER THEY DEEM APPROPRIATE PRIOR TO USING OR INCORPORATING THE BELOW AMENDMENTS IN A SWAP HEDGING A LOAN FACILITY. NONE OF ISDA, ITS DIRECTORS, EMPLOYEES, AGENTS OR ADVISORS ACCEPT ANY RESPONSIBILITY FOR ANY LOSS OR DAMAGE ARISING DIRECTLY OR INDIRECTLY FROM ANY USE TO WHICH ANY OF ITS DOCUMENTATION OR OTHER DOCUMENTATION MAY BE PUT.

[See Exhibit I for the introduction, standard paragraphs and closing for the Confirmation.]

1. The terms of the particular Swap Transaction to which this Confirmation relates are as follows:

|  |  |
| --- | --- |
| [Notional Amount:] | [                   ] |
| Trade Date: | [                   ] |
| Effective Date: | [                   ] |
| Termination Date: | [                   ] [, subject to adjustment in accordance with the [Following/Modified Following/Preceding] Business Day Convention][[1]](#footnote-1) |
| Fixed Amounts: |  |
| Fixed Rate Payer: | [Party A/B] |
| [Fixed Rate Payer Currency Amount:] | [                   ] |
| Fixed Rate Payer Payment Dates [or Period End Dates, if Delayed Payment or Early Payment applies]: | [                   ] [, subject to adjustment in accordance with the [Following/Modified Following/Preceding] Business Day Convention][[2]](#footnote-2) |
| Fixed Amount [or Fixed Rate and Fixed Rate Day Count Fraction]: | [                   ] |
| Floating Amounts: |  |
| Floating Rate Payer: | [Party B/A] |
| [Floating Rate Payer Currency Amount:] | [                   ] |
| Floating Rate Payer Payment Dates [or Period End Dates, if Delayed Payment or Early Payment applies]: | [                   ] [, subject to adjustment in accordance with the [Following/Modified Following/Preceding] Business Day Convention] |
| [Floating Rate for initial Calculation Period:] | [                   ] |
| Floating Rate Option: | [USD-SOFR CME Term, as amended and restated in Appendix 1][[3]](#footnote-3) |
| Designated Maturity: | [                   ] |
| [Linear Interpolation:] | [Applicable [*parties may specify the Shorter Designated Maturity and the Longer Designated Maturity*]/[Inapplicable] |
| Spread: | [Plus/Minus           %] [None] |
| Floating Rate Day Count Fraction: | [                   ] |
| Reset Dates: | [                   ] [, subject to adjustment in accordance with the [Following/Modified Following/Preceding] Business Day Convention][[4]](#footnote-4) |
| [Rate Cut-off Dates:] | [                   ] |
| [Method of Averaging:] | [Unweighted/Weighted Average] |
| Compounding: | [Inapplicable/Straight Compounding Applicable/Flat Compounding Applicable/Spread Exclusive Compounding Applicable] |
| [Compounding Dates:] | [                   ] |
| [Discounting: | [                   ] |
| Discount Rate: | [                   ] |
| Discount Rate Day Count Fraction:] | [                   ] |
| [Initial Exchange: | [                   ] |
| Initial Exchange Date: | [                   ] [, subject to adjustment in accordance with the [Following/Modified Following/Preceding] Business Day Convention][[5]](#footnote-5) |
| Party A Initial Exchange Amount: | [                   ] |
| Party B Initial Exchange Amount:] | [                   ] |
| [Interim Exchange: |  |
| Interim Exchange Date: | [                   ] [, subject to adjustment in accordance with the [Following/Modified Following/Preceding] Business Day Convention]  |
| Party A Interim Exchange Amount: | [                   ] |
| Party B Interim Exchange Amount:] | [                   ] |
| [Final Exchange: | [                   ] |
| Final Exchange Date: | [                   ] [, subject to adjustment in accordance with the [Following/Modified Following/Preceding] Business Day Convention]  |
| Party A Final Exchange Amount: | [                   ] |
| Party B Final Exchange Amount:] | [                   ] |
| [Business Days for [first currency]:] | [                   ] |
| [Business Days for [second currency]:] | [                   ] |
| [Business Day Convention: | [Following/Modified Following/ Preceding]][[6]](#footnote-6) |
| Benchmark Replacement: | [Option 1 (amendment approach)] [Option 2 (hardwired fallback to Daily Simple SOFR)][[7]](#footnote-7) |
| [Spread Adjustment:][[8]](#footnote-8) | [0.11448% (11.448 basis points)][0.26161% (26.161 basis points)][*Other*][*None*][[9]](#footnote-9) |
| Calculation Agent: | [                   ][[10]](#footnote-10) |
| Credit Agreement: | [*Insert definition of the Credit Agreement being hedged*] |
| Floor: | [Not Applicable][ %][[11]](#footnote-11) |
| Benchmark Replacement Date Longstop Date: | [Ninety (90)] [*specify number of days*] days[[12]](#footnote-12) |

# **Appendix 1**

# **LSTA Term SOFR Fallbacks**

[***Notes to draft:***

1. ***The Credit Agreement allows the Borrower to elect the length of the interest period at the beginning of every interest period from those options listed in the definition of Interest Period. The LSTA Term SOFR Fallbacks in the Credit Agreement allow the Credit Agreement to be amended to remove the length of an impacted tenor from the definition of Interest Period, such that the Borrower can no longer specify an interest period of that length. In a business-as-usual context, the interest periods under the Loan should be fixed from the outset (so as to allow the fixing of calculation periods under this Swap Transaction). However, if the Term SOFR tenor corresponding to the Designated Maturity of this Swap Transaction is permanently discontinued, parties should consider whether amendments to the Swap Transaction are necessary to reflect the change to use a different tenor pursuant to the Credit Agreement and the consequent change in length of the interest period under the Loan. In the absence of any amendment to this Swap Transaction, the Discontinued Rates Maturities provisions in Section 8.5 (Application of Discontinued Rates Maturities Provisions) of the 2006 Definitions will apply to the Swap Transaction to apply an interpolated rate resulting in basis between the Loan and this Swap Transaction. Sample language addressing this potential basis risk is included as a footnote. This language requires the parties to negotiate in good faith with a view to amending this Swap Transaction to align with the outcome under the Credit Agreement in this scenario. If this language is to be used, it should be inserted in this Appendix as paragraph 5.[[13]](#footnote-13) If not used, this note and the corresponding footnote (and all other notes to draft and footnotes) should be deleted from the final version of the Confirmation.***
2. ***The LSTA Term SOFR Fallbacks in the Credit Agreement include an additional paragraph headed ‘Benchmark Unavailability Period’ which results in the loan switching to use a different benchmark for the calculation of interest during a Benchmark Unavailability Period. This is not replicated in* *this Appendix 1. Parties should be aware that, unless amendments are made in the LSTA Term SOFR Fallbacks in the Credit Agreement to disapply that paragraph, in the event of a Benchmark Unavailability Period (as defined in the LSTA Term SOFR Fallbacks in the Credit Agreement) the benchmark pursuant to this Swap Transaction and the benchmark pursuant to the Credit Agreement for any Interest* *Period/Calculation Period commencing during a Benchmark******Unavailability Period may be different. Parties should consider whether to disapply the paragraph ‘Benchmark Unavailability Period’ in the LSTA Term SOFR Fallbacks to the Credit Agreement.***]
3. Capitalised terms used but not otherwise defined in this Appendix 1 will bear the meanings given to them in the 2006 ISDA Definitions including in Section 7.1(ab)(lxxiv) (*USD-SOFR CME Term*) of the 2006 ISDA Definitions, as amended in section 2 below.
4. Section 7.1(ab)(lxxiv) is amended as follows:

“(lxxiv) “**USD-SOFR CME Term**” means that the rate for a Reset Date will be CME Term SOFR for a period of the Designated Maturity as provided by the administrator of CME Term SOFR to, and published by, authorized distributors of CME Term SOFR at 6:00 a.m., New York City time on the day that is two U.S. Government Securities Business Days preceding that Reset Date (or any amended publication day or time for CME Term SOFR, as specified by the CME Term SOFR administrator in the CME Term SOFR benchmark methodology).

If that rate is subsequently corrected and provided by the administrator of CME Term SOFR to, and published by, authorized distributors of CME Term SOFR within the longer of one hour of the time when such rate is first published by authorized distributors of CME Term SOFR and the republication cut-off time for CME Term SOFR, if any, as specified by the CME Term SOFR administrator in the CME Term SOFR benchmark methodology then that rate will be subject to those corrections. Section 7.6(c) (Corrections to Published and Displayed Rates) shall apply as though the reference therein to ‘subsections (a) or (b)’ were a reference to this Section 7.1(ab)(lxxiv).

*Temporary Non-Publication of CME Term SOFR*

Subject to the below, if CME Term SOFR for a period of the Designated Maturity in respect of the Reset Date is not published by the administrator of CME Term SOFR or an authorized distributor and is not otherwise provided by the administrator of CME Term SOFR by either (A) the Reset Date or (B) such other date on which CME Term SOFR is required, then the rate for that Reset Date will be the last provided or published CME Term SOFR for a period of the Designated Maturity.[[14]](#footnote-14)

*Benchmark Replacement*

1. If “Option 1” has been specified in the Confirmation as the ‘Benchmark Replacement’, upon the occurrence of a Benchmark Transition Event in respect of the then-current Benchmark, the Calculation Agent may amend this Swap Transaction to replace the Floating Rate Option with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at the time determined by the Calculation Agent, provided that if the same Benchmark Replacement applies pursuant to the Credit Agreement then such amendment will apply from the date on which such Benchmark Replacement will apply to the Credit Agreement. No replacement of the Floating Rate Option with a Benchmark Replacement will occur prior to the applicable Benchmark Transition Start Date.
2. If “Option 2” has been specified in the Confirmation as the ‘Benchmark Replacement’, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred in respect of the then-current Benchmark, then:
3. if a Benchmark Replacement is determined in accordance with sub-paragraph (ii)(a) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace the Floating Rate Option for all purposes hereunder without any amendment, further action or consent of the parties (subject to sub-paragraph (b) below); and
4. if a Benchmark Replacement is determined in accordance with sub-paragraph (ii)(b) of the definition of “Benchmark Replacement” or a Benchmark Replacement Adjustment is determined in accordance with sub-paragraph (ii) of the definition of “Benchmark Replacement Adjustment” for such Benchmark Replacement Date, then if the same Benchmark Replacement applies pursuant to the Credit Agreement, such Benchmark Replacement or Benchmark Replacement Adjustment (as applicable) will replace the Floating Rate Option for all purposes hereunder from the date on which such Benchmark Replacement or Benchmark Replacement Adjustment (as applicable) will apply pursuant to the Credit Agreement.[[15]](#footnote-15)

*Discontinued Rates Maturities*

The provisions of this Rate Option are subject to Section 8.5 (*Application of Discontinued Rates Maturities Provisions*), provided that if:

1. Term SOFR for a period of the Designated Maturity has been permanently discontinued; and
2. the Swap Transaction is not a Covered Swap Transaction because there is either no Nearest Long Rate or no Nearest Short Rate,

then a Benchmark Transition Event shall be deemed to have occurred and the Benchmark Replacement Date shall be the first date on which Term SOFR would ordinarily have been provided and there is no Nearest Long Rate or Nearest Short Rate (or, if later, the first date on which Term SOFR for a period of the Designated Maturity would ordinarily have been provided and has been permanently discontinued).

*Definitions*

For these purposes:

“**Administrative Agent**” means the ‘Administrative Agent’ pursuant to the Credit Agreement.

“**Available Tenor**” means, as of any date of determination and with respect to the then-current Benchmark, as applicable:

1. if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to the Credit Agreement; or
2. otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark pursuant to the Credit Agreement,

in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is removed from the definition of “Interest Period” pursuant to the Section entitled “*Benchmark Replacement Setting*”[[16]](#footnote-16) of the Credit Agreement.

“**Benchmark**” means, initially, Term SOFR; provided that if a Benchmark Transition Event has occurred with respect to Term SOFR or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to the paragraph titled *Benchmark Replacement* above.

“**Benchmark Replacement**” means, with respect to any Benchmark Transition Event,

1. If “Option 1” has been specified in the Confirmation as the applicable ‘Benchmark Replacement’, the sum of:
2. the alternate benchmark rate that has been selected by the Calculation Agent, giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then-current Benchmark for Dollar-denominated syndicated credit facilities at such time, provided that if the Calculation Agent is notified that the Administrative Agent, or the Administrative Agent and the Borrower, have made an equivalent determination in respect of the Loan and with respect to the same tenor, and it is commercially reasonable to apply such determination under this Swap Transaction, the Calculation Agent will make the same determination hereunder; and
3. the related Benchmark Replacement Adjustment;

provided that, if such Benchmark Replacement as so determined would be less than the Floor, such Benchmark Replacement will be deemed to be the Floor for the purposes of this Swap Transaction.

1. If “Option 2” has been specified in the Confirmation as the applicable ‘Benchmark Replacement’, the first alternative set forth in the order below that can be determined by the Calculation Agent for the applicable Benchmark Replacement Date, provided that if the Calculation Agent is notified that the Administrative Agent, or the Administrative Agent and the Borrower, has made an equivalent determination in respect of the Loan and with respect to the same tenor, and it is commercially reasonable to apply such determination under this Swap Transaction, the Calculation Agent will make the same determination hereunder:
2. the sum of (i) Daily Simple SOFR and (ii) the Spread Adjustment[[17]](#footnote-17) specified in the Confirmation (if any)[[18]](#footnote-18); or
3. the sum of: (i) the alternate benchmark rate selected by the Calculation Agent (or, if the proviso above applies, by the Administrative Agent or the Administrative Agent and the Borrower, giving due consideration to (A) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (B) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then-current Benchmark for Dollar-denominated syndicated credit facilities and (ii) the related Benchmark Replacement Adjustment.

If the Benchmark Replacement as determined pursuant to sub-paragraph (ii)(a) or (b) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Swap Transaction.[[19]](#footnote-19)

“**Benchmark Replacement Adjustment**” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Calculation Agent, giving due consideration to:

1. any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body; or
2. any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities at such time,

provided that if the Calculation Agent is notified that the Administrative Agent, or the Administrative Agent and the Borrower, have made an equivalent determination in respect of the Loan and in respect of the same tenor, and it is commercially reasonable to apply such determination under this Swap Transaction, the Calculation Agent will make the same determination hereunder.

“**Benchmark Replacement Date**” means:

1. if “Option 1” has been specified in the Confirmation as the ‘Benchmark Replacement’, the earliest to occur of the following events with respect to the then-current Benchmark:
2. in the case of sub-paragraphs (i) or (ii) of the definition of “Benchmark Transition Event,” the later of:
3. the date of the public statement or publication of information referenced therein; and
4. the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or
5. in the case of sub-paragraph (iii) of the definition of “Benchmark Transition Event,” the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (iii) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date; and
6. If “Option 2” has been specified in the Confirmation as the ‘Benchmark Replacement’, a date and time determined by the Calculation Agent (having due regard to the Benchmark Replacement Date determined by the Administrative Agent pursuant to the Credit Agreement), which date shall be no later than the date described in sub-paragraph (i) above.

For the avoidance of doubt, the “Benchmark Replacement Date” will be deemed to have occurred in the case of sub-paragraphs (i)(a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“**Benchmark Transition Event**” means the occurrence of one or more of the following events with respect to the then-current Benchmark:

1. a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);
2. a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or
3. a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“**Benchmark Transition Start Date**” means, in the case of a Benchmark Transition Event, the earlier of:

1. the applicable Benchmark Replacement Date; and
2. if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90th[[20]](#footnote-20) day, or such other period of time specified as the Benchmark Replacement Date Longstop Date[[21]](#footnote-21) in the Confirmation, prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90, or such other period of time specified as the Benchmark Replacement Date Longstop Date in the Confirmation, days after such statement or publication, the date of such statement or publication).

“**CME Term SOFR**” means the forward-looking term Secured Overnight Financing Rate (SOFR) provided by CME Group Benchmark Administration Limited as administrator of the benchmark (or a successor administrator).

“**Conforming Changes**” means, with respect to either the use or administration of Term SOFR or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes that the Calculation Agent decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Calculation Agent in a manner substantially consistent with market practice (or, if the Calculation Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Calculation Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Calculation Agent decides is reasonably necessary) and having due regard to any conforming changes made by the Administrative Agent pursuant to the Credit Agreement.

“**Daily Simple SOFR**” means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Calculation Agent provided that, if the Calculation Agent is notified that the Administrative Agent has made an equivalent determination in respect of the Loan and it is commercially reasonable to apply such determination to this Swap Transaction, the Calculation Agent will make the same determination herein.

“**Loan**” means the loan or loans pursuant to the Credit Agreement that are being hedged by this transaction.

“**Relevant Governmental Body**” means the Federal Reserve Board or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board or the Federal Reserve Bank of New York, or any successor thereto.

“**Relevant Tenor**” means, in respect of the original Floating Rate Option, the specified Designated Maturity, and in respect of any Benchmark that applies under this Swap Transaction as the Benchmark Replacement, the tenor of such Benchmark (including overnight) that has been determined as the tenor for the Benchmark Replacement.

“**SOFR**” means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

“**SOFR Administrator**” means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

“**Term SOFR**” means CME Term SOFR.

“**Unadjusted Benchmark Replacement**” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

1. **Benchmark Replacement Conforming Changes**. In connection with the use, administration, adoption or implementation of a Benchmark Replacement, the Calculation Agent will have the right to make Conforming Changes to this Swap Transaction from time to time and, notwithstanding anything to the contrary herein, any amendments implementing such Conforming Changes will become effective without any further action or consent of the parties.
2. **Notices; Standards for Decisions and Determinations**.
3. The Calculation Agent will promptly notify Party A and Party B of:
4. the implementation of any Benchmark Replacement; and
5. the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement.
6. Any determination, decision or election that may be made by the Calculation Agent pursuant to this Appendix 1, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without further consent, except, in each case, as expressly required pursuant to this Appendix 1 and subject to sub-paragraph (iii) below.
7. The parties acknowledge that this Swap Transaction is hedging one or more Loans bearing interest calculated by reference to Term SOFR and documented pursuant to the Credit Agreement. In making any determination hereunder the Calculation Agent will have due regard to the equivalent determination made by the Administrative Agent pursuant to the Credit Agreement and, if commercially reasonable, will apply the same determination pursuant to this Swap Transaction.
1. If the parties want to provide that the Termination Date will be adjusted in accordance with a Business Day Convention (and, accordingly, that the final Calculation Period will be shortened or lengthened), the appropriate Business Day Convention must be specified. [↑](#footnote-ref-1)
2. Bracketed language is not necessary if Payment Dates and Period End Dates are to be adjusted in accordance with the Modified Following Business Day Convention, as provided in the 2006 ISDA Definitions. [↑](#footnote-ref-2)
3. Parties can also insert a different term SOFR option here if one is available. USD-SOFR CME Term is the only term SOFR Floating Rate Option included in the 2006 ISDA Definitions. If parties use a different term SOFR benchmark, corresponding changes will need to be made in Appendix 1, which sets out “USD-SOFR CME Term”. [↑](#footnote-ref-3)
4. Bracketed language is not necessary if Reset Dates are to be adjusted in accordance with the Business Day Convention applicable to Payment Dates. [↑](#footnote-ref-4)
5. Bracketed language is not necessary if this date is to be adjusted in accordance with the Modified Following Business Day Convention, as provided in the 2006 ISDA Definitions. [↑](#footnote-ref-5)
6. If a Business Day Convention is to apply to all dates that are stated in the 2006 ISDA Definitions to be adjusted in accordance with the applicable Business Day Convention, that Business Day Convention can be specified here. [↑](#footnote-ref-6)
7. The Credit Agreement includes two options for the Benchmark Replacement. Option 1 is the amendment approach and Option 2 is a hardwired fallback to Daily Simple SOFR with a further fallback if Daily Simple SOFR is not available. Parties to match the Option selected in the Credit Agreement. [↑](#footnote-ref-7)
8. Include this field if Option 2 (hardwired fallback to Daily Simple SOFR) is being used. [↑](#footnote-ref-8)
9. If Adjusted Term SOFR is used in the Credit Agreement and Option 2 (hardwired fallback to Daily Simply SOFR) is used, an adjusted Daily Simple SOFR will need to apply and a Spread Adjustment will need to be specified. These values represent the ARRC/ISDA recommended spread adjustment values available here: <https://assets.bbhub.io/professional/sites/10/IBOR-Fallbacks-LIBOR-Cessation_Announcement_20210305.pdf>, depending on payment periods.

 “0.11448% (11.448 basis points)” would be selected if monthly Calculation Periods apply. “0.26161% (26.161 basis points)” would be selected if quarterly Calculation Periods apply.

Parties may negotiate other appropriate spread adjustments.
Note that the Credit Agreement does not provide for a spread adjustment between Term SOFR (with no adjustment) and Daily Simple SOFR, which is consistent with no spread adjustment being used for the transition to “Term SOFR” provisions in the LSTA’s various SOFR concept credit agreements. [↑](#footnote-ref-9)
10. If the Calculation Agent is a third party, the parties may wish to consider any documentation necessary to confirm its undertaking to act in that capacity. [↑](#footnote-ref-10)
11. Parties to specify the benchmark rate floor, if any, specified with respect to Term SOFR in the Credit Agreement. [↑](#footnote-ref-11)
12. If the number of days providing for the long stop date for the Benchmark Replacement Date, as set out in the definition of Benchmark Transition Start Date in the Credit Agreement, has been amended to a number other than 90, insert that number here. Parties should refer to the definition of Benchmark Transition Start Date in Appendix 1 and the corresponding definition in the Credit Agreement. [↑](#footnote-ref-12)
13. See the sample provision below that can be inserted as paragraph 5:

[5. **Unavailability of Tenor of Benchmark**. At any time (including in connection with the implementation of a Benchmark Replacement):

(i) if the then-current Benchmark is a term rate (including Term SOFR) and either:

(A) the Relevant Tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Calculation Agent in its reasonable discretion; or

(B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that the Relevant Tenor for such Benchmark is not or will not be representative;

then the Calculation Agent shall consult in good faith with Party A and Party B in respect of any amendments to be made herein to reflect removal of the impacted tenor from the definition of “Interest Period” (or any similar or analogous definition) pursuant to the Credit Agreement, which amendments may include applying a different Designated Maturity to the specified Designated Maturity and related amendments to Period End Dates and Payment Dates. Section 8.5 (*Application of* *Discontinued Rates Maturities Provisions*)of the 2006 ISDA Definitions will continue to apply until such time as the parties agree any amendments to this Swap Transaction to address the impacted tenor; and

(ii) if a tenor that was removed pursuant to sub-paragraph (i) above either:

(A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement); or

(B) is not (or is no longer) subject to an announcement described in sub-paragraph (i)(B) above,

 then the Calculation Agent shall consult in good faith with Party A and Party B in respect of any amendments to be made herein to reflect the reinstatement of such previously removed tenor from the definition of “Interest Period” (or any similar or analogous definition) pursuant to the Credit Agreement to reinstate such previously removed tenor, which amendments may include applying the original Designated Maturity (and reinstating the original Period End Dates and Payment Dates) if such Designated Maturity is no longer impacted by one of the events set out in sub-paragraphs (i)(A) and (B) above. For the avoidance of doubt, no amendments shall be made herein unless agreed between Party A and Party B.] [↑](#footnote-ref-13)
14. The temporary non-publication fallback in the LSTA Term SOFR Fallbacks that apply pursuant to the Credit Agreement also provides for a fallback to the previous published rate. However, it differs from the above paragraph in that if the rate is unavailable for more than three U.S. Government Securities Business Days, Section 2.17 (Inability to Determine Rates) of the Credit Agreement will apply whereas under the swap, the above paragraph will continue to apply so that the previously published rate, no matter how many days previously that rate was published, will apply. [↑](#footnote-ref-14)
15. Parties should be aware that Option 2 in the Credit Agreement contains the following language: “If the Benchmark Replacement is Daily Simple SOFR, all interest payments will be payable on a [monthly][quarterly] basis.” This language has not been replicated in this template. Parties should consider deleting that language from the Credit Agreement if that could result in a mis-match between the frequency of payments under this Swap Transaction (i.e. the specified Floating Rate Payer Payment Dates) and the frequency of payments under the Credit Agreement. [↑](#footnote-ref-15)
16. Parties to ensure this Section heading matches the section heading in the Credit Agreement. [↑](#footnote-ref-16)
17. If Adjusted Term SOFR is used in the Credit Agreement, an adjusted Daily Simple SOFR will need to apply and the appropriate Spread Adjustment will need to be specified. See the field ‘Spread Adjustment’ in the front end of this Confirmation. [↑](#footnote-ref-17)
18. The drafting does not provide for a spread adjustment between Term SOFR (with no adjustment) and Daily Simple SOFR, which is consistent with no spread adjustment being used for the transition to “Term SOFR” provisions in the LSTA’s various SOFR concept credit agreements. [↑](#footnote-ref-18)
19. Parties to amend to reflect any amendments to the waterfall in the definition of “Benchmark Replacement” in the Credit Agreement (such as including, e.g., SOFR Averages (Applied in Advance) in the waterfall). Parties to consider whether any consequential amendments need to be made (e.g. to reflect updated numbering in the definition of “Benchmark Replacement Adjustment”). [↑](#footnote-ref-19)
20. Parties may choose to set a different number of days using the ‘Benchmark Replacement Date Longstop Date’ field in the front end of this Confirmation. [↑](#footnote-ref-20)
21. See the field “Benchmark Replacement Date Longstop Date” in the front end of this Confirmation. [↑](#footnote-ref-21)