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 BSBY 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 LSTA loan facilities incorporating the optional “Fallback Language Rider for Credit Agreements Referencing Bloomberg Short-Term Bank Yield Index (BSBY)” as set out in the LSTA Market Advisory dated December 17, 2021 (the “LSTA BSBY Fallbacks”). Parties should check that there are no bespoke amendments to the Credit Agreement (particularly the LSTA BSBY Fallbacks) that need to be reflected in this Confirmation.***

***This template and the LSTA BSBY Fallbacks in Appendix 1 have been included to assist parties entering into swaps hedging loans incorporating the LSTA BSBY Fallbacks. ISDA accepts no responsibility for the content of the LSTA BSBY 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]2 |
| [Floating Rate for initial Calculation Period:] | [                   ] |
| Floating Rate Option: | USD-BSBY, as amended and restated in Appendix 1 |
| Designated Maturity: | [*Specify the 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][[3]](#footnote-3) |
| [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][[4]](#footnote-4) |
| 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]5 |
| 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]5 |
| 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]][[5]](#footnote-5) |
| Calculation Agent: | [                   ][[6]](#footnote-6) |
| Credit Agreement: | [*Insert definition of the Credit Agreement being hedged*] |
| Floor: | [Not Applicable][ %][[7]](#footnote-7) |
| Benchmark Replacement Date Longstop Date: | [Ninety (90)] [*specify number of days*] days[[8]](#footnote-8) |

**Appendix 1**

**LSTA BSBY 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 BSBY 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 Transaction). However, if the BSBY tenor corresponding to the Designated Maturity of this Transaction is permanently discontinued, parties should consider whether amendments to the 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 Transaction, the Discontinued Rate Maturities provisions in Section 8.5 (Application of Discontinued Rates Maturities Provisions) of the 2006 ISDA Definitions will apply to the Transaction to apply an interpolated rate resulting in basis between the Loan and this 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 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.[[9]](#footnote-9) 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 BSBY 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 BSBY Fallbacks in the Credit Agreement to disapply that paragraph, in the event of a Benchmark Unavailability Period (as defined in the LSTA BSBY Fallbacks in the Credit Agreement) the benchmark pursuant to this 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 BSBY 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)(lxvii) (*USD-BSBY*) of the 2006 ISDA Definitions, as amended in section 2 below.
4. Section 7.1(ab)(lxvii) is amended as follows:

“(lxvii) “**USD-BSBY**” means that the rate for a Reset Date will be BSBY for a period of the Designated Maturity as provided by the administrator of BSBY to, and published by, authorized distributors of BSBY as of 8:00 a.m., New York City time (or any amended publication time for BSBY, as specified by the BSBY administrator in the BSBY benchmark methodology) on the day that is two U.S. Government Securities Business Days preceding that Reset Date.

If that rate is subsequently corrected and provided by the administrator of BSBY to, and published by, authorized distributors of BSBY within the longer of one hour of the time when such rate is first published by authorized distributors of BSBY and the republication cut-off time for BSBY, if any, as specified by the BSBY administrator in the BSBY 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)(lxvii).

*Temporary Non-Publication of BSBY*

Subject to the below, if BSBY for a period of the Designated Maturity in respect of the day that is two U.S. Government Securities Business Days preceding the Reset Date is not published by the administrator of BSBY or an authorized distributor and is not otherwise provided by the administrator of BSBY by either (A) the Reset Date or (B) such other date on which BSBY is required, then the rate for that Reset Date will be the last provided or published BSBY for a period of the Designated Maturity as of the day that is two U.S. Government Securities Business Days preceding that Reset Date.[[10]](#footnote-10)

*Benchmark Replacement*

If a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior to the Reference Time, then:

* + - 1. if a Benchmark Replacement is determined in accordance with sub-paragraph (1) or (2) 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 (ii) below); and
			2. if a Benchmark Replacement is determined in accordance with sub-paragraph (3) of the definition of “Benchmark Replacement” or a Benchmark Replacement Adjustment is determined in accordance with sub-paragraph (2) 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.

*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. BSBY 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 BSBY would ordinarily have been provided and there is no Nearest Long Rate or Nearest Short Rate (or, if later, the first date on which BSBY 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*”[[11]](#footnote-11) of the Credit Agreement.

“**Benchmark**” means, initially, BSBY; provided that if a Benchmark Transition Event has occurred with respect to BSBY 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 paragraph 1 (*Benchmark Replacement*) above. Any reference to “Benchmark” shall include, as applicable, the published component used in the calculation thereof.

“**Benchmark Replacement**” means, for the Relevant Tenor, 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 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 Transaction, the Calculation Agent will make the same determination hereunder:

1. the sum of: (a) Term SOFR and (b) the related Benchmark Replacement Adjustment;
2. the sum of: (a) Daily Simple SOFR and (b) the related Benchmark Replacement Adjustment;
3. the sum of (a) the alternate benchmark rate and (b) an adjustment (which may be a positive or negative value or zero), in each case, that has been selected by the Calculation Agent (or, if applicable, by the Administrative Agent) as the replacement for such Relevant Tenor of such Benchmark giving due consideration to any evolving or then-prevailing market convention for determining a benchmark rate and an adjustment as a replacement for the then-current Benchmark, including any applicable recommendations made by a Relevant Governmental Body, for U.S. dollar-denominated syndicated credit facilities at such time;[[12]](#footnote-12)

provided, that any such Benchmark Replacement shall be administratively feasible as determined by the Calculation Agent in its sole discretion. If the Benchmark Replacement as determined pursuant to sub-paragraph (1), (2) or (3) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor.

“**Benchmark Replacement Adjustment**” means, for purposes of sub-paragraphs (1) and (2) of the definition of “Benchmark Replacement,” with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for the Relevant Tenor, the first alternative set forth in the order below that can be determined 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 in respect of the same tenor and it is commercially reasonable to apply such determination under this Transaction, the Calculation Agent will make the same determination hereunder:

1. an adjustment (which may be a positive or negative value or zero) equal to the BSBY Long-Term Spread Adjustment for such Corresponding Tenor as of the Reference Time such Benchmark Replacement is first set and is displayed on a screen or other information service that publishes such adjustment from time to time as selected by the Calculation Agent;[[13]](#footnote-13)and
2. an adjustment (which may be a positive or negative value or zero) that has been selected by the Calculation Agent as the replacement for the Relevant Tenor giving due consideration to 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 the Relevant Tenor of such Benchmark with the applicable Unadjusted Benchmark Replacement, including any applicable recommendations made by a Relevant Governmental Body, for U.S. dollar-denominated syndicated credit facilities at such time.

“**Benchmark Replacement Conforming Changes**” means, with respect to any Benchmark Replacement, any technical, administrative or operational changes that the Calculation Agent decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the 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 such Benchmark Replacement 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.

“**Benchmark Replacement Date**” means 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 earliest to occur of the following events with respect to the then-current Benchmark:

1. in the case of sub-paragraph (1) of the definition of “Benchmark Transition Event,” the later of:

(a) the date of the public statement or publication of information referenced therein; and

(b) the date on which all Available Tenors of such Benchmark (or such component thereof) are no longer available, permitted to be used for determining the interest rate of U.S. dollar denominated syndicated loans, or shall cease; or

1. in the case of sub-paragraph (2) of the definition of “Benchmark Transition Event,” a date and time determined by the Calculation Agent as administratively feasible in its reasonable discretion and no later than 90 days or such other period of time specified as the Benchmark Replacement Date Longstop Date[[14]](#footnote-14) in the Confirmation following the date of the public statement or publication of information referenced therein.

For the avoidance of doubt, the “Benchmark Replacement Date” will be deemed to have occurred in the case of sub-paragraphs (1) and (2) 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:

(a) the administrator of such Benchmark (or the published component used in the calculation thereof);

(b) a Governmental Authority having jurisdiction over such administrator with respect to its publication of such Benchmark; or

(c) a Governmental Authority having jurisdiction over the Administrative Agent,

in each case acting in such capacity, identifying a specific date after which all Available Tenors of such Benchmark (or such component thereof),

* + - 1. shall or will no longer be made available or permitted to be used for determining the interest rate of U.S. dollar denominated syndicated loans, or
			2. shall or will otherwise cease;

provided that, at the time of any such statement or publication to the extent related solely to unavailability or cessation of such Benchmark, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

1. a public statement or publication of information by the administrator of such Benchmark (including a “Technical Note” published on the BSBY Website) that a BSBY Final Step Event has occurred for all Available Tenors of such Benchmark.

“**Bloomberg**” means Bloomberg Index Services Limited (or a successor administrator of BSBY).

“**BSBY**” means the U.S. Dollar wholesale funding rate known as ‘BSBY’ (the Bloomberg Short-Term Bank Yield Index) and provided by Bloomberg Index Services Limited as administrator of the benchmark (or a successor administrator);

“**BSBY Final Step Event**” means, for any Available Tenor or the Relevant Tenor (as applicable), either (i) the twentieth (20th) consecutive U.S. Government Securities Business Day or (ii) the thirtieth (30th) U.S. Government Securities Business Day within a rolling ninety (90)-day period, on which BSBY is calculated in accordance with “Level 6” (or any successor final step) of the “Alternative Calculation Waterfall” defined or set forth in BSBY’s index methodology and rulebook, as published on the BSBY Website.

“**BSBY Long-Term Spread Adjustment**” means the most recently dated “BSBY SOFR 5Y Spread Adjustment” published on the BSBY Website.

“**BSBY Website**” means the “Bloomberg Short-Term Bank Yield Index” website at https://www.bloomberg.com/professional/product/ indices/bsby/ (or any successor website).

“**Corresponding Tenor**” with respect to the Relevant Tenor means, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Relevant Tenor, provided that if the Relevant Tenor does not correspond to a tenor applicable to the Unadjusted Benchmark Replacement, the closest corresponding tenor of the Unadjusted Benchmark Replacement shall be applied.

“**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 with respect to the same tenor and it is commercially reasonable to apply such determination to this 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.

“**Reference Time**” with respect to any setting of the then-current Benchmark means (1) if such Benchmark is BSBY, 8:00 a.m. (New York City time) on the day that is two U.S. Government Securities Business Days preceding the date of such setting, and (2) if such Benchmark is not BSBY, the time determined 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 with respect to the same tenor and it is commercially reasonable to apply such determination to this Transaction, the Calculation Agent will make the same determination hereunder.

“**Relevant Governmental Body**” means the Board of Governors of the Federal Reserve System of the United States and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System of the United States and/or the Federal Reserve Bank of New York.

“**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 Transaction as the Benchmark Replacement, the tenor of such Benchmark (including overnight) that has been determined as the tenor for the Benchmark Replacement.

“**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 Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of the parties.
2. **Notices; Standards for Decisions and Determinations**.
	* + 1. The Calculation Agent will promptly notify Party A and Party B of:
				1. the implementation of any Benchmark Replacement; and
				2. the effectiveness of any Benchmark Replacement Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement.
			2. 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.
			3. The parties acknowledge that this Transaction is hedging one or more Loans bearing interest calculated by reference to BSBY 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 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. 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-3)
4. 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-4)
5. 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-5)
6. 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-6)
7. Parties to specify the benchmark rate floor, if any, specified with respect to BSBY in the Credit Agreement. [↑](#footnote-ref-7)
8. If the number of days providing for the long stop date for the Benchmark Replacement Date, as set out in the definition of Benchmark Replacement 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 Replacement Date in Appendix 1 and the corresponding definition in the Credit Agreement. [↑](#footnote-ref-8)
9. See the sample provision below that can be inserted as paragraph 5:

[4. **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 BSBY or 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;

(B) the administrator of such Benchmark or a Governmental Authority having jurisdiction over such administrator with respect to its publication of such Benchmark or a Governmental Authority having jurisdiction over the Administrative Agent, in each case acting in such capacity, has provided a public statement or publication of information identifying a specific date after which the Relevant Tenor shall or will no longer be made available, or permitted to be used for determining the interest rate of U.S. dollar denominated syndicated loans; or

(C) the administrator of such Benchmark has provided a public statement or publication of information (including a “Technical Note” published on the BSBY Website) announcing that a BSBY Final Step Event has occurred with respect to the Relevant Tenor for such Benchmark,

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 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) or sub-paragraph (i)(C) 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) to (C) inclusive above. For the avoidance of doubt, no amendments shall be made herein unless agreed between Party and Party B.] [↑](#footnote-ref-9)
10. The temporary non-publication fallback in the LSTA BSBY Fallbacks that apply pursuant to the Credit Agreement (set out in square brackets in the definition of “BSBY”) 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 2.19 (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-10)
11. Parties to ensure this Section heading matches the section heading in the Credit Agreement. [↑](#footnote-ref-11)
12. 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-12)
13. Parties to amend to reflect any amendments to the definition of “Benchmark Replacement Adjustment” in the Credit Agreement (such as e.g., including set values, such as the ARRC/ISDA recommended spread adjustment values). [↑](#footnote-ref-13)
14. See the field “Benchmark Replacement Date Longstop Date” in the front end of this Confirmation. [↑](#footnote-ref-14)