

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM 10-Q

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the period ended September 30, 2021

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from \_\_\_\_\_ to \_\_\_\_\_  
Commission file number 1-8993

**WHITE MOUNTAINS INSURANCE GROUP, LTD.**

(Exact name of Registrant as specified in its charter)

**Bermuda**  
(State or other jurisdiction of incorporation or organization)  
**23 South Main Street, Suite 3B**  
**Hanover,**  
**New Hampshire**  
(Address of principal executive offices)

**94-2708455**  
(I.R.S. Employer Identification No.)  
**03755-2053**  
(Zip Code)

Registrant's telephone number, including area code: **(603) 640-2200**

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Shares, par value \$1.00 per share	WTM	New York Stock Exchange Bermuda Stock Exchange

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the Registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the Registrant was required to submit such files). Yes  No

Indicate by check mark whether the Registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer  Accelerated filer  Non-accelerated filer   
Smaller reporting company  Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the Registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes  No

As of November 5, 2021, 3,017,772 common shares with a par value of \$1.00 per share were outstanding (which includes 37,850 restricted common shares that were not vested at such date).

WHITE MOUNTAINS INSURANCE GROUP, LTD.

Table of Contents

	<u>Page No.</u>
<b>PART I.</b>	<b>FINANCIAL INFORMATION</b>
<b>Item 1.</b>	<b>Financial Statements (Unaudited)</b>
	Consolidated Balance Sheets, September 30, 2021 and December 31, 2020
	1
	Consolidated Statements of Operations and Comprehensive Income, Three and Nine Months Ended September 30, 2021 and 2020
	3
	Consolidated Statements of Changes in Equity, Three and Nine Months Ended September 30, 2021 and 2020
	6
	Consolidated Statements of Cash Flows, Nine Months Ended September 30, 2021 and 2020
	8
	Notes to Consolidated Financial Statements
	9
<b>Item 2.</b>	<b>Management's Discussion and Analysis of Financial Condition and Results of Operations</b>
	54
	Results of Operations for the Three and Nine Months Ended September 30, 2021 and 2020
	54
	Liquidity and Capital Resources
	80
	Non-GAAP Financial Measures
	85
	Critical Accounting Estimates
	87
	Forward-Looking Statements
	91
<b>Item 3.</b>	<b>Quantitative and Qualitative Disclosures About Market Risk</b>
	91
<b>Item 4.</b>	<b>Controls and Procedures</b>
	92
<b>PART II.</b>	<b>OTHER INFORMATION</b>
	92
<b>Items 1 through 6.</b>	
	92
<b>SIGNATURES</b>	93

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Part I. FINANCIAL INFORMATION.

Item 1. Financial Statements

WHITE MOUNTAINS INSURANCE GROUP, LTD.  
CONSOLIDATED BALANCE SHEETS

Millions, except share and per share amounts	September 30, 2021	December 31, 2020
Assets	Unaudited	
<b>Financial Guarantee (HG Global/BAM)</b>		
Fixed maturity investments, at fair value	\$ 898.4	\$ 859.5
Short-term investments, at fair value	50.3	60.4
Total investments	948.7	919.9
Cash	21.8	42.8
Insurance premiums receivable	6.9	6.9
Deferred acquisition costs	31.7	27.8
Other assets	18.7	20.4
Total Financial Guarantee assets	1,027.8	1,017.8
<b>P&amp;C Insurance and Reinsurance (Ark)</b>		
Fixed maturity investments, at fair value	618.1	—
Common equity securities, at fair value	159.6	—
Short-term investments, at fair value	396.5	—
Other long-term investments	320.6	—
Total investments	1,494.8	—
Cash	116.5	—
Reinsurance recoverables	465.6	—
Insurance premiums receivable	482.3	—
Ceded unearned premiums	92.1	—
Deferred acquisition costs and value of in-force business acquired	127.8	—
Goodwill and other intangible assets	292.5	—
Other assets	61.3	—
Total P&C Insurance and Reinsurance assets	3,132.9	—
<b>Specialty Insurance Distribution (NSM)</b>		
Cash (restricted \$92.2 and \$78.4)	126.5	126.5
Premiums and commissions receivable	78.8	76.7
Goodwill and other intangible assets	734.8	736.8
Other assets	56.4	59.6
Total Specialty Insurance Distribution assets	996.5	999.6
<b>Asset Management (Kudu)</b>		
Short-term investments, at fair value	.1	.1
Other long-term investments	604.7	400.6
Total investments	604.8	400.7
Cash (restricted \$4.5 and \$0.0)	14.8	7.8
Accrued investment income	9.0	9.8
Goodwill and other intangible assets	9.0	9.2
Other assets	8.4	2.7
Total Asset Management assets	646.0	430.2
<b>Other Operations</b>		
Fixed maturity investments, at fair value	316.4	347.7
Short-term investments, at fair value	162.6	82.4
Investment in MediaAlpha, at fair value	316.4	802.2
Other long-term investments	360.2	386.2
Total investments	1,155.6	1,618.5
Cash	31.1	34.1
Cash pre-funded/placed in escrow for Ark Transaction	—	646.3
Goodwill and other intangible assets	48.7	36.4
Other assets	75.0	48.5
Total Other Operations assets	1,310.4	2,383.8
<b>Total assets</b>	<b>\$ 7,113.6</b>	<b>\$ 4,831.4</b>

See Notes to Consolidated Financial Statements

**CONSOLIDATED BALANCE SHEETS (CONTINUED)**

<b>Millions, except share and per share amounts</b>	<b>September 30, 2021</b>	<b>December 31, 2020</b>
<b>Liabilities</b>	<b>Unaudited</b>	
<b>Financial Guarantee (HG Global/BAM)</b>		
Unearned insurance premiums	\$ 257.0	\$ 237.5
Accrued incentive compensation	21.0	25.7
Other liabilities	32.5	28.3
<b>Total Financial Guarantee liabilities</b>	<b>310.5</b>	<b>291.5</b>
<b>P&amp;C Insurance and Reinsurance (Ark)</b>		
Loss and loss adjustment expense reserves	890.9	—
Unearned insurance premiums	596.6	—
Debt	200.7	—
Reinsurance payable	481.4	—
Contingent consideration	24.0	—
Other liabilities	87.4	—
<b>Total P&amp;C Insurance and Reinsurance liabilities</b>	<b>2,281.0</b>	<b>—</b>
<b>Specialty Insurance Distribution (NSM)</b>		
Debt	295.0	272.6
Premiums payable	132.5	113.4
Contingent consideration	6.7	14.6
Other liabilities	84.2	91.2
<b>Total Specialty Insurance Distribution liabilities</b>	<b>518.4</b>	<b>491.8</b>
<b>Asset Management (Kudu)</b>		
Debt	195.6	86.3
Other liabilities	40.2	10.0
<b>Total Asset Management liabilities</b>	<b>235.8</b>	<b>96.3</b>
<b>Other Operations</b>		
Debt	19.1	17.5
Accrued incentive compensation	44.7	70.1
Other liabilities	49.8	46.3
<b>Total Other Operations liabilities</b>	<b>113.6</b>	<b>133.9</b>
<b>Total liabilities</b>	<b>3,459.3</b>	<b>1,013.5</b>
<b>Equity</b>		
<b>White Mountains's common shareholders' equity</b>		
White Mountains's common shares at \$1 par value per share—authorized 50,000,000 shares; issued and outstanding 3,029,620 and 3,102,011 shares and paid-in surplus	3.0	3.1
Paid-in surplus	583.2	592.1
Retained earnings	2,935.3	3,311.2
Accumulated other comprehensive gain (loss), after-tax:		
Net unrealized foreign currency translation and interest rate swap gains (losses)	.2	(.4)
<b>Total White Mountains's common shareholders' equity</b>	<b>3,521.7</b>	<b>3,906.0</b>
<b>Non-controlling interests</b>	<b>132.6</b>	<b>(88.1)</b>
<b>Total equity</b>	<b>3,654.3</b>	<b>3,817.9</b>
<b>Total liabilities and equity</b>	<b>\$ 7,113.6</b>	<b>\$ 4,831.4</b>

See Notes to Consolidated Financial Statements

**WHITE MOUNTAINS INSURANCE GROUP, LTD.**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**  
(Unaudited)

Millions	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
<b>Revenues:</b>				
<i>Financial Guarantee (HG Global/BAM)</i>				
Earned insurance premiums	\$ 6.7	\$ 6.2	\$ 19.6	\$ 17.2
Net investment income	4.4	4.7	13.2	15.1
Net realized and unrealized investment (losses) gains	(4.0)	3.2	(15.6)	23.7
Other revenues	.3	.4	.9	2.1
Total Financial Guarantee revenues	<u>7.4</u>	<u>14.5</u>	<u>18.1</u>	<u>58.1</u>
<i>P&amp;C Insurance and Reinsurance (Ark)</i>				
Earned insurance premiums	213.4	—	435.8	—
Net investment income	.6	—	1.8	—
Net realized and unrealized investment gains	.3	—	10.3	—
Other revenues	3.4	—	9.4	—
Total P&C Insurance and Reinsurance revenues	<u>217.7</u>	<u>—</u>	<u>457.3</u>	<u>—</u>
<i>Specialty Insurance Distribution (NSM)</i>				
Commission revenues	67.0	58.2	194.6	174.2
Other revenues	15.3	12.5	46.8	37.6
Total Specialty Insurance Distribution revenues	<u>82.3</u>	<u>70.7</u>	<u>241.4</u>	<u>211.8</u>
<i>Asset Management (Kudu)</i>				
Net investment income	9.5	6.4	26.1	19.3
Net realized and unrealized investment gains	18.9	9.8	62.5	1.5
Other revenues	.1	.1	.2	.2
Total Asset Management revenues	<u>28.5</u>	<u>16.3</u>	<u>88.8</u>	<u>21.0</u>
<i>Other Operations</i>				
Net investment income	5.0	60.1	16.1	79.3
Net realized and unrealized investment gains (losses)	15.3	43.6	34.0	(17.4)
Net realized and unrealized investment (losses) gains from investment in MediaAlpha	(396.8)	250.0	(325.5)	295.0
Commission revenues	2.4	2.1	7.0	6.1
Other revenues	28.1	2.2	57.6	6.0
Total Other Operations revenues	<u>(346.0)</u>	<u>358.0</u>	<u>(210.8)</u>	<u>369.0</u>
<b>Total revenues</b>	<u>\$ (10.1)</u>	<u>\$ 459.5</u>	<u>\$ 594.8</u>	<u>\$ 659.9</u>

**CONSOLIDATED STATEMENTS OF OPERATIONS (CONTINUED)**  
**(Unaudited)**

Millions	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
<b>Expenses:</b>				
<b>Financial Guarantee (HG Global/BAM)</b>				
Insurance acquisition expenses	\$ 3.0	\$ 1.6	\$ 6.5	\$ 5.4
General and administrative expenses	12.4	14.0	42.7	41.4
Total Financial Guarantee expenses	<u>15.4</u>	<u>15.6</u>	<u>49.2</u>	<u>46.8</u>
<b>P&amp;C Insurance and Reinsurance (Ark)</b>				
Loss and loss adjustment expenses	129.2	—	247.8	—
Insurance and reinsurance acquisition expenses	53.7	—	124.4	—
General and administrative expenses	21.8	—	84.4	—
Interest expense	2.1	—	4.5	—
Total P&C Insurance and Reinsurance expenses	<u>206.8</u>	<u>—</u>	<u>461.1</u>	<u>—</u>
<b>Specialty Insurance Distribution (NSM)</b>				
General and administrative expenses	48.8	42.9	142.1	131.0
Broker commission expenses	20.4	17.1	60.9	56.4
Change in fair value of contingent consideration	.6	.7	.8	(1.6)
Amortization of other intangible assets	8.2	5.1	25.0	16.2
Loss on assets held for sale	—	—	28.7	—
Interest expense	5.9	6.1	17.7	16.1
Total Specialty Insurance Distribution expenses	<u>83.9</u>	<u>71.9</u>	<u>275.2</u>	<u>218.1</u>
<b>Asset Management (Kudu)</b>				
General and administrative expenses	3.3	2.2	9.0	7.5
Amortization of other intangible assets	—	.1	.2	.3
Interest expense	1.9	1.4	9.2	4.3
Total Asset Management expenses	<u>5.2</u>	<u>3.7</u>	<u>18.4</u>	<u>12.1</u>
<b>Other Operations</b>				
Cost of sales	24.0	2.3	45.9	6.5
General and administrative expenses	14.5	44.3	79.7	87.1
Amortization of other intangible assets	2.0	.2	2.9	.6
Interest expense	.4	.3	1.1	.8
Total Other Operations expenses	<u>40.9</u>	<u>47.1</u>	<u>129.6</u>	<u>95.0</u>
<b>Total expenses</b>	<u>352.2</u>	<u>138.3</u>	<u>933.5</u>	<u>372.0</u>
<b>Pre-tax (loss) income from continuing operations</b>	<u>(362.3)</u>	<u>321.2</u>	<u>(338.7)</u>	<u>287.9</u>
Income tax expense	(21.6)	(98.5)	(41.9)	(97.1)
<b>Net (loss) income from continuing operations</b>	<u>(383.9)</u>	<u>222.7</u>	<u>(380.6)</u>	<u>190.8</u>
Net (loss) gain from sale of discontinued operations, net of tax	—	(.7)	18.7	(.8)
<b>Net (loss) income</b>	<u>(383.9)</u>	<u>222.0</u>	<u>(361.9)</u>	<u>190.0</u>
Net loss attributable to non-controlling interests	12.5	10.9	53.7	29.5
<b>Net (loss) income attributable to White Mountains's common shareholders</b>	<u>\$ (371.4)</u>	<u>\$ 232.9</u>	<u>\$ (308.2)</u>	<u>\$ 219.5</u>

See Notes to Consolidated Financial Statements

**WHITE MOUNTAINS INSURANCE GROUP, LTD.**  
**CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME**  
(Unaudited)

Millions	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
<b>Net (loss) income attributable to White Mountains's common shareholders</b>	\$ (371.4)	\$ 232.9	\$ (308.2)	\$ 219.5
Other comprehensive (loss) income, net of tax	(2.2)	3.9	.6	1.0
<b>Comprehensive (loss) income</b>	<b>(373.6)</b>	<b>236.8</b>	<b>(307.6)</b>	<b>220.5</b>
Other comprehensive loss (income) attributable to non-controlling interests	.2	(.1)	—	(.3)
<b>Comprehensive (loss) income attributable to White Mountains's common shareholders</b>	<b>\$ (373.4)</b>	<b>\$ 236.7</b>	<b>\$ (307.6)</b>	<b>\$ 220.2</b>

**Earnings (loss) per share attributable to White Mountains's common shareholders:**

<b>Basic (loss) earnings per share</b>				
Continuing operations	\$ (120.18)	\$ 75.32	\$ (105.48)	\$ 70.40
Discontinued operations	—	(.23)	6.03	(.26)
Total consolidated operations	<b>\$ (120.18)</b>	<b>\$ 75.09</b>	<b>\$ (99.45)</b>	<b>\$ 70.14</b>
<b>Diluted (loss) earnings per share</b>				
Continuing operations	\$ (120.18)	\$ 75.32	\$ (105.48)	\$ 70.40
Discontinued operations	—	(.23)	6.03	(.26)
Total consolidated operations	<b>\$ (120.18)</b>	<b>\$ 75.09</b>	<b>\$ (99.45)</b>	<b>\$ 70.14</b>
<b>Dividends declared and paid per White Mountains's common share</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ 1.00</b>	<b>\$ 1.00</b>

See Notes to Consolidated Financial Statements.

WHITE MOUNTAINS INSURANCE GROUP, LTD.  
CONSOLIDATED STATEMENTS OF CHANGES IN EQUITY  
(Unaudited)

Millions	White Mountains's Common Shareholders' Equity					
	Common shares and paid-in surplus	Retained earnings	AOCI, after tax	Total	Non-controlling interest	Total Equity
<b>Balance at June 30, 2021</b>	\$ 597.2	\$ 3,378.6	\$ 2.4	\$ 3,978.2	\$ 129.8	\$ 4,108.0
Net loss	—	(371.4)	—	(371.4)	(12.5)	(383.9)
Net change in foreign currency translation and other	—	—	(2.2)	(2.2)	(.2)	(2.4)
Total comprehensive loss	—	(371.4)	(2.2)	(373.6)	(12.7)	(386.3)
Dividends to non-controlling interests	—	—	—	—	(.6)	(.6)
Repurchases and retirements of common shares	(15.2)	(71.9)	—	(87.1)	—	(87.1)
BAM member surplus contribution, net of tax	—	—	—	—	14.7	14.7
Amortization of restricted share awards	3.6	—	—	3.6	—	3.6
Recognition of equity-based compensation expense of subsidiaries	.2	—	—	.2	—	.2
Net contributions and dilution from other non-controlling interests	.4	—	—	.4	1.4	1.8
Acquisition of non-controlling interests	—	—	—	—	—	—
<b>Balance at September 30, 2021</b>	\$ 586.2	\$ 2,935.3	\$ .2	\$ 3,521.7	\$ 132.6	\$ 3,654.3

Millions	White Mountains's Common Shareholders' Equity					
	Common shares and paid-in surplus	Retained earnings	AOCI, after tax	Total	Non-controlling interest	Total Equity
<b>Balance at June 30, 2020</b>	\$ 587.0	\$ 2,589.3	\$ (10.3)	\$ 3,166.0	\$ (102.7)	\$ 3,063.3
Net income (loss)	—	232.9	—	232.9	(10.9)	222.0
Net change in foreign currency translation and other	—	—	3.8	3.8	.2	4.0
Total comprehensive income (loss)	—	232.9	3.8	236.7	(10.7)	226.0
Dividends to non-controlling interests	—	—	—	—	(.9)	(.9)
Issuances of common shares	.2	—	—	.2	—	.2
Repurchases and retirements of common shares	—	(.1)	—	(.1)	—	(.1)
BAM member surplus contributions, net of tax	—	—	—	—	15.4	15.4
Amortization of restricted share awards	3.6	—	—	3.6	—	3.6
Recognition of equity-based compensation expense of subsidiary	1.0	—	—	1.0	—	1.0
Net contributions and dilution from other non-controlling interests	.3	—	—	.3	(.4)	(.1)
Acquisition of non-controlling interests	—	—	—	—	.8	.8
<b>Balance at September 30, 2020</b>	\$ 592.1	\$ 2,822.1	\$ (6.5)	\$ 3,407.7	\$ (98.5)	\$ 3,309.2

See Notes to Consolidated Financial Statements.

CONSOLIDATED STATEMENTS OF CHANGES IN EQUITY (CONTINUED)  
(Unaudited)

Millions	White Mountains's Common Shareholders' Equity					
	Common shares and paid-in surplus	Retained earnings	AOCI, after tax	Total	Non-controlling interest	Total Equity
<b>Balance at January 1, 2021</b>	\$ 595.2	\$ 3,311.2	\$ (.4)	\$ 3,906.0	\$ (88.1)	\$ 3,817.9
Net loss	—	(308.2)	—	(308.2)	(53.7)	(361.9)
Net change in foreign currency translation and other	—	—	.4	.4	—	.4
Total comprehensive (loss) income	—	(308.2)	.4	(307.8)	(53.7)	(361.5)
Dividends declared on common shares	—	(3.1)	—	(3.1)	—	(3.1)
Dividends to non-controlling interests	—	—	—	—	(1.8)	(1.8)
Issuances of common shares	1.7	—	—	1.7	—	1.7
Issuance of shares of non-controlling interests	—	—	—	—	6.1	6.1
Repurchases and retirements of common shares	(16.6)	(78.0)	—	(94.6)	—	(94.6)
BAM member surplus contributions, net of tax	—	—	—	—	44.8	44.8
Amortization of restricted share awards	11.1	—	—	11.1	—	11.1
Recognition of equity-based compensation expense of subsidiaries	2.0	—	—	2.0	.3	2.3
Net contributions and dilution from other non-controlling interests	(7.2)	13.4	.2	6.4	(5.3)	1.1
Acquisition of non-controlling interests	—	—	—	—	230.3	230.3
<b>Balance at September 30, 2021</b>	\$ 586.2	\$ 2,935.3	\$ .2	\$ 3,521.7	\$ 132.6	\$ 3,654.3

Millions	White Mountains's Common Shareholders' Equity					
	Common shares and paid-in surplus	Retained earnings	AOCI, after tax	Total	Non-controlling interest	Total Equity
<b>Balance at January 1, 2020</b>	\$ 596.3	\$ 2,672.4	\$ (7.2)	\$ 3,261.5	\$ (116.8)	\$ 3,144.7
Net income (loss)	—	219.5	—	219.5	(29.5)	190.0
Net change in foreign currency translation and other	—	—	.7	.7	.3	1.0
Total comprehensive income (loss)	—	219.5	.7	220.2	(29.2)	191.0
Dividends declared on common shares	—	(3.2)	—	(3.2)	—	(3.2)
Dividends to non-controlling interests	—	—	—	—	(2.3)	(2.3)
Issuances of common shares	1.5	—	—	1.5	—	1.5
Repurchases and retirements of common shares	(18.6)	(66.6)	—	(85.2)	—	(85.2)
BAM member surplus contributions, net of tax	—	—	—	—	46.9	46.9
Amortization of restricted share awards	12.3	—	—	12.3	—	12.3
Recognition of equity-based compensation expense of subsidiary	1.0	—	—	1.0	—	1.0
Net contributions and dilution from other non-controlling interests	(.4)	—	—	(.4)	2.1	1.7
Acquisition of non-controlling interests	—	—	—	—	.8	.8
<b>Balance at September 30, 2020</b>	\$ 592.1	\$ 2,822.1	\$ (6.5)	\$ 3,407.7	\$ (98.5)	\$ 3,309.2

See Notes to Consolidated Financial Statements.

**WHITE MOUNTAINS INSURANCE GROUP, LTD.**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS (Unaudited)**

Millions	Nine Months Ended September 30,	
	2021	2020
<b>Cash flows from operations:</b>		
Net (loss) income	\$ (361.9)	\$ 190.0
Adjustments to reconcile net income to net cash used for operations:		
Net realized and unrealized investment gains	(91.2)	(7.8)
Net realized and unrealized investment loss (gains) from investment in MediaAlpha	325.5	(295.0)
Deferred income tax expense	29.0	87.9
Net (gain) loss from sale of discontinued operations, net of tax	(18.7)	.8
Amortization of restricted share and option awards	11.1	12.2
Amortization and depreciation	42.9	27.2
Other operating items:		
Net change in reinsurance recoverables	(32.3)	—
Net change in insurance premiums receivable	(245.7)	—
Net change in commissions receivable	(1.2)	6.0
Net change in ceded unearned premiums	78.1	—
Net change in loss and loss adjustment expense reserves	194.9	—
Net change in premiums payable	9.5	5.3
Net change in unearned insurance premiums	290.0	28.6
Net change in deferred acquisition costs	(60.0)	(4.0)
Net change in reinsurance payable	(46.8)	—
Net change in restricted cash	18.3	26.6
Investments in Kudu Participation Contracts	(141.6)	(57.5)
Net change in other assets and liabilities, net	46.1	(8.1)
<b>Net cash provided from operations</b>	<b>46.0</b>	<b>12.2</b>
<b>Cash flows from investing activities:</b>		
Net change in short-term investments	(87.3)	(370.3)
Sales of fixed maturity and convertible investments	215.9	293.2
Maturities, calls and paydowns of fixed maturity and convertible investments	144.6	135.2
Sales of common equity securities	176.8	582.9
Distributions and redemptions of other long-term investments and settlements of forward contracts	98.2	64.5
Release of cash pre-funded/placed in escrow for Ark Transaction	646.3	—
Purchases of consolidated subsidiaries, net of cash acquired of \$52.2 and \$13.4	(39.0)	(129.4)
Purchases of other long-term investments	(206.5)	(61.0)
Purchases of common equity securities	(119.7)	(33.8)
Purchases of fixed maturity and convertible investments	(996.0)	(411.3)
Other investing activities, net	(2.7)	(42.0)
<b>Net cash (used to) provided from investing activities</b>	<b>(169.4)</b>	<b>28.0</b>
<b>Cash flows from financing activities:</b>		
Draw down of debt and revolving line of credit	403.9	69.4
Repayment of debt and revolving line of credit	(105.9)	(2.7)
Cash dividends paid to the Company's common shareholders	(3.2)	(3.2)
Common shares repurchased	(87.1)	(78.5)
Net contributions from non-controlling interest shareholders	2.0	1.0
Contingent consideration payments related to acquisitions of subsidiaries	(8.8)	(7.0)
Acquisition of subsidiary shares from non-controlling interest shareholders	(.4)	—
Capital contributions from BAM members	44.8	46.9
Acquisition of subsidiary shares by non-controlling interest shareholders	6.1	—
Fidus Re premium payment	(6.9)	(2.3)
Other financing activities, net	(22.2)	(9.8)
<b>Net cash provided from financing activities</b>	<b>222.3</b>	<b>13.8</b>
<b>Effect of exchange rate changes on cash</b>	<b>.6</b>	<b>(.2)</b>
<b>Net change in cash during the period - continuing operations, including the effect of exchange rate changes</b>	<b>99.5</b>	<b>53.8</b>
<b>Cash balances at beginning of period (includes restricted cash balances of \$78.4 and \$56.3)</b>	<b>211.2</b>	<b>161.0</b>
<b>Cash balances at end of period (includes restricted cash balances of \$96.7 and \$82.9)</b>	<b>\$ 310.7</b>	<b>\$ 214.8</b>
<b>Supplemental cash flows information:</b>		
Interest paid	\$ (21.9)	\$ (11.4)
Net income tax payments	\$ (2.1)	\$ (.1)

See Notes to Consolidated Financial Statements



## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Unaudited)

### **Note 1. Basis of Presentation and Significant Accounting Policies**

#### **Basis of Presentation**

The Company is an exempted Bermuda limited liability company whose principal businesses are conducted through its subsidiaries and other affiliates. The Company's headquarters is located at 26 Reid Street, Hamilton, Bermuda HM 11, its principal executive office is located at 23 South Main Street, Suite 3B, Hanover, New Hampshire 03755-2053 and its registered office is located at Clarendon House, 2 Church Street, Hamilton, Bermuda HM 11. The Company's website is located at [www.whitemountains.com](http://www.whitemountains.com). The information contained on White Mountains's website is not incorporated by reference into, and is not a part of, this report.

The accompanying consolidated financial statements have been prepared in accordance with generally accepted accounting principles in the United States ("GAAP") and include the accounts of White Mountains Insurance Group, Ltd. (the "Company" or the "Registrant"), its subsidiaries (collectively with the Company, "White Mountains") and other entities required to be consolidated under GAAP.

#### **Consolidation Principles**

Under GAAP, the Company is required to consolidate any entity in which it holds a controlling financial interest. A controlling financial interest is usually in the form of an investment representing the majority of the subsidiary's voting interests. However, a controlling financial interest may also arise from a financial interest in a variable interest entity ("VIE") through arrangements that do not involve ownership of voting interests. The Company consolidates a VIE if it determines that it is the primary beneficiary. The primary beneficiary is defined as the entity who holds a variable interest that gives it both the power to direct the VIE's activities that most significantly impact its economic performance and the obligation to absorb losses of, or the right to receive returns from, the VIE that could potentially be significant to the VIE.

Intercompany transactions have been eliminated in consolidation. These interim financial statements include all adjustments considered necessary by management to fairly state the financial position, results of operations and cash flows of White Mountains. These interim financial statements may not be indicative of financial results for the full year and should be read in conjunction with the Company's 2020 Annual Report on Form 10-K.

#### **Business Combinations**

White Mountains accounts for purchases of businesses using the acquisition method, which requires the measurement of assets acquired, including goodwill and other intangible assets, and liabilities assumed, including contingent liabilities, at their estimated fair values as of the acquisition date. The acquisition date fair values represent management's best estimates and are based upon established valuation techniques, reasonable assumptions and, where appropriate, valuations performed by independent third parties. In circumstances where additional information is required in order to determine the acquisition date fair value of balance sheet amounts, provisional amounts may be recorded as of the acquisition date and may be subject to subsequent adjustment throughout the measurement period, which is up to one year from the acquisition date. Measurement period adjustments are recognized in the period in which they are determined. The results of operations and cash flows of businesses acquired are included in the consolidated financial statements from the date of acquisition. White Mountains accounts for purchases of other intangible assets that do not meet the definition of a business as asset acquisitions. Asset acquisitions are recognized at the amount of consideration paid, which is deemed to equal fair value.

#### **Use of Estimates**

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities as of the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

#### **Fair Value Measurements**

Fair value measurements are categorized into a hierarchy that distinguishes between inputs based on market data from independent sources (observable inputs) and a reporting entity's internal assumptions based upon the best information available when external market data is limited or unavailable (unobservable inputs). Quoted prices in active markets for identical assets or liabilities have the highest priority ("Level 1"), followed by observable inputs other than quoted prices, including prices for similar but not identical assets or liabilities ("Level 2") and unobservable inputs, including the reporting entity's estimates of the assumptions that market participants would use, having the lowest priority ("Level 3").

## Reportable Segments

White Mountains has determined its reportable segments based on the nature of the underlying businesses, the manner in which the Company's subsidiaries and affiliates are organized and managed and the organization of the financial information provided to the chief operating decision maker to assess performance and make decisions regarding allocation of resources. As of September 30, 2021, White Mountains's reportable segments were HG Global/BAM, Ark, NSM, Kudu and Other Operations.

The HG Global/BAM segment consists of HG Global Ltd. and its wholly-owned subsidiaries ("HG Global") and the consolidated results of Build America Mutual Assurance Company ("BAM") (collectively, "HG Global/BAM"). BAM is the first and only mutual municipal bond insurance company in the United States. By insuring the timely payment of principal and interest, BAM provides market access to, and lowers interest expense for, issuers of municipal bonds used to finance essential public purposes such as schools, utilities and transportation facilities. BAM is owned by and operated for the benefit of its members, the municipalities that purchase BAM's insurance for their debt issuances. HG Global was established to fund the startup of BAM and, through its wholly-owned subsidiary, HG Re Ltd. ("HG Re"), to provide up to 15%-of-par, first loss reinsurance protection for policies underwritten by BAM. For capital appreciation bonds, par is adjusted to the estimated equivalent par value for current interest paying bonds. HG Global, together with its subsidiaries, funded the initial capitalization of BAM through the purchase of \$503.0 million of surplus notes issued by BAM, consisting of \$203.0 million of Series A Notes and \$300.0 million of Series B Notes (the "BAM Surplus Notes"). As of September 30, 2021 and December 31, 2020, White Mountains owned 96.9% of HG Global's preferred equity and 88.4% of its common equity. White Mountains does not have an ownership interest in BAM. However, White Mountains is required to consolidate BAM's results in its financial statements because BAM is a VIE for which White Mountains is the primary beneficiary. BAM's results are all attributed to non-controlling interests.

The Ark segment consists of Ark Insurance Holdings Limited and its subsidiaries (collectively, "Ark"). Ark writes a diversified portfolio of reinsurance and insurance, including property, marine & energy, specialty, accident & health and casualty, through Lloyd's of London ("Lloyd's") Syndicates 4020 and 3902 (the "Syndicates"). Beginning in January 2021, Ark began writing certain classes of its business through Group Ark Insurance Limited ("GAIL"), Ark's wholly-owned Class 4 Bermuda-based insurance and reinsurance company.

As of September 30, 2021, White Mountains owned 72.0% of Ark on a basic shares outstanding basis (63.0% on a fully-diluted, fully-converted basis, taking account of management's equity incentives). The remaining shares are owned by employees. In the future, management rollover shareholders could earn additional shares in the company if and to the extent that White Mountains achieves certain multiple of invested capital return thresholds. If fully earned, these additional shares would represent 12.5% of the shares outstanding at closing. See **Note 2 — "Significant Transactions"**.

The NSM segment consists of NSM Insurance HoldCo, LLC and its subsidiaries (collectively, "NSM"). NSM is a full-service managing general underwriting agency ("MGU") and program administrator for specialty property and casualty insurance. The company places insurance in niche sectors such as specialty transportation, real estate, social services and pet. On behalf of its insurance carrier partners, NSM typically manages all aspects of the placement process, including product development, marketing, underwriting, policy issuance and claims. NSM earns commissions based on the volume and, in some cases, profitability of the insurance that it places. NSM does not take insurance risk. As of September 30, 2021 and December 31, 2020, White Mountains owned 96.6% and 96.5% of the basic units outstanding of NSM (87.3% and 89.6% on a fully diluted, fully converted basis). See **Note 2 — "Significant Transactions"**.

The Kudu segment consists of Kudu Investment Management, LLC and its subsidiaries (collectively "Kudu"). Kudu provides capital solutions for boutique asset managers for a variety of purposes including generational ownership transfers, management buyouts, acquisition and growth finance and legacy partner liquidity. Kudu also provides strategic assistance to investees from time to time. Kudu's capital solutions typically are structured as minority preferred equity stakes with distribution rights, generally tied to gross revenues and designed to generate immediate strong, stable cash yields. As of September 30, 2021 and December 31, 2020, White Mountains owned 99.3% and 99.1% of the basic units outstanding (84.7% and 85.4% on a fully diluted, fully converted basis).

The Other Operations segment consists of the Company and its wholly-owned subsidiary, White Mountains Capital, LLC, ("WM Capital") its other intermediate holding companies, its wholly-owned investment management subsidiary, White Mountains Advisors LLC ("WM Advisors"), investment assets managed by WM Advisors, its interests in MediaAlpha, Inc. ("MediaAlpha"), PassportCard Limited ("PassportCard") and DavidShield Life Insurance Agency (2000) Ltd. ("DavidShield") (collectively, "PassportCard/ DavidShield"), Elementum Holdings LP ("Elementum"), and certain other consolidated and unconsolidated entities and certain other assets. See **Note 2 — "Significant Transactions"**.

### **Discontinued Operations and Assets Held for Sale**

In the first quarter of 2021, White Mountains recorded a gain on sale of discontinued operations as a result of reversing a liability arising from the tax indemnification provided in connection with the sale of Sirius International Insurance Group, Ltd. (“Sirius Group”) in 2016.

On April 12, 2021, NSM sold the Fresh Insurance Services Group Limited (“Fresh Insurance”) motor business, which was classified as held for sale at March 31, 2021. The transaction did not meet the criteria to be classified as discontinued operations. See **Note 19 — “Held for Sale and Discontinued Operations”**.

### **Significant Accounting Policies**

In addition to the following, refer to the Notes to Consolidated Financial Statements in the Company’s 2020 Annual Report on Form 10-K for a complete discussion regarding White Mountains’s significant accounting policies.

#### **Ark Insurance Operations**

Ark writes a diversified portfolio of reinsurance and insurance, including property, marine & energy, specialty, accident & health and casualty, through the Syndicates. Beginning in January 2021, Ark began writing certain classes of its business through GAIL.

For the years of account prior to White Mountains’s transaction with Ark, a significant proportion of the Syndicates’ underwriting capital was provided by other third-party insurance and reinsurance groups (“TPC Providers”) using whole account reinsurance contracts through Ark’s corporate member. The TPC Providers’ economic participation in the Syndicates for the remaining open years of account prior to White Mountains’s transaction with Ark is approximately 51% of the total net result of the Syndicates. Captions within results of operations and other comprehensive income are shown net of amounts relating to the TPC Providers share of the Syndicates’ results, including investment results.

Ark’s premiums written comprise premiums on insurance contracts inception during the year as well as premium adjustments related to prior years of account. Insurance premiums are recognized as revenues over the loss exposure or coverage period in proportion to the level of insurance protection provided. In most cases, premiums are earned ratably over the term of the contract with unearned premiums calculated on a monthly pro-rata basis. Catastrophe premiums are earned in proportion to the level of insurance protection provided. Premiums earned are presented net of amounts ceded to reinsurers. Premiums receivable, representing amounts due from insureds, are presented net of an allowance for uncollectible premiums, including expected credit losses, both dispute and credit related. The allowance is based upon Ark’s ongoing review of amounts outstanding, historical loss data, including delinquencies and write-offs, current and forecasted economic conditions and other relevant factors. Credit risk is partially mitigated by Ark’s ability to cancel the policy if the policyholder does not pay the premium.

Deferred acquisition costs comprise brokerage and taxes which are directly attributable to and vary with the production of business. These costs are deferred and amortized to the extent they related to successful contract acquisitions over the applicable premium recognition period.

Losses and loss adjustment expenses (“LAE”) are charged against income as incurred. Unpaid losses and LAE, including estimates for amounts incurred but not reported (“IBNR”) are based on estimates of the ultimate costs of settling claims, including the effects of inflation and other societal and economic factors. Unpaid loss and LAE reserves represent management’s best estimate of ultimate losses and LAE, net of estimated salvage and subrogation recoveries, if applicable. Such estimates are regularly reviewed and updated and any resulting adjustments are reflected in current results of operations. The process of estimating loss and LAE involves a considerable degree of judgment by management and the ultimate amount of expense to be incurred could be considerably greater than or less than the amounts currently reflected in the financial statements.

Reinsurance recoverables represent amounts of paid losses and loss adjustment expenses, case reserves and IBNR amounts ceded to reinsurers under reinsurance treaties. Amounts recoverable from reinsurers are estimated in a manner consistent with the associated claim liability. Ark reports its reinsurance recoverables net of an allowance for estimated uncollectible reinsurance, including expected credit losses. The allowance is based upon its ongoing review of amounts outstanding, length of collection periods, changes in reinsurer credit standing, disputes, applicable coverage defenses and other relevant factors.

### **Goodwill and Other Intangible Assets**

Goodwill represents the excess of the amount paid to acquire subsidiaries over the fair value of identifiable net assets at the date of acquisition. Other intangible assets consist primarily of underwriting capacity, customer relationships, renewal rights and trade names.

### **Derivatives**

From time to time, White Mountains holds derivative financial instruments for risk management purposes. White Mountains recognizes all derivatives as either assets or liabilities, measured at fair value, on the consolidated balance sheet. Changes in the fair value of derivative instruments that meet the criteria for hedge accounting are recognized in other comprehensive income and reclassified into current period pre-tax income when the hedged items are recognized therein. Changes in the fair value of derivative instruments that do not meet the criteria for hedge accounting are recognized in current period pre-tax income.

As of September 30, 2021 and December 31, 2020, NSM holds an interest rate swap derivative instrument that meets the criteria for hedge accounting. See **Note 9 — “Derivatives”**.

### **Reinsurance Contracts Accounted for as Deposits**

Reinsurance contracts that do not meet the risk transfer requirements necessary to be accounted for as reinsurance are accounted for using the deposit method. Under the deposit method, ceded premiums paid are not recognized through income but rather treated as a deposit. BAM entered into ceded reinsurance agreements with Fidus Re Ltd. (“Fidus Re”) during the second quarter of 2018 and the first quarter of 2021, which are both accounted for using the deposit method. See **Note 10 — “Municipal Bond Guarantee Insurance”**. The nonrefundable consideration paid by BAM to Fidus Re is charged to financing expense within general and administrative expenses.

Ark has an aggregate excess of loss contract with SiriusPoint Ltd. (“SiriusPoint”), formerly Third Point Reinsurance Ltd., which is accounted for using the deposit method and recorded within other assets. Ark earns an annual crediting rate of 3.0%, which is recorded within other revenue. During the three months ended June 30, 2021, Ark negotiated a reduction of \$31.7 million, including accrued interest, to the aggregate excess of loss contract with SiriusPoint. As of September 30, 2021, the carrying value of Ark’s deposit in SiriusPoint, including accrued interest, was \$20.3 million.

### **Cash and Restricted Cash**

Cash includes amounts on hand and demand deposits with banks and other financial institutions. Amounts presented in the statement of cash flows are shown net of balances acquired and sold in the purchase or sale of the Company’s consolidated subsidiaries.

Cash balances that are not immediately available for general corporate purposes, including fiduciary accounts held by NSM on behalf of insurance carriers and the interest reserve account that Kudu maintains under its credit facility, are classified as restricted.

## **Note 2. Significant Transactions**

### **MediaAlpha**

On October 30, 2020, MediaAlpha completed an initial public offering (the “MediaAlpha IPO”). In the offering, White Mountains sold 3.6 million shares at \$19.00 per share (\$17.67 per share net of underwriting fees) and received total proceeds of \$63.8 million. White Mountains also received \$55.0 million of net proceeds related to a dividend recapitalization at MediaAlpha.

Subsequent to the MediaAlpha IPO, White Mountains’s investment in MediaAlpha is accounted for at fair value based on the publicly traded share price of MediaAlpha’s common stock and White Mountains presents its investment in MediaAlpha as a separate line item on the balance sheet.

As of December 31, 2020, White Mountains owned 20.5 million MediaAlpha shares, representing a 35.0% ownership interest (32.3% on a fully-diluted, fully converted basis). At the December 31, 2020 closing price of \$39.07 per share, the fair value of White Mountains’s remaining investment in MediaAlpha was \$802.2 million.

On March 23, 2021, MediaAlpha completed a secondary offering of 8.05 million shares. In the secondary offering, White Mountains sold 3.6 million shares at \$46.00 per share (\$44.62 per share net of underwriting fees) for net proceeds of \$160.3 million.

As of September 30, 2021, White Mountains owned 16.9 million shares, representing a 28.4% basic ownership interest (26.3% fully-diluted/fully-converted basis). At the September 30, 2021 closing price of \$18.68 per share, the fair value of White Mountains’s investment in MediaAlpha was \$316.4 million. At this level of ownership, each \$1.00 per share increase or decrease in the share price of MediaAlpha will result in an approximate \$5.60 per share increase or decrease in White Mountains’s book value per share. At the October 2021 month-end closing price of \$17.53 per share, the fair value of White Mountains’s investment in MediaAlpha was \$297.0 million. See **Note 16 — “Equity-Method Eligible Investments”**.

### **Ark**

On October 1, 2020, White Mountains entered into a subscription and purchase agreement (the “Ark SPA”) with Ark and certain selling shareholders (collectively with Ark, the “Ark Sellers”). Certain Ark Sellers also entered into a related management warranty deed (together with the Ark SPA, the “Ark Acquisition Agreement”) pursuant to which they made certain warranties about the Ark business (collectively the “Ark Transaction”). Under the terms of the Ark SPA, White Mountains agreed to contribute \$605.4 million of equity capital to Ark, at a pre-money valuation of \$300.0 million, and purchase \$40.9 million of shares from the Ark Sellers. White Mountains also agreed to contribute up to an additional \$200.0 million of equity capital to Ark in 2021. In accordance with the Ark SPA, in the fourth quarter of 2020, White Mountains pre-funded/placed in escrow a total of \$646.3 million in preparation for closing the Ark Transaction, including \$280.0 million funded directly to Lloyd’s on behalf of Ark under the terms of a Deposit Trust Deed and \$366.3 million placed in escrow, which is reflected on the balance sheet within the Other Operations segment as of December 31, 2020.

On January 1, 2021, White Mountains completed the Ark Transaction in accordance with the terms of the Ark SPA. As of September 30, 2021, White Mountains owned 72.0% of Ark on a basic shares outstanding basis (63.0% on a fully-diluted, fully-converted basis, taking account of management’s equity incentives). The remaining shares are owned by employees. In the future, management rollover shareholders could earn additional shares in the company if and to the extent that White Mountains achieves certain multiple of invested capital return thresholds. If fully earned, these additional shares would represent 12.5% of the shares outstanding at closing.

White Mountains recognized total assets acquired related to the Ark Transaction of \$2.5 billion, including goodwill and other intangible assets of \$292.5 million, and total liabilities of \$1.7 billion, including contingent consideration of \$22.5 million and non-controlling interest of \$220.2 million. Ark incurred transaction costs of \$25.3 million in the first quarter of 2021.

In the third quarter of 2021, Ark issued \$163.3 million of floating rate unsecured subordinated notes (the “Ark 2021 Subordinated Notes”) in three separate transactions. See **Note 7 — “Debt”**. In connection with the issuance of the Ark 2021 Subordinated Notes, White Mountains and Ark terminated White Mountains’s commitment to provide up to \$200.0 million of additional equity capital to Ark in 2021.

The following presents additional details of the assets acquired and liabilities assumed as of the January 1, 2021 acquisition date:

Millions	\$	As of January 1, 2021
Investments	\$	594.3
Cash		<sup>(1)</sup> 52.0
Reinsurance recoverables		433.4
Insurance premiums receivable		236.7
Ceded unearned premiums		170.2
Value of in-force business acquired		71.7
Other assets		88.9
Loss and loss adjustment expense reserves		(696.0)
Unearned insurance premiums		(326.1)
Debt		(46.4)
Ceded reinsurance payable		(528.3)
Other liabilities		(25.9)
Net tangible assets acquired		24.5
Goodwill		116.8
Other intangible assets - syndicate underwriting capacity		175.7
Deferred tax liability on other intangible assets		(33.4)
Net assets acquired	\$	283.6

<sup>(1)</sup> Cash excludes the White Mountains cash contribution of \$605.4 as part of the Ark transaction.

The acquisition date fair values of assets and liabilities, including insurance reserves and intangible assets, are provisional and are subject to revision within one year of the acquisition date.

The values of net tangible assets acquired and the resulting goodwill, other intangible assets and contingent consideration were recorded at fair value using Level 3 inputs. The majority of the tangible assets acquired and liabilities assumed were recorded at their carrying values, as their carrying values approximated their fair values due to their short-term nature. The fair values of goodwill, other intangible assets and the contingent consideration liability were internally estimated primarily based on the income approach. The income approach estimates fair value based on the present value of the cash flows that the assets are expected to generate in the future. White Mountains developed internal estimates for the expected future cash flows and discount rates used in the present value calculations.

The value of in-force business acquired represents the estimated profits relating to the unexpired contracts, net of related prepaid reinsurance at the acquisition date through the expiration date of the contracts. The value of the syndicate underwriting capacity intangible asset was estimated using net cash flows attributable to Ark's rights to write business in the Lloyd's market. The value of the in-force business acquired and the syndicate underwriting capacity were estimated using a discounted cash flow method. Significant inputs to the valuation models include estimates of growth in premium revenues, investment returns, claim costs, expenses and discount rates based on a weighted average cost of capital.

In evaluating the fair value of Ark's loss and loss adjustment expense reserves, White Mountains determined that the risk-free rate of interest was approximately equal to the risk factor reflecting the uncertainty within the reserves and that no adjustment was necessary.

Ark's segment income and expenses for the three and nine months ended September 30, 2021 are presented in **Note 15 - "Segment Information."** Pro forma financial information for Ark for the three and nine months ended September 30, 2020 has not been presented because as a private U.K. domiciled company Ark does not have quarterly financial reporting requirements and therefore quarterly financial information is not available for periods prior to the January 1, 2021 acquisition date.

#### NSM

On May 18, 2018, NSM acquired 100% of Fresh Insurance, which is an insurance broker that offers non-standard personal lines products in the United Kingdom. NSM paid \$49.6 million of upfront cash consideration for Fresh Insurance. NSM borrowed \$51.0 million to fund the transaction. During the nine months ended September 30, 2019, NSM paid a purchase price adjustment of an additional \$0.7 million of consideration. The purchase price is subject to additional adjustments based upon growth in EBITDA during two earnout periods, one which ended in February 2020 and one ending in February 2022. NSM did not make any payments related to the first Fresh Insurance earnout period.

On April 12, 2021, NSM sold Fresh Insurance's motor business for net proceeds of £1.1 million (\$1.5 million based upon the foreign exchange spot rate as of the transaction date). As of March 31, 2021, the Fresh Insurance motor business was classified as held for sale and NSM recognized a loss of \$28.7 million in the first quarter of 2021. See **Note 19 — "Held for Sale and Discontinued Operations"**.

On December 3, 2018, NSM acquired all the net assets of KBK Insurance Group, Inc. (“KBK”), a specialized MGU focused on the towing and transportation space. NSM paid \$60.0 million of upfront cash consideration for KBK. White Mountains contributed \$29.0 million to NSM and NSM borrowed \$30.1 million to fund the transaction. As of March 31, 2019, White Mountains determined that the relative values of goodwill and other intangible assets from the KBK transaction were \$32.6 million and \$32.7 million, reflecting acquisition date fair values, and recorded a liability of \$5.9 million relating to the fair value of contingent consideration made in connection with the acquisition. The purchase price is subject to adjustments based upon growth in EBITDA during three earnout periods, one which ended in December 2019, one which ended in December 2020 and one ending in December 2021. In the first quarter of 2021 and 2020, NSM paid \$6.7 million and \$6.4 million related to the first and second KBK earnout periods. As of September 30, 2021, the KBK contingent consideration liability was \$6.6 million.

On April 7, 2020, NSM acquired 100% of Kingsbridge Group Limited (“Kingsbridge”), a leading provider of commercial lines insurance and consulting services for the professional contractor and freelancer markets in the United Kingdom. NSM paid £107.2 million (\$132.2 million based upon the foreign exchange spot rate at the date of acquisition) of upfront cash consideration for Kingsbridge. White Mountains contributed \$80.3 million to NSM and NSM borrowed £42.5 million (\$52.4 million based upon the foreign exchange spot rate at the date of acquisition) to fund the transaction. During 2020, NSM determined that the relative values of goodwill and other intangible assets recorded in connection with the Kingsbridge transaction were \$111.5 million and \$20.2 million, reflecting acquisition date fair values. The purchase price is subject to adjustment based upon growth in EBITDA during an earnout period ending in January 2022. During 2020, NSM initially recorded a liability relating to the fair value of the Kingsbridge contingent consideration of \$4.1 million. During the fourth quarter of 2020, NSM recognized pre-tax income of \$4.1 million for the change in fair value of the Kingsbridge contingent consideration liability and a foreign currency translation unrealized gain of \$0.3 million. As of September 30, 2021, the Kingsbridge contingent consideration liability was \$0.1 million.

On August 6, 2021, NSM acquired 100% of J.C. Taylor Insurance (“J.C. Taylor”), a managing general agent (“MGA”) offering classic and antique collector car insurance. NSM paid \$49.6 million of upfront cash consideration for J.C. Taylor. NSM borrowed \$35.0 million under its credit facility to fund the acquisition. NSM recognized total assets acquired related to the J.C. transaction of \$60.3 million, including goodwill and other intangible assets of \$55.7 million, and total liabilities of \$10.7 million. The relative fair values of goodwill and of other intangible assets recognized in connection with the acquisition of J.C. Taylor had not yet been finalized as of September 30, 2021.

The contingent consideration liabilities related to NSM’s acquisitions are subject to adjustments based upon EBITDA, EBITDA projections, and present value factors for acquired entities. For the three and nine months ended September 30, 2021, NSM recognized pre-tax loss of \$0.6 million and \$0.8 million for the change in the fair value of its contingent consideration liabilities. For the three and nine months ended September 30, 2020, NSM recognized pre-tax loss (income) of \$0.7 million and \$(1.6) million for the change in the fair value of its contingent consideration liabilities. Any future adjustments to contingent consideration liabilities under the agreements will be recognized through pre-tax income. As of September 30, 2021 and December 31, 2020, NSM recorded total contingent consideration liabilities of \$6.7 million and \$14.6 million.

#### ***PassportCard/DavidShield***

On January 24, 2018, White Mountains acquired a 50.0% ownership interest in DavidShield, its joint venture partner in PassportCard. DavidShield is a managing general agency that is the leading provider of expatriate medical insurance in Israel and uses the same card-based delivery system as PassportCard. As part of the transaction, White Mountains reorganized its equity stake in PassportCard so that White Mountains and its partner in DavidShield would each own 50.0% of both businesses. To facilitate the transaction, White Mountains provided financing to its partner in the form of a non-interest bearing loan that is secured by the partner’s equity in PassportCard and DavidShield. The gross purchase price for the 50.0% interest in DavidShield was \$41.8 million, or \$28.3 million net of the financing provided for the restructuring.

On May 7, 2020, White Mountains made an additional \$15.0 million investment in PassportCard/DavidShield to support operations through the ongoing COVID-19 pandemic. The transaction increased White Mountains’s ownership interest from 50.0% to 53.8%, but had no impact on the governance structure of the companies, including White Mountains’s board representation or other investor rights. The governance structures for both PassportCard and DavidShield were designed to give White Mountains and its co-investor equal power to make the decisions that most significantly impact the operations of PassportCard and DavidShield.

As a result of the transaction, White Mountains’s re-evaluated its accounting treatment for PassportCard and DavidShield. Because White Mountains does not have the unilateral power to direct the operations of PassportCard or DavidShield, White Mountains does not hold a controlling financial interest in either PassportCard or DavidShield and does not consolidate either entity. White Mountains’s ownership interest gives White Mountains the opportunity to exert significant influence over the significant financial and operating activities of PassportCard and DavidShield. Accordingly, PassportCard and DavidShield meet the criteria to be accounted for under the equity method. White Mountains has taken the fair value option for its investment in PassportCard and DavidShield. Changes in the fair value of PassportCard and DavidShield are recorded in realized and unrealized investment gains. White Mountains’s maximum exposure to loss on its equity investment in PassportCard/DavidShield and the non-interest bearing loan to its partner is limited to the total carrying value of \$114.4 million.

### Note 3. Investment Securities

White Mountains's portfolio of investment securities held for general investment purposes consists of fixed maturity investments, short-term investments, common equity securities, its investment in MediaAlpha and other long-term investments, which are classified as trading securities. Trading securities are reported at fair value as of the balance sheet date. Net realized and unrealized investment gains (losses) on trading securities are reported in pre-tax revenues.

White Mountains's fixed maturity investments are generally valued using industry standard pricing methodologies. Key inputs include benchmark yields, benchmark securities, reported trades, issuer spreads, bids, offers, credit ratings and prepayment speeds. Income on mortgage and asset-backed securities is recognized using an effective yield based on anticipated prepayments and the estimated economic life of the securities. When actual prepayments differ significantly from anticipated prepayments, the estimated economic life is recalculated and the remaining unamortized premium or discount is amortized prospectively over the remaining economic life.

Realized investment gains (losses) resulting from sales of investment securities are accounted for using the specific identification method. Premiums and discounts on all fixed maturity investments are amortized or accreted to income over the anticipated life of the investment. Short-term investments consist of interest-bearing money market funds, certificates of deposit and other securities, which at the time of purchase, mature or become available for use within one year. Short-term investments are carried at fair value, which approximated amortized cost, as of September 30, 2021 and December 31, 2020.

Other long-term investments consist primarily of unconsolidated entities, including Kudu's Participation Contracts, private equity funds, a hedge fund, Lloyd's trust deposits, a bank loan fund, insurance-linked securities funds ("ILS funds") and private debt investments.

#### Net Investment Income

White Mountains's net investment income is comprised primarily of interest income associated with White Mountains's fixed maturity investments and short-term investments, dividend income from common equity securities, distributions from its investment in MediaAlpha and distributions from other long-term investments.

The following table presents pre-tax net investment income for the three and nine months ended September 30, 2021 and 2020:

Millions	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Fixed maturity investments	\$ 8.2	\$ 7.0	\$ 21.9	\$ 22.4
Short-term investments	—	.1	.5	1.0
Common equity securities	.1	.5	.1	6.5
Investment in MediaAlpha	—	55.0	—	60.0
Other long-term investments	12.0	8.9	37.1	24.7
Amount attributable to TPC Providers	(.2)	—	(.8)	—
Total investment income	20.1	71.5	58.8	114.6
Third-party investment expenses	(.6)	(.3)	(1.6)	(.9)
Net investment income, pre-tax	\$ 19.5	\$ 71.2	\$ 57.2	\$ 113.7



## Net Realized and Unrealized Investment Gains (Losses)

The following table presents net realized and unrealized investment gains (losses) for the three and nine months ended September 30, 2021 and 2020:

Millions	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Fixed maturity investments	\$ (6.8)	\$ 3.6	\$ (23.2)	\$ 35.8
Short-term investments	(.3)	—	—	.4
Common equity securities	1.6	48.4	7.7	5.9
Investment in MediaAlpha	(396.8)	250.0	(325.5)	295.0
Other long-term investments	37.7	4.6	113.2	(34.3)
Amount attributable to TPC Providers	(1.7)	—	(6.5)	—
Net realized and unrealized investment (losses) gains <sup>(1)</sup>	(366.3)	306.6	(234.3)	302.8
Less: net (losses) gains on investment securities sold during the period	(4.8)	36.1	(5.1)	29.6
Net realized and unrealized investment (losses) gains on investment securities held at the end of the period	\$ (361.5)	\$ 270.5	\$ (229.2)	\$ 273.2

<sup>(1)</sup> For the three months ended September 30, 2021 and 2020, includes \$(7.0) and \$0.8 of realized and unrealized investment gains (losses) related to foreign currency exchange. For the nine months ended September 30, 2021 and 2020, includes \$(7.4) and \$(0.8) of realized and unrealized investment gains (losses) related to foreign currency exchange.

The following table presents total gains included in earnings attributable to net unrealized investment gains for Level 3 investments for the three and nine months ended September 30, 2021 and 2020 for investments still held at the end of the period:

Millions	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Other long-term investments	\$ 26.5	\$ 260.1	\$ 75.5	\$ 276.0
Total net unrealized investment gains, pre-tax - Level 3 investments	\$ 26.5	\$ 260.1	\$ 75.5	\$ 276.0

## Investment Holdings

The following tables present the cost or amortized cost, gross unrealized investment gains (losses) and carrying values of White Mountains's fixed maturity investments as of September 30, 2021 and December 31, 2020:

Millions	September 30, 2021				
	Cost or Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Net Foreign Currency Gains (Losses)	Carrying Value
U.S. Government and agency obligations	\$ 207.4	\$ .8	\$ (.6)	\$ —	\$ 207.6
Debt securities issued by corporations	945.2	13.1	(3.4)	(.7)	954.2
Municipal obligations	276.1	18.0	(.7)	—	293.4
Mortgage and asset-backed securities	247.3	4.2	(1.4)	—	250.1
Collateralized loan obligations	128.5	—	(.4)	(.5)	127.6
Total fixed maturity investments	\$ 1,804.5	\$ 36.1	\$ (6.5)	\$ (1.2)	\$ 1,832.9

Millions	December 31, 2020			
	Cost or Amortized Cost	Gross Unrealized Gains	Gross Unrealized Gains (Losses)	Carrying Value
U.S. Government and agency obligations	\$ 173.2	\$ 3.1	\$ —	\$ 176.3
Debt securities issued by corporations	522.8	24.7	(.1)	547.4
Municipal obligations	244.0	21.0	—	265.0
Mortgage and asset-backed securities	211.7	6.8	—	218.5
Total fixed maturity investments	\$ 1,151.7	\$ 55.6	\$ (.1)	\$ 1,207.2

The following table presents the cost or amortized cost and carrying value of White Mountains's fixed maturity investments by contractual maturity as of September 30, 2021. Actual maturities could differ from contractual maturities because borrowers may have the right to call or prepay certain obligations with or without call or prepayment penalties.

Millions	September 30, 2021	
	Cost or Amortized Cost	Carrying Value
Due in one year or less	\$ 111.9	\$ 112.7
Due after one year through five years	836.1	843.4
Due after five years through ten years	368.5	377.3
Due after ten years	112.2	121.8
Mortgage and asset-backed securities and collateralized loan obligations	375.8	377.7
Total fixed maturity investments	\$ 1,804.5	\$ 1,832.9

The following tables present the cost or amortized cost, gross unrealized investment gains (losses), net foreign currency gains (losses), and carrying values of common equity securities, White Mountains's investment in MediaAlpha and other long-term investments as of September 30, 2021 and December 31, 2020:

Millions	September 30, 2021				
	Cost or Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Net Foreign Currency Gains (Losses)	Carrying Value
Common equity securities	\$ 152.5	\$ 8.8	\$ (.5)	\$ (1.2)	\$ 159.6
Investment in MediaAlpha	\$ —	\$ 316.4	\$ —	\$ —	\$ 316.4
Other long-term investments	\$ 1,154.7	\$ 197.6	\$ (62.9)	\$ (3.9)	\$ 1,285.5

Millions	December 31, 2020				
	Cost or Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Net Foreign Currency Gains (Losses)	Carrying Value
Investment in MediaAlpha	\$ —	\$ 802.2	\$ —	\$ —	\$ 802.2
Other long-term investments	\$ 767.4	\$ 95.8	\$ (78.1)	\$ 1.7	\$ 786.8

## Fair Value Measurements

As of September 30, 2021 and December 31, 2020, White Mountains used quoted market prices or other observable inputs to determine fair value for approximately 69% and 73% of the investment portfolio.

### Fair Value Measurements by Level

The following tables present White Mountains's fair value measurements for investments as of September 30, 2021 and December 31, 2020 by level. The major security types were based on the legal form of the securities. White Mountains has disaggregated its fixed maturity investments based on the issuing entity type, which impacts credit quality, with debt securities issued by U.S. government entities carrying minimal credit risk, while the credit and other risks associated with other issuers, such as corporations, municipalities or entities issuing mortgage and asset-backed securities vary depending on the nature of the issuing entity type. White Mountains further disaggregates debt securities issued by corporations by industry sector because investors often reference commonly used benchmarks and their subsectors to monitor risk and performance. Accordingly, White Mountains has further disaggregated this asset class into subclasses based on the similar sectors and industry classifications it uses to evaluate investment risk and performance against commonly used benchmarks, such as the Bloomberg Barclays U.S. Intermediate Aggregate.

Millions	September 30, 2021			
	Fair Value	Level 1	Level 2	Level 3
Fixed maturity investments:				
U.S. Government and agency obligations	\$ 207.6	\$ 207.6	\$ —	\$ —
Debt securities issued by corporations:				
Financials	246.5	—	246.5	—
Consumer	180.5	—	180.5	—
Industrial	114.8	—	114.8	—
Technology	110.8	—	110.8	—
Healthcare	98.2	—	98.2	—
Utilities	69.9	—	69.9	—
Communications	53.2	—	53.2	—
Energy	47.0	—	47.0	—
Materials	33.3	—	33.3	—
Total debt securities issued by corporations	954.2	—	954.2	—
Municipal obligations	293.4	—	293.4	—
Mortgage and asset-backed securities	250.1	—	250.1	—
Collateralized loan obligations	127.6	—	127.6	—
Total fixed maturity investments	1,832.9	207.6	1,625.3	—
Short-term investments	609.5	601.6	7.9	—
Common equity securities <sup>(1)</sup>	159.6	—	159.6	—
Investment in MediaAlpha	316.4	316.4	—	—
Other long-term investments	814.5	—	—	814.5
Other long-term investments — NAV <sup>(2)</sup>	471.0	—	—	—
Total other long-term investments	1,285.5	—	—	814.5
Total investments	\$ 4,203.9	\$ 1,125.6	\$ 1,792.8	\$ 814.5

<sup>(1)</sup> Consist of investments in listed funds that predominantly invest in international equities.

<sup>(2)</sup> Consists of private equity funds, a hedge fund, Lloyd's trust deposits, a bank loan fund and ILS funds for which fair value is measured at NAV using the practical expedient. Investments for which fair value is measured at NAV are not classified within the fair value hierarchy.

Millions	December 31, 2020			
	Fair Value	Level 1	Level 2	Level 3
Fixed maturity investments:				
U.S. Government and agency obligations	\$ 176.3	\$ 176.3	\$ —	\$ —
Debt securities issued by corporations:				
Financials	133.9	—	133.9	—
Consumer	81.9	—	81.9	—
Industrial	66.9	—	66.9	—
Technology	66.7	—	66.7	—
Healthcare	51.5	—	51.5	—
Communications	44.5	—	44.5	—
Energy	35.8	—	35.8	—
Materials	33.9	—	33.9	—
Utilities	32.3	—	32.3	—
Total debt securities issued by corporations	547.4	—	547.4	—
Municipal obligations	265.0	—	265.0	—
Mortgage and asset-backed securities	218.5	—	218.5	—
Total fixed maturity investments	1,207.2	176.3	1,030.9	—
Short-term investments	142.9	142.9	—	—
Investment in MediaAlpha	802.2	802.2	—	—
Other long-term investments	614.2	—	—	614.2
Other long-term investments — NAV <sup>(1)</sup>	172.6	—	—	—
Total other long-term investments	786.8	—	—	614.2
Total investments	\$ 2,939.1	\$ 1,121.4	\$ 1,030.9	\$ 614.2

<sup>(1)</sup> Consists of private equity funds and ILS funds for which fair value is measured at NAV using the practical expedient. Investments for which fair value is measured at NAV are not classified within the fair value hierarchy.

### Debt Securities Issued by Corporations

The following table presents the credit ratings of debt securities issued by corporations held in White Mountains's investment portfolio as of September 30, 2021 and December 31, 2020:

Millions	Fair Value at	
	September 30, 2021	December 31, 2020
AAA	\$ 12.7	\$ 10.6
AA	85.7	57.9
A	473.3	318.3
BBB	373.7	159.6
BB	—	1.0
Other	8.8	—
Debt securities issued by corporations <sup>(1)</sup>	\$ 954.2	\$ 547.4

<sup>(1)</sup> Credit ratings are based upon issuer credit ratings provided by Standard & Poor's Financial Services LLC ("Standard & Poor's"), or if unrated by Standard & Poor's, long-term obligation ratings provided by Moody's Investor Service, Inc.

## Mortgage and Asset-backed Securities and Collateralized Loan Obligations

The following table presents the fair value of White Mountains's mortgage and asset-backed securities and collateralized loan obligations as of September 30, 2021 and December 31, 2020:

Millions	September 30, 2021			December 31, 2020		
	Fair Value	Level 2	Level 3	Fair Value	Level 2	Level 3
<b>Mortgage-backed securities:</b>						
Agency:						
FNMA	\$ 125.3	\$ 125.3	\$ —	\$ 88.7	\$ 88.7	\$ —
FHLMC	76.5	76.5	—	70.1	70.1	—
GNMA	29.4	29.4	—	40.6	40.6	—
Total agency <sup>(1)</sup>	231.2	231.2	—	199.4	199.4	—
Non-agency: Residential	.6	.6	—	—	—	—
Total non-agency	.6	.6	—	—	—	—
Total mortgage-backed securities	231.8	231.8	—	199.4	199.4	—
<b>Other asset-backed securities:</b>						
Credit card receivables	11.2	11.2	—	11.3	11.3	—
Vehicle receivables	7.1	7.1	—	7.8	7.8	—
Total other asset-backed securities	18.3	18.3	—	19.1	19.1	—
Total mortgage and asset-backed securities	250.1	250.1	—	218.5	218.5	—
<b>Collateralized loan obligations</b>						
Total mortgage and asset-backed securities and collateralized loan obligations	\$ 377.7	\$ 377.7	\$ —	\$ 218.5	\$ 218.5	\$ —

<sup>(1)</sup> Represents publicly traded mortgage-backed securities which carry the full faith and credit guaranty of the U.S. Government (i.e., GNMA) or are guaranteed by a government sponsored entity (i.e., FNMA, FHLMC).

As of September 30, 2021, White Mountains's investment portfolio included \$127.6 million of collateralized loan obligations that are within the senior tranches of their respective fund securitization structures. All of White Mountains's collateral loan obligations were rated AAA or AA as of September 30, 2021.

## Investment in MediaAlpha

Subsequent to the MediaAlpha IPO, White Mountains's investment in MediaAlpha is accounted for at fair value based on the publicly traded share price of MediaAlpha's common stock and is presented as a separate line item on the balance sheet.

At the September 30, 2021 closing price of \$18.68 per share, the fair value of White Mountains's investment in MediaAlpha was \$316.4 million. See Note 2 — "Significant Transactions".

## Other Long-Term Investments

The following table presents the carrying values of White Mountains's other long-term investments as of September 30, 2021 and December 31, 2020:

Millions	Fair Value at	
	September 30, 2021	December 31, 2020
Kudu's Participation Contracts	\$ 604.7	\$ 400.6
PassportCard/DavidShield	105.0	95.0
Elementum Holdings L.P.	56.7	55.1
Other unconsolidated entities <sup>(1)</sup>	27.0	42.4
Total unconsolidated entities	793.4	593.1
Private equity funds and hedge funds	144.2	121.2
Bank loan fund	161.7	—
Lloyd's trust deposits	111.2	—
ILS funds	53.9	51.4
Private debt investments	13.3	21.1
Other	7.8	—
Total other long-term investments	\$ 1,285.5	\$ 786.8

<sup>(1)</sup> Includes White Mountains's non-controlling equity interests in certain private common equity securities, limited liability companies and convertible preferred securities and Simple Agreement for Future Equity ("SAFE") investments.

### Private Equity Funds and Hedge Funds

White Mountains invests in private equity funds and hedge funds, which are included in other long-term investments. The fair value of these investments is generally estimated using the net asset value ("NAV") of the funds. As of September 30, 2021, White Mountains held investments in fourteen private equity funds and one hedge fund. The largest investment in a single private equity fund or hedge fund was \$27.4 million as of September 30, 2021 and \$29.1 million as of December 31, 2020.

The following table presents the fair value of investments and unfunded commitments in private equity funds and hedge funds by investment objective and sector as of September 30, 2021 and December 31, 2020:

Millions	September 30, 2021		December 31, 2020	
	Fair Value	Unfunded Commitments	Fair Value	Unfunded Commitments
<b>Private equity funds</b>				
Aerospace/Defense/Government	\$ 63.9	\$ 14.0	\$ 69.1	\$ 15.3
Financial services	63.2	29.6	23.5	30.4
Real estate	4.8	2.9	—	—
Manufacturing/Industrial	.1	—	28.6	—
Total private equity funds	132.0	46.5	121.2	45.7
<b>Hedge funds</b>				
European small/mid cap	12.2	—	—	—
Total hedge funds	12.2	—	—	—
Total private equity funds and hedge funds included in other long-term investments	\$ 144.2	\$ 46.5	\$ 121.2	\$ 45.7

Investments in private equity funds are generally subject to a lock-up period during which investors may not request a redemption. Distributions prior to the expected termination date of the fund may be limited to dividends or proceeds arising from the liquidation of the fund's underlying investments. In addition, certain private equity funds have the option to extend the lock-up period.

The following table presents investments in private equity funds that were subject to lock-up periods as of September 30, 2021:

Millions	1 – 3 years	3 – 5 years	5 – 10 years	>10 years	Total
Private equity funds — expected lock-up period remaining	\$3	\$14.0	\$109.0	\$8.7	\$132.0

Investors in private equity funds are generally subject to indemnification obligations outside of the capital commitment period and prior to the winding up of the fund. As of September 30, 2021 and December 31, 2020, White Mountains is not aware of any indemnification claims relating to its investments in private equity funds.

Redemption of investments in most hedge funds is subject to restrictions, including lock-up periods where no redemptions or withdrawals are allowed, restrictions on redemption frequency and advance notice periods for redemptions. Amounts requested for redemptions remain subject to market fluctuations until the redemption effective date, which generally falls at the end of the defined redemption period. White Mountains's hedge fund investment is subject to a perpetual two-year restriction on redemption frequency from the initial investment in the fund and a 90-days advanced notice period requirement.

#### *Lloyd's Trust Deposits*

White Mountains's other long-term investments include Lloyd's trust deposits, which consists of overseas deposits and Canadian comingled pooled funds. The Lloyd's trust deposits invest primarily in short-term government securities, agency securities and corporate bonds held in trusts that are managed by Lloyd's of London. These investments are required of Lloyd's syndicates to protect policyholders in overseas markets and are pledged into Lloyd's trust accounts to provide a portion of the capital needed to support obligations at Lloyd's. The fair value of the Lloyd's trust deposits is generally estimated using the NAV of the funds. As of September 30, 2021, White Mountains held Lloyd's trust deposits with a fair value of \$111.2 million.

#### *Bank Loan Fund*

White Mountains's other long-term investments include a bank loan fund with a fair value of \$161.7 million as of September 30, 2021. The fair value of this investment is estimated using the NAV of the fund. The bank loan fund's investment objective is to provide, on an unleveraged basis, high current income consistent with preservation of capital and low duration. The bank loan fund primarily invests in a broad portfolio of U.S. dollar-denominated, non-investment grade, floating-rate senior secured loans and may invest in other financial instruments, such as secured and unsecured corporate debt, credit default swaps, reverse repurchase agreements and synthetic indices and cash and cash equivalents.

The investment in the bank loan fund is subject to restrictions on redemption frequency and advance notice periods for redemptions. Amounts requested for redemptions remain subject to market fluctuations until the redemption effective date, which generally falls at the end of the defined redemption period. White Mountains may redeem all or a portion of its bank loan fund investment as of any calendar month-end upon 15 calendar days advanced written notice.

#### *Insurance-Linked Securities Funds*

White Mountains's other long-term investments include ILS fund investments. The fair value of these investments is generally estimated using the NAV of the funds. As of September 30, 2021, White Mountains held investments in ILS funds with a fair value of \$53.9 million.

Investments in ILS funds are generally subject to restrictions, including lock-up periods where no redemptions or withdrawals are allowed, non-renewal clauses, restrictions on redemption frequency and advance notice periods for redemptions. From time to time, natural catastrophe, liquidity, market or other events will occur that make the determination of fair value for underlying investments in ILS funds less certain due to the potential for loss development. In such circumstances, the impacted investments may be subject to additional lock-up provisions.

ILS funds are typically subject to monthly and annual restrictions on redemptions and advance redemption notice period requirements that range between 30 and 90 days. Amounts requested for redemption remain subject to market fluctuations until the redemption effective date, which generally falls at the end of the defined redemption period.

One of the ILS funds in White Mountains's portfolio requires shareholders to provide advance redemption notice on or before September 15 of each calendar year. Amounts requested for redemption in this fund remain subject to market fluctuation until the underlying investment has fully matured or been commuted, which may be up to a period of three years from the start of each calendar year.

## Rollforward of Fair Value Measurements by Level

White Mountains uses quoted market prices where available as the inputs to estimate fair value for its investments in active markets. Such measurements are considered to be either Level 1 or Level 2 measurements, depending on whether the quoted market price inputs are for identical securities (Level 1) or similar securities (Level 2). Level 3 measurements for fixed maturity investments, common equity securities and other long-term investments as of September 30, 2021 and 2020 consist of securities for which the estimated fair value has not been determined based upon quoted market price inputs for identical or similar securities.

The following tables present the changes in White Mountains's fair value measurements by level for the nine months ended September 30, 2021 and 2020:

Millions	Level 3 Investments				Total
	Level 1 Investments	Level 2 Investments	Other Long-term Investments	Other Long-term Investments Measured at NAV <sup>(1)</sup>	
Balance at December 31, 2020	\$ 978.5	\$ 1,030.9	\$ 614.2	\$ 172.6	\$ 2,796.2 <sup>(2)</sup>
Net realized and unrealized gains (losses)	(327.6)	(13.1)	79.0	33.9	(227.8) <sup>(3)</sup>
Amortization/Accretion	(.1)	(5.9)	—	—	(6.0)
Purchases	130.9	989.7	143.6	199.6	1,463.8
Sales	(257.7)	(284.9)	(31.9)	(70.9)	(645.4)
Effect of Ark Transaction	—	68.2	9.6	135.8	213.6
Transfers in	—	—	—	—	—
Transfers out	—	—	—	—	—
Balance at September 30, 2021	\$ 524.0	\$ 1,784.9	\$ 814.5	\$ 471.0	\$ 3,594.4 <sup>(2)</sup>

<sup>(1)</sup> Consists of private equity funds, a hedge fund, Lloyd's trust deposits, a bank loan fund, and ILS funds for which fair value is measured at NAV using the practical expedient. Investments for which fair value is measured at NAV are not classified within the fair value hierarchy. See Note 1 — "Basis of Presentation and Significant Accounting Policies".

<sup>(2)</sup> Excludes carrying value of \$609.5 and \$142.9 as of September 30, 2021 and December 31, 2020 classified as short-term investments.

<sup>(3)</sup> Includes amounts attributable to TPC Providers of \$6.5 for the nine months ended September 30, 2021.

Millions	Level 3 Investments					Total
	Level 1 Investments	Level 2 Investments	Common Equity Securities	Other Long-term Investments and Investment in MediaAlpha Pre-IPO	Other Long-term Investments Measured at NAV <sup>(1)</sup>	
Balance at December 31, 2019	\$ 780.0	\$ 1,109.6	\$ .1	\$ 654.0	\$ 202.3	\$ 2,746.0 <sup>(2)</sup>
Net realized and unrealized gains (losses)	29.2	12.5	—	275.6	(14.9)	302.4 <sup>(3)</sup>
Amortization/Accretion	—	(3.0)	—	—	—	(3.0)
Purchases	128.8	316.2	—	78.8	39.8	563.6
Sales	(642.7)	(368.5)	—	(8.1)	(56.3)	(1,075.6)
Transfers in	—	—	—	—	—	—
Transfers out	—	—	—	—	—	—
Balance at September 30, 2020	\$ 295.3	\$ 1,066.8	\$ .1	\$ 1,000.3	\$ 170.9	\$ 2,533.4 <sup>(2)</sup>

<sup>(1)</sup> Includes private equity funds, a hedge fund and ILS funds for which fair value is measured at NAV using the practical expedient are no longer classified within the fair value hierarchy. See Note 1 — "Basis of Presentation and Significant Accounting Policies".

<sup>(2)</sup> Excludes carrying value of \$571.8 and \$201.2 as of September 30, 2020 and December 31, 2019 classified as short-term investments.

<sup>(3)</sup> Excludes realized and unrealized gains associated with short-term investments of \$0.4 for the nine months ended September 30, 2020.



*Fair Value Measurements — Transfers Between Levels - Nine-months ended September 30, 2021 and 2020*

Transfers between levels are recorded using the fair value measurement as of the end of the quarterly period in which the event or change in circumstance giving rise to the transfer occurred.

During the nine months ended September 30, 2021 and 2020, there were no fixed maturity investments or other long-term investments classified as Level 3 measurements in the prior period that were transferred to Level 2 measurements.

During the nine months ended September 30, 2021 and 2020, there were no fixed maturity investments or other long-term investments classified as Level 2 measurements in the prior period that were transferred to Level 3 measurements.

**Significant Unobservable Inputs**

The following tables present significant unobservable inputs used in estimating the fair value of White Mountains's other long-term investments, classified within Level 3 as of September 30, 2021 and December 31, 2020. The tables below exclude \$14.9 million and \$27.6 million of Level 3 other long-term investments generally valued based on recent or expected transaction prices. The fair value of investments in private equity funds, hedge funds, Lloyd's trust deposits, bank loans funds and ILS funds are generally estimated using the NAV of the funds.

\$ in Millions	September 30, 2021			
	Description	Valuation Technique(s) <sup>(1)</sup>	Fair Value <sup>(2)</sup>	Unobservable Inputs
				Discount Rate <sup>(3)(4)</sup>
				Terminal Cash Flow Exit Multiple (x) or Terminal Revenue Growth Rate (%) <sup>(4)</sup>
Kudu's Participation Contracts <sup>(5)(6)</sup>	Discounted cash flow	\$604.7	18% - 23%	7x - 13x
PassportCard/DavidShield	Discounted cash flow	\$105.0	23%	4%
Elementum Holdings, L.P.	Discounted cash flow	\$56.7	17%	4%
Private debt investments	Discounted cash flow	\$11.2	4% - 8%	N/A
Other	Discounted cash flow	\$22.0	20% - 24%	4%

<sup>(1)</sup> Key inputs to the discounted cash flow analysis generally include projections of future revenue and earnings, discount rates and terminal exit multiples or growth rates.

<sup>(2)</sup> Includes the net unrealized investment gains (losses) associated with foreign currency; foreign currency effects based on observable inputs.

<sup>(3)</sup> Since Kudu's Participation Contracts are not subject to corporate taxes within Kudu Investment Management, LLC, pre-tax discount rates are applied to pre-tax cash flows in determining fair values.

<sup>(4)</sup> Increases (decreases) to the discount rates in isolation would result in lower (higher) fair value measurements, while increases (decreases) to the terminal cash flow exit multiples or terminal revenue growth rates in isolation would result in higher (lower) fair value measurements.

<sup>(5)</sup> For the nine months ended September 30, 2021, Kudu deployed a total of \$141.6 in new and existing Kudu Participation Contracts, including TIG Advisors, TK Partners, Third Eye Capital Management and Douglass Winthrop Advisors.

<sup>(6)</sup> As of September 30, 2021, certain Kudu Participation Contracts with a total fair value of \$121.0 were valued using a probability weighted expected return method, which was based on a discounted cash flow analysis and an expected sale transaction.

\$ in Millions	December 31, 2020			
	Description	Valuation Technique(s) <sup>(1)</sup>	Fair Value <sup>(2)</sup>	Unobservable Inputs
				Discount Rate <sup>(3)(4)</sup>
				Terminal Cash Flow Exit Multiple (x) or Terminal Revenue Growth Rate (%) <sup>(4)</sup>
Kudu's Participation Contracts <sup>(5)</sup>	Discounted cash flow	\$400.6	18% - 23%	7x - 12x
PassportCard/DavidShield <sup>(6)</sup>	Discounted cash flow	\$95.0	23%	4%
Elementum Holdings, L.P.	Discounted cash flow	\$55.1	17%	4%
Private debt investments	Discounted cash flow	\$17.1	4% - 8%	N/A
Other	Discounted cash flow	\$18.8	20% - 24%	4%

<sup>(1)</sup> Key inputs to the discounted cash flow analysis generally include projections of future revenue and earnings, discount rates and terminal exit multiples or growth rates.

<sup>(2)</sup> Includes the net unrealized investment gains (losses) associated with foreign currency; foreign currency effects based on observable inputs.

<sup>(3)</sup> Since Kudu's Participation Contracts are not subject to corporate taxes within Kudu Investment Management, LLC, pre-tax discount rates are applied to pre-tax cash flows in determining fair values.

<sup>(4)</sup> Increases (decreases) to the discount rates in isolation would result in lower (higher) fair value measurements, while increases (decreases) to the terminal cash flow exit multiples or terminal revenue growth rates in isolation would result in higher (lower) fair value measurements.

<sup>(5)</sup> In 2020, Kudu deployed a total of \$118.2 in new Kudu Participation Contracts, including Creation Investments Capital, Sequoia Financial Group, Channel Capital and Ranger Investment Management.

<sup>(6)</sup> In 2020, White Mountains made an additional \$15.0 investment in PassportCard/DavidShield. See Note 2 — "Significant Transactions".

#### Note 4. Goodwill and Other Intangible Assets

White Mountains accounts for purchases of businesses using the acquisition method. Under the acquisition method, White Mountains recognizes and measures the assets acquired, liabilities assumed and any non-controlling interest in the acquired entities at their acquisition date fair values. The acquisition date fair values of certain assets and liabilities, generally consisting of intangible assets and liabilities for contingent consideration, may be recorded at provisional amounts in circumstances where the information necessary to complete the acquisition accounting is not available at the reporting date. Any such provisional amounts are finalized as measurement period adjustments within one year of the acquisition date.

The following table presents the acquisition date fair values, accumulated amortization and net carrying values for other intangible assets and goodwill, by segment as of September 30, 2021 and December 31, 2020:

\$ in Millions	Weighted Average Economic Life (in years)	September 30, 2021				December 31, 2020			
		Acquisition Date Fair Value	Accumulated Amortization	Impairments and Amounts Allocated to Held for Sale	Net Carrying Value	Acquisition Date Fair Value	Accumulated Amortization	Impairments	Net Carrying Value
<b>Goodwill:</b>									
Ark	N/A	\$ 116.8	\$ —	\$ —	\$ 116.8	\$ —	\$ —	\$ —	\$ —
NSM <sup>(1)</sup>	N/A	559.8	—	30.2	529.6	506.4	—	—	506.4
Kudu	N/A	7.6	—	—	7.6	7.6	—	—	7.6
Other Operations	N/A	17.4	—	—	17.4	11.5	—	—	11.5
Total goodwill		<u>701.6</u>	<u>—</u>	<u>30.2</u>	<u>671.4</u>	<u>525.5</u>	<u>—</u>	<u>—</u>	<u>525.5</u>
<b>Other intangible assets:</b>									
Ark									
Underwriting Capacity	N/A	175.7	—	—	175.7	—	—	—	—
NSM <sup>(1)</sup>									
Customer relationships	8.9	136.0	50.6	3.5	81.9	136.2	36.7	3.5	96.0
Trade names	16	65.3	10.9	1.0	53.4	65.4	8.3	1.0	56.1
Information technology platform	0	3.1	1.4	1.7	—	3.1	1.4	1.7	—
Renewal rights	12	82.5	13.1	—	69.4	82.5	4.9	—	77.6
Other	3.4	1.1	.6	—	.5	1.7	1.0	—	.7
Subtotal		<u>288.0</u>	<u>76.6</u>	<u>6.2</u>	<u>205.2</u>	<u>288.9</u>	<u>52.3</u>	<u>6.2</u>	<u>230.4</u>
Kudu									
Trade names	7	2.2	.8	—	1.4	2.2	.6	—	1.6
Other Operations									
Trade names	18.1	8.2	1.0	—	7.2	3.6	.3	—	3.3
Customer relationships	13.3	18.9	3.5	—	15.4	14.2	1.4	—	12.8
Insurance Licenses	N/A	8.6	—	—	8.6	8.6	—	—	8.6
Other	5.4	.3	.2	—	.1	.3	.1	—	.2
Subtotal		<u>36.0</u>	<u>4.7</u>	<u>—</u>	<u>31.3</u>	<u>26.7</u>	<u>1.8</u>	<u>—</u>	<u>24.9</u>
Total other intangible assets		<u>501.9</u>	<u>82.1</u>	<u>6.2</u>	<u>413.6</u>	<u>317.8</u>	<u>54.7</u>	<u>6.2</u>	<u>256.9</u>
Total goodwill and other intangible assets		<u>\$ 1,203.5</u>	<u>\$ 82.1</u>	<u>\$ 36.4</u>	<u>1,085.0</u>	<u>\$ 843.3</u>	<u>\$ 54.7</u>	<u>6.2</u>	<u>782.4</u>
Goodwill and other intangible assets attributed to non-controlling interests					<u>(118.0)</u>				<u>(28.1)</u>
Goodwill and other intangible assets included in White Mountains's common shareholders' equity					<u>\$ 967.0</u>				<u>\$ 754.3</u>

<sup>(1)</sup> As of September 30, 2021, NSM's goodwill and intangible assets included \$(2.3) and \$(0.2) of the effect of foreign currency translation. As of December 31, 2020, NSM's goodwill and intangible assets included \$13.4 and \$1.6 of the effect of foreign currency translation.

The goodwill recognized for the entities shown above is attributed to expected future cash flows. The acquisition date fair values of other intangible assets with finite lives are estimated using income approach techniques, which use future expected cash flows to develop a discounted present value amount.

The multi-period-excess-earnings method estimates fair value using the present value of the incremental after-tax cash flows attributable solely to the other intangible asset over its remaining life. This approach was used to estimate the fair value of other intangible assets associated with the underwriting capacity, trade names, customer relationships and contracts and information technology.

The relief-from-royalty method was used to estimate fair value for other intangible assets that relate to rights that could be obtained via a license from a third-party owner. Under this method, the fair value is estimated using the present value of license fees avoided by owning rather than leasing the asset. This technique was used to estimate the fair value of domain names, certain trademarks and brand names.

The with-or-without method estimates the fair value of an other intangible asset that provides an incremental benefit. Under this method, the fair value of the other intangible asset is calculated by comparing the value of the entity with and without the other intangible asset. This approach was used to estimate the fair value of favorable lease terms.

The following table presents a summary of the acquisition date fair values of goodwill and other intangible assets for acquisitions completed from January 1, 2020 through September 30, 2021:

\$ in Millions		
Acquisition of subsidiary/ asset	Goodwill and Other intangible asset <sup>(1)</sup>	Acquisition Date
Kingsbridge	\$ 131.7	April 7, 2020
J.C. Taylor	55.7	August 6, 2021
Total NSM segment	\$ 187.4	
Ark	\$ 292.5	January 1, 2021
Other Operations	\$ 30.6	Various

<sup>(1)</sup> Acquisition date fair values include the effect of adjustments during the measurement period and excludes the effect of foreign currency translation subsequent to the acquisition date.

On at least an annual basis beginning no later than the interim period included in the one-year anniversary of an acquisition, White Mountains evaluates goodwill and other intangible assets for potential impairment. Between annual evaluations, White Mountains considers changes in circumstances or events subsequent to the most recent evaluation that may indicate that an impairment may exist and, if necessary will perform an interim review for potential impairment.

On April 12, 2021, NSM sold Fresh Insurance's motor business. In connection with the sale, White Mountains recognized a loss of \$28.7 million during the three months ended March 31, 2021. See **Note 19 — "Held for Sale and Discontinued Operations"**. During the three months ended June 30, 2020, White Mountains recognized impairments of other intangible assets of \$6.2 million. The impairments related to NSM's write-off of intangible assets in its U.K. vertical. The impairments related to lower premium volumes, including due to the impact of the COVID-19 pandemic, and certain reorganization initiatives in the U.K. vertical. There were no other impairments of other intangible assets and no impairments of goodwill for the three and nine months ended September 30, 2021 and 2020.

The following tables present the change in goodwill and other intangible assets for the three and nine months ended September 30, 2021 and 2020:

Millions	Three Months Ended September 30,					
	2021			2020		
	Goodwill	Other Intangible Assets	Total Goodwill and Other Intangible Assets	Goodwill	Other Intangible Assets	Total Goodwill and Other Intangible Assets
Beginning balance	\$ 629.4	\$ 414.8	\$ 1,044.2	\$ 518.2	\$ 241.7	\$ 759.9
Acquisition of businesses	55.7 <sup>(1)</sup>	—	55.7	14.9 <sup>(2)</sup>	—	14.9
Attribution of acquisition date fair value estimates between goodwill and other intangible assets <sup>(3)</sup>	(9.3)	9.3	—	—	—	—
Foreign currency translation	(4.0)	(.3)	(4.3)	7.0	(.1)	6.9
Measurement period adjustments <sup>(4)</sup>	(.4)	—	(.4)	—	—	—
Amortization	—	(10.2)	(10.2)	—	(5.4)	(5.4)
Ending balance	\$ 671.4	\$ 413.6	\$ 1,085.0	\$ 540.1	\$ 236.2	\$ 776.3

<sup>(1)</sup> The relative fair values of goodwill and other intangible assets recognized in connection with the acquisition of J.C. Taylor had not yet been finalized at September 30, 2021.

<sup>(2)</sup> The relative fair values of goodwill and other intangible assets recognized in connection with an acquisition within Other Operations had not yet been finalized at September 30, 2020.

<sup>(3)</sup> Relates to an acquisition within the Other Operations segment.

<sup>(4)</sup> Measurement period adjustments relate to updated information about acquisition date fair values of assets acquired and liabilities assumed. During the nine months ended September 30, 2021, adjustments relate to an acquisition within the Other Operations segment.

Millions	Nine Months Ended September 30,					
	2021			2020		
	Goodwill	Other Intangible Assets	Total Goodwill and Other Intangible Assets	Goodwill	Other Intangible Assets	Total Goodwill and Other Intangible Assets
Beginning balance	\$ 525.5	\$ 256.9	\$ 782.4	\$ 394.7	\$ 260.0	\$ 654.7
Attribution of acquisition date fair value estimates between goodwill and other intangible assets <sup>(1)</sup>	(9.3)	9.3	—	—	—	—
Ark Transaction	116.8	175.7	292.5	—	—	—
Acquisition of businesses	71.5 <sup>(2)</sup>	—	71.5	140.0 <sup>(3)</sup>	—	140.0
Foreign currency translation	(2.3)	(.2)	(2.5)	5.2	(.5)	4.7
Impairments	—	—	—	—	(6.2)	(6.2)
Loss on assets held for sale <sup>(4)</sup>	(30.2)	—	(30.2)	—	—	—
Measurement period adjustments <sup>(5)</sup>	(.6)	—	(.6)	.2	—	.2
Amortization	—	(28.1)	(28.1)	—	(17.1)	(17.1)
Ending balance	\$ 671.4	\$ 413.6	\$ 1,085.0	\$ 540.1	\$ 236.2	\$ 776.3

<sup>(1)</sup> Relates to an acquisition within the Other Operations segment.

<sup>(2)</sup> The relative fair values of goodwill and other intangible assets of \$55.7 recognized in connection with the acquisition of J.C. Taylor had not yet been finalized at September 30, 2021. The remaining \$15.8 relates to the relative fair values of goodwill and other intangible assets recognized in connection with an acquisition within the Other Operations segment.

<sup>(3)</sup> The relative fair values of goodwill and other intangible assets recognized in connection with the acquisition of Kingsbridge and an acquisition within Other Operations had not yet been finalized at September 30, 2020.

<sup>(4)</sup> Relates to the sale of NSM's Fresh Insurance's motor business recorded in the first quarter of 2021. This amount excludes \$1.5 of net proceeds related to the sale.

<sup>(5)</sup> Measurement period adjustments relate to updated information about acquisition date fair values of assets acquired and liabilities assumed. During the nine months ended September 30, 2021, adjustments relate to acquisitions within the Other Operations segment.

#### **Note 5. Loss and Loss Adjustment Expense Reserves**

Ark establishes loss and LAE reserves that are estimates of amounts needed to pay claims and related expenses in the future for insured events that have already occurred. The process of estimating reserves involves a considerable degree of judgment by management and, as of any given date, is inherently uncertain.

Loss and LAE reserves typically comprise case reserves for claims reported and reserves for losses that have occurred but for which claims have not yet been reported, referred to as IBNR reserves. IBNR reserves include a provision for expected future development on case reserves. Case reserves are estimated based on the experience and knowledge of claims staff regarding the nature and potential cost of each claim and are adjusted as additional information becomes known or payments are made. IBNR reserves are typically derived by subtracting paid loss and LAE and case reserves from estimates of ultimate losses and LAE. Actuaries estimate ultimate loss and LAE using various generally accepted actuarial methods applied to known losses and other relevant information. Like case reserves, IBNR reserves are adjusted as additional information becomes known or payments are made.

Ultimate loss and LAE are generally determined by extrapolation of claim emergence and settlement patterns observed in the past that can reasonably be expected to persist into the future. In forecasting ultimate loss and LAE with respect to any line of business, past experience with respect to that line of business is the primary resource, but cannot be relied upon in isolation. Ark's own experience, particularly claims development experience, such as trends in case reserves, payments on and closings of claims, as well as changes in business mix and coverage limits, is the most important information for estimating its reserves. Ultimate loss and LAE for major losses and catastrophes are estimated based on the known and expected exposures to the loss event, rather than simply relying on the extrapolation of reported and settled claims.

Uncertainties in estimating ultimate loss and LAE are magnified by the time lag between when a claim actually occurs and when it is reported and eventually settled. This time lag is sometimes referred to as the "claim-tail". The claim-tail for most property coverages is typically short (usually a few days up to a few months). The claim-tail for liability/casualty coverages can be quite long as claims are often reported and ultimately paid or settled years after the related loss events occur. During the long claims reporting and settlement period, additional facts regarding coverages written in prior accident years, as well as about actual claims and trends may become known and, as a result, Ark may adjust its reserves. If management determines that an adjustment is appropriate, the adjustment is booked in the accounting period in which such determination is made. Accordingly, should reserves need to be increased or decreased in the future from amounts currently established, future results of operations would be negatively or positively impacted.

In determining ultimate loss and LAE, the cost to indemnify claimants, provide needed legal defense and other services for insureds and administer the investigation and adjustment of claims are considered. These claim costs are influenced by many factors that change over time, such as expanded coverage definitions as a result of new court decisions, inflation in costs to repair or replace damaged property, inflation in the cost of services and legislated changes in statutory benefits, as well as by the particular, unique facts that pertain to each claim. As a result, the rate at which claims arose in the past and the costs to settle them may not always be representative of what will occur in the future. The factors influencing changes in claim costs are often difficult to isolate or quantify and developments in paid and incurred losses from historical trends are frequently subject to multiple and conflicting interpretations. Changes in coverage terms or claims handling practices may also cause future experience and/or development patterns to vary from the past. Because of the factors previously discussed, the process requires the use of informed judgment and is inherently uncertain.

Ark performs an actuarial review of its recorded reserves each quarter, using several generally accepted actuarial methods to evaluate its loss reserves, each of which has its own strengths and weaknesses. Management places more or less reliance on a particular method based on the facts and circumstances at the time the reserve estimates are made.

The following table summarizes the loss and LAE reserve activity of Ark's insurance and reinsurance subsidiaries for the three and nine months ended September 30, 2021:

Millions	Three Months Ended September 30, 2021	Nine Months Ended September 30, 2021
Gross beginning balance	\$ 760.0	\$ 696.0
Less: beginning reinsurance recoverable on unpaid losses	(425.3)	(433.4)
Net loss and LAE reserves	334.7	262.6
Loss and LAE incurred relating to:		
Current year losses	141.9	269.0
Prior year losses	(12.7)	(21.2)
Total incurred losses and LAE	129.2	247.8
Foreign currency translation adjustment to loss and LAE reserves	(1.2)	(3.4)
Loss and LAE paid relating to:		
Current year losses	(9.0)	(11.5)
Prior year losses	(20.3)	(62.1)
Total loss and LAE payments	(29.3)	(73.6)
Net ending balance	433.4	433.4
Plus: ending reinsurance recoverable on unpaid losses	457.5	457.5
Gross ending balance	\$ 890.9	\$ 890.9

Ark's GAAP combined ratio in the third quarter of 2021 included \$12.7 million (6 points) of favorable prior year development, primarily related to the Property line of business.

Ark's GAAP combined ratio in the first nine months of 2021 included \$21.2 million (5 points) of favorable prior year development, primarily related to the Property, Marine & Energy and Accident & Health lines of business.

See **Note 10 — "Municipal Bond Guarantee Insurance"** for loss and LAE reserve balances related to White Mountains financial guarantee business.

**Note 6. Third-Party Reinsurance**

In the normal course of business, Ark may seek to limit losses that may arise from catastrophes or other events by reinsuring certain risks with third-party reinsurers. Ark remains liable for risks reinsured in the event that the reinsurer does not honor its obligations under reinsurance contracts. The following table summarizes the effects of reinsurance on written and earned premiums and on losses and LAE for Ark.

Millions	Three Months Ended September 30, 2021	Nine Months Ended September 30, 2021
Written premiums:		
Gross	\$ 162.4	\$ 895.0
Ceded	(41.5)	(169.5)
Net written premiums	<u>\$ 120.9</u>	<u>\$ 725.5</u>
Earned premiums:		
Gross	\$ 284.5	\$ 622.0
Ceded	(71.1)	(186.2)
Net earned premiums	<u>\$ 213.4</u>	<u>\$ 435.8</u>
Losses and LAE:		
Gross	\$ 193.5	\$ 372.7
Ceded	(64.3)	(124.9)
Net Losses and LAE	<u>\$ 129.2</u>	<u>\$ 247.8</u>

As of September 30, 2021, Ark had \$457.5 million and \$8.1 million of reinsurance recoverables on unpaid and paid losses. As reinsurance contracts do not relieve Ark of its obligation to its policyholders, Ark seeks to reduce the credit risk associated with reinsurance balances by avoiding over-reliance on specific reinsurers through the application of concentration limits and thresholds. Ark is selective with its reinsurers, placing reinsurance with only those reinsurers having a strong financial condition. Ark monitors the financial strength of its reinsurers on an ongoing basis.

As of September 30, 2021, Ark's reinsurance recoverables of \$465.6 million included \$299.9 million related to TPC Providers, which are collateralized. The following table provides a listing of Ark's remaining gross and net reinsurance recoverables, excluding amounts related to TPC Providers, by the reinsurer's A.M. Best Company, Inc ("A.M. Best") rating and the percentage of total recoverables.

A.M. Best Rating <sup>(1)</sup>	As of September 30, 2021				
	Gross		Collateral		Net
A+ or better	\$ 122.8	\$ 23.9	\$ 98.9		84.2 %
A- to A	32.7	15.6	17.1		14.6
B++ or lower and not rated	10.2	8.8	1.4		1.2
<b>Total</b>	<u>\$ 165.7</u>	<u>\$ 48.3</u>	<u>\$ 117.4</u>		<u>100.0 %</u>

<sup>(1)</sup> A.M. Best ratings as detailed above are: "A+ or better" (Superior) "A- to A" (Excellent), "B++" (Good).

See **Note 10 — "Municipal Bond Guarantee Insurance"** for third-party reinsurance balances related to White Mountains financial guarantee business.

**Note 7. Debt**

The following table presents White Mountains's debt outstanding as of September 30, 2021 and December 31, 2020:

Millions	September 30, 2021	Effective Rate	(1)	December 31, 2020	Effective Rate	(1)
Ark 2007 Notes Tranche 1	\$ 30.0			\$ —		
Ark 2007 Notes Tranche 2	13.9			—		
Ark 2007 Subordinated Notes, carrying value	43.9			—		
Ark 2021 Notes Tranche 1	45.3			—		
Ark 2021 Notes Tranche 2	47.0			—		
Ark 2021 Notes Tranche 3	70.0			—		
Unamortized issuance cost	(5.5)			—		
Ark 2021 Subordinated Notes, carrying value	156.8			—		
Total Ark Subordinated Notes, carrying value	200.7	5.1%		—		
NSM Bank Facility	300.4	7.4%	(2)	277.4	7.5%	(2)
Unamortized issuance cost	(6.7)			(6.1)		
NSM Bank Facility, carrying value	293.7			271.3		
Other NSM debt, carrying value	1.3	3.3%		1.3	2.5%	
Kudu Credit Facility	203.0	4.1%		—		
Unamortized issuance cost	(7.4)			—		
Kudu Credit Facility, carrying value	195.6			—		
Kudu Bank Facility	—			89.2	8.3%	
Unamortized issuance cost	—			(2.9)		
Kudu Bank Facility, carrying value	—			86.3		
Other Operations debt	19.5	7.4%		18.0	7.4%	
Unamortized issuance cost	(.4)			(.5)		
Other Operations, carrying value	19.1			17.5		
Total debt	\$ 710.4			\$ 376.4		

<sup>(1)</sup> Effective rate includes the effect of the amortization of debt issuance costs.

<sup>(2)</sup> NSM's effective rate excludes the effect of the interest rate swap on the hedged portion of the debt. The weighted average interest rate for the quarter ended September 30, 2021 and December 31, 2020, excluding the effect of amortization of debt issuance costs, was 6.7% and 7.0%. The weighted average interest rate for the quarter ended September 30, 2021 and December 31, 2020 on the total NSM Bank Facility including both the effect of the amortization of debt issuance costs and the effect of the interest rate swap was 8.3% and 8.4%.



## Ark Subordinated Notes

In March 2007, GAIL, a wholly-owned subsidiary of Ark, issued \$30.0 million face value of floating rate unsecured junior subordinated deferrable interest notes to Alesco Preferred Funding XII Ltd., Alesco Preferred Funding XIII Ltd. and Alesco Preferred Funding XIV Ltd (the “Ark 2007 Notes Tranche 1”) and a €12.0 million floating rate subordinated note to Dekania Europe CDO II plc (the “Ark 2007 Notes Tranche 2”) (together, the “Ark 2007 Subordinated Notes”). The Ark 2007 Notes Tranche 1, which mature in June 2037, accrue interest at a floating rate equal to the three-month U.S. LIBOR plus 4.6%. The Ark 2007 Notes Tranche 2, which matures in June 2027, accrues interest at a floating rate equal to the three-month EURIBOR plus 4.6%. As of September 30, 2021, the Ark 2007 Notes Tranche 1 had an outstanding balance of \$30.0 million and the Ark 2007 Notes Tranche 2 had an outstanding balance of €12.0 million (\$13.9 million based upon the foreign exchange spot rate as of September 30, 2021).

In the third quarter of 2021, GAIL issued \$163.3 million face value floating rate subordinated notes at par in three separate transactions for proceeds of \$157.8 million, net of debt issuance costs. The Ark 2021 Subordinated Notes were issued in private placement offerings that were exempt from the registration requirements of the Securities Act of 1933. On July 13, 2021, Ark issued €39.1 million (\$46.3 million based upon the foreign exchange spot rate as of the date of the transaction) face value floating rate unsecured subordinated notes (“Ark 2021 Notes Tranche 1”). The Ark 2021 Notes Tranche 1, which mature in July 2041, accrue interest at a floating rate equal to the three-month EURIBOR plus 5.75%. On August 11, 2021, Ark issued \$47.0 million face value floating rate unsecured subordinated notes (“Ark 2021 Notes Tranche 2”). The Ark 2021 Notes Tranche 2, which mature in August 2041, accrue interest at a floating rate equal to the three-month U.S. LIBOR plus 5.75%. On September 8, 2021, Ark issued \$70.0 million face value floating rate unsecured subordinated notes (“Ark 2021 Notes Tranche 3”). The Ark 2021 Notes Tranche 3, which mature in September 2041, accrue interest at a floating rate equal to the three-month U.S. LIBOR plus 6.1%. On the ten-year anniversary of the issue dates, the interest rate for the Ark 2021 Subordinated Notes will increase by 1.0% per annum. Ark has the option to redeem, in whole or in part, the Ark 2021 Subordinated Notes ahead of contractual maturity at the outstanding principal amounts plus accrued interest at the ten-year anniversary or any subsequent interest payment date.

All payments of principal and interest under the Ark 2021 Subordinated Notes are conditional upon GAIL’s solvency and compliance with the enhanced capital requirements of the Bermuda Monetary Authority (“BMA”). The deferral of payments of principal and interest under these conditions does not constitute a default by Ark and does not give the noteholders any rights to accelerate repayment of the Ark 2021 Subordinated Notes or take any enforcement action under the Ark 2021 Subordinated Notes.

If the payments of principal and interest under the Ark 2021 Subordinated Notes become subject to tax withholding on behalf of Bermuda or any political subdivision there, the Ark 2021 Subordinated Notes require the payment of additional amounts such that the amount received by the noteholders is the same as would have been received absent the tax withholding being imposed. The Ark 2021 Notes Tranche 3 require the payment of additional interest of 1.0% per annum upon the occurrence of a Premium Load Event until such event is remedied. Premium Load Events include the failure to meet payment obligations of the Ark 2021 Notes Tranche 3 when due, failure of GAIL to maintain an investment grade credit rating, failure to maintain 120% of GAIL’s Bermuda solvency capital requirement, failure of GAIL to maintain a debt to capital ratio below 40%, late filing of GAIL’s or Ark’s financial information, and making a restricted payment or distribution on GAIL’s common stock or other securities that rank junior or pari passu with the Ark 2021 Notes Tranche 3 when a different Premium Load Event exists or will be caused by the restricted payment.

As of September 30, 2021, the Ark 2021 Notes Tranche 1 had an outstanding balance of €39.1 million (\$45.3 million based upon the foreign exchange spot rate as of September 30, 2021), the Ark 2021 Notes Tranche 2 had an outstanding balance of \$47.0 million, and the Ark 2021 Notes Tranche 3 had an outstanding balance of \$70.0 million.

## Ark Stand By Letter of Credit Facility

Ark has a secured stand by letter of credit facility (the “Ark LOC Facility”) with three lenders, Lloyds Bank plc, National Westminster Bank plc and ING Bank N.V, London Branch to provide capital support for the Syndicates. As of September 30, 2021, the utilized level of the facility was \$45.0 million, with the ability to increase up to \$150.0 million, subject to formal approval by Lloyd’s. The Ark LOC Facility has a termination date of December 31, 2025. During the three and nine months ended September 30, 2021, Ark did not borrow or make any repayments under the Ark LOC Facility.

The Ark LOC Facility, which provides funds at Lloyd’s, is secured by all property of the loan parties and contains various affirmative, negative and financial covenants that White Mountains considers to be customary for such borrowings, including a minimum tangible net worth covenant.

## NSM Bank Facility

NSM maintains a secured credit facility (the “NSM Bank Facility”) with Ares Capital Corporation. In both 2021 and 2020, NSM amended the terms of the facility. On April 7, 2020, NSM amended the NSM Bank Facility to increase the total commitment from \$234.0 million, comprised of term loans of \$224.0 million and a revolving credit loan commitment of \$10.0 million, to \$291.4 million, comprised of term loans of \$276.4 million, including £42.5 million (\$52.4 million based upon the foreign exchange spot rate as of the date of the transaction) in a GBP term loan, and a revolving credit loan commitment of \$15.0 million. In connection with the April 7, 2020 amendment, the reference rates for USD denominated borrowings increased. The USD-LIBOR rate floor increased to 1.25% and the margin over USD-LIBOR increased from a range of 4.25% to 4.75% to a range of 5.50% to 6.00%.

On June 2, 2021, NSM amended the NSM Bank Facility to reduce the margin over the reference interest rate for USD LIBOR loans from a range of 5.5% to 6.00% to a range of 4.50% to 5.00%, and reduce the margin over the reference rate for GBP loans from a range of 6.0% to 6.50% to a range of 5.00% to 5.50%. The amendment also increased the revolving credit loan commitment to \$40.0 million and added a \$50.0 million delayed-draw term loan commitment. The amendment also changed the reference interest rate for the GBP loan from GBP-LIBOR to SONIA. The maturity dates of the term loans and the revolving credit loans were not changed as part of the amendment. The term loans under the NSM Bank Facility mature on May 11, 2026, and the revolving loan matures on November 11, 2025. The reference interest rates under the NSM Bank Facility are generally subject to a 1.25% rate floor.

Under GAAP, if the terms of a debt instrument are amended, unless there is greater than 10% change in the expected discounted future cash flows of such instrument, the instrument’s carrying value does not change. White Mountains has determined that the impact of the 2021 and 2020 amendments to the NSM Bank Facility was less than 10% on the expected discounted future cash flows.

The following table presents the change in debt under the NSM Bank Facility for the three and nine months ended September 30, 2021 and 2020:

NSM Bank Facility Millions	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Beginning balance	\$ 276.6	\$ 273.4	\$ 277.4	\$ 221.3
Term loans				
Borrowings <sup>(1)</sup>	—	—	—	52.4
Repayments	(.7)	(.7)	(2.1)	(1.3)
Foreign currency translation	(1.5)	2.3	(.9)	2.6
Revolving credit loan				
Borrowings <sup>(2)</sup>	35.0	—	35.0	—
Repayments	(9.0)	—	(9.0)	—
Ending balance	\$ 300.4	\$ 275.0	\$ 300.4	\$ 275.0

<sup>(1)</sup> Borrowings for the nine months ended September 30, 2020 included \$52.4 for the funding of the acquisition of Kingsbridge.

<sup>(2)</sup> Borrowings for both the three and nine months ended September 30, 2021 included \$35.0 for the funding of the acquisition of J.C. Taylor.

As of September 30, 2021, the term loans had an outstanding balance of \$274.4 million, including £41.9 million (\$56.6 million based upon the foreign exchange spot rate as of September 30, 2021) in a GBP term loan, and the revolving credit loan had an outstanding balance of \$26.0 million.

On June 15, 2018, NSM entered into an interest rate swap agreement to hedge its exposure to interest rate risk on \$151.0 million of its USD denominated variable rate term loans. See **Note 9 — “Derivatives”**.

As of September 30, 2021, \$146.5 million of the outstanding term loans were hedged by the swap and \$128.0 million of the outstanding term loans were unhedged.

The following table presents the NSM weighted average interest rate for the nine months ended September 30, 2021 and 2020:

NSM Weighted Average Interest Rate	Nine Months Ended September 30,					
	2021			2020		
	Weighted Average	Interest Expense <sup>(1)</sup>	Weighted Average Interest rate	Weighted Average	Interest Expense <sup>(1)</sup>	Weighted Average Interest rate
Millions						
Term loan - hedged	\$ 147.1	\$ 10.0	9.1 %	\$ 148.5	\$ 10.0	9.0 %
Term loan - unhedged	129.5	7.3	7.5 %	125.1	6.1	6.5 %
Total NSM Facility	\$ 276.6	\$ 17.3	8.3 %	\$ 273.6	\$ 16.1	7.8 %

<sup>(1)</sup> Interest expense includes the amortization of debt issuance costs and the effect of the interest rate swap and excludes interest expense related to the Other NSM Debt.

The NSM Bank Facility is secured by all property of the loan parties and contains various affirmative, negative and financial covenants that White Mountains considers to be customary for such borrowings, including a maximum consolidated total leverage ratio covenant.

#### Other NSM Debt

NSM also has a secured term loan related to its U.K. vertical. As of September 30, 2021, the secured term loan had an outstanding balance of \$1.4 million and a maturity date of December 31, 2022.

#### Kudu Credit Facility and Kudu Bank Facility

On December 23, 2019, Kudu entered into a secured credit facility with Monroe Capital Management Advisors, LLC (the "Kudu Bank Facility"). On March 23, 2021, Kudu replaced the Kudu Bank Facility and entered into a secured revolving credit facility (the "Kudu Credit Facility") with Massachusetts Mutual Life Insurance Company to repay the Kudu Bank Facility, and to fund new investments and related transaction expenses. The maximum borrowing capacity of the Kudu Credit Facility is \$300.0 million. The Kudu Credit Facility matures on March 23, 2036. In connection with the replacement of the Kudu Bank Facility, Kudu recognized a total loss of \$4.1 million, representing debt issuance costs and prepayment fees, which are included within interest expense for the year to date period ended September 30, 2021.

Interest on the Kudu Credit Facility accrues at a floating interest rate equal to the greater of the three-month USD-LIBOR and 0.25%, plus in each case, the applicable spread of 4.30%. The Kudu Credit Facility requires Kudu to maintain an interest reserve account, which is included in restricted cash. As of September 30, 2021, the interest reserve account is \$4.5 million. The Kudu Credit Facility requires Kudu to maintain a ratio of outstanding balance to the sum of fair market value of participation contracts and cash held in certain accounts (the "LTV Percentage") of less than 50% in years 0-3, 40% in years 4-6, 25% in years 7-8, 15% in years 9-10, and 0% thereafter. As of September 30, 2021, Kudu has a 34% LTV Percentage.

Kudu may borrow undrawn balances within the initial three-year availability period, subject to customary terms and conditions, to the extent the amount borrowed under the Kudu Credit Facility does not exceed the borrowing base, which is equal to 35% of the fair value of Kudu's qualifying participation contracts. When considering White Mountains's remaining equity commitment to Kudu and the fair value of Kudu's qualifying participation contracts as of September 30, 2021, the available undrawn balance was \$11.7 million.

During the nine months ended September 30, 2021, Kudu borrowed \$3.0 million and repaid the outstanding Kudu Bank Facility balance of \$92.2 million. During the three and nine months ended September 30, 2021, Kudu borrowed \$101.0 million and \$203.0 million and made no repayments on the Kudu Credit Facility. As of September 30, 2021, the Kudu Credit Facility had an undrawn balance of \$97.0 million.

The Kudu Credit Facility is secured by all property of the loan parties and contains various affirmative and negative covenants that White Mountains considers to be customary for such borrowings.

## Other Operations Debt

As of September 30, 2021, debt in White Mountains's Other Operations segment consisted of three secured credit facilities (collectively, "Other Operations debt").

The first credit facility has a maximum borrowing capacity of \$16.3 million, which is comprised of a term loan of \$11.3 million, a delayed-draw term loan of \$3.0 million and a revolving credit loan commitment of \$2.0 million, all with a maturity date of March 12, 2024. The second credit facility has a maximum borrowing capacity of \$15.0 million, which is comprised of a term loan of \$9.0 million, a delayed-draw term loan of \$4.0 million and a revolving credit loan commitment of \$2.0 million, all with a maturity date of July 2, 2025. The third credit facility has a maximum borrowing capacity of \$4.0 million, which is comprised of a revolving credit loan commitment, with a maturity date of October 26, 2021.

During the three and nine months ended September 30, 2021, White Mountains's Other Operations segment borrowed \$0.4 million and \$0.7 million. During the three and nine months ended September 30, 2021, White Mountains's Other Operations segment made repayments of \$1.2 million and \$2.6 million. As of September 30, 2021, the Other Operations debt had an outstanding balance of \$19.5 million.

## Compliance

At September 30, 2021, White Mountains was in compliance in all material respects with the covenants under all of its debt instruments.

## Note 8. Income Taxes

The Company and its Bermuda domiciled subsidiaries are not subject to Bermuda income tax under current Bermuda law. In the event there is a change in the current law and taxes are imposed, the Company and its Bermuda domiciled subsidiaries would be exempt from such tax until March 31, 2035, pursuant to the Bermuda Exempted Undertakings Tax Protection Act of 1966. The Company has subsidiaries and branches that operate in various other jurisdictions around the world that are subject to tax in the jurisdictions in which they operate. The jurisdictions in which the Company's subsidiaries and branches are subject to tax are Ireland, Israel, Luxembourg, the United Kingdom and the United States.

White Mountains's income tax expense related to pre-tax loss from continuing operations for the three and nine months ended September 30, 2021 represented an effective tax rate of (6.0)% and (12.4)%. The effective tax rate was different from the U.S. statutory rate of 21.0%, due to losses in jurisdictions with lower tax rates than the United States, a full valuation allowance on net deferred tax assets in certain U.S. operations, consisting of the WM Adams, Inc. consolidated tax group within the Other Operations segment and BAM, and state income taxes. For the nine months ended September 30, 2021, the effective rate was also different from the U.S. statutory rate of 21.0% due to additional tax expense related to the revaluation of U.K. deferred tax assets and liabilities. On June 10, 2021, the U.K. enacted an increase in its corporate tax rate from 19.0% to 25.0% for periods after April 1, 2023. On June 30, 2021, White Mountains increased its net U.K. deferred tax liability to reflect the higher tax rate on temporary differences projected to reverse after the new rate becomes effective.

White Mountains's income tax expense related to pre-tax income from continuing operations for the three and nine months ended September 30, 2020 represented an effective tax rate of 30.7% and 33.7%. The effective tax rate was different from the U.S. statutory rate of 21.0% due to tax expense associated with the reorganization of the Guilford Holdings, Inc. consolidated U.S. tax group in preparation for the MediaAlpha IPO and state income taxes, partially offset by income generated in jurisdictions with lower tax rates than the United States. The additional tax expense associated with the reorganization of the Guilford Holdings, Inc. consolidated U.S. tax group within the Other Operations segment consisted of withholding taxes and the establishment of a partial valuation allowance on deferred tax assets of various service companies, other entities and investments.

In arriving at the effective tax rate for the three and nine months ended September 30, 2021 and 2020, White Mountains forecasted all income and expense items including the change in unrealized investment gains (losses) and realized investment gains (losses) for the years ending December 31, 2021 and 2020.

White Mountains records a valuation allowance against deferred tax assets if it becomes more likely than not that all or a portion of a deferred tax asset will not be realized. Changes in valuation allowances from period to period are included in income tax expense in the period of change. In determining whether or not a valuation allowance, or change therein, is warranted, White Mountains considers factors such as prior earnings history, expected future earnings, carryback and carryforward periods and strategies that if executed would result in the realization of a deferred tax asset.

With few exceptions, White Mountains is no longer subject to U.S. federal, state, or non-U.S. income tax examinations by tax authorities for years before 2015.

## **Note 9. Derivatives**

### **NSM Interest Rate Swap**

On June 15, 2018, NSM entered into an interest rate swap agreement to hedge its exposure to interest rate risk on \$151.0 million of its USD denominated variable rate term loans under the NSM Bank Facility. Under the terms of the swap agreement, NSM pays a fixed-rate of 2.97% and receives a variable rate, which is reset monthly, based on the then-current USD-LIBOR. As of September 30, 2021, the variable rate received by NSM under the swap agreement was 1.00%. Over the term of the swap, the notional amount decreases in accordance with the principal repayments NSM expects to make on its term loans. The interest rate swap is scheduled to mature on June 30, 2024.

As of September 30, 2021, \$146.5 million of the outstanding term loans were hedged by the swap. For the three and nine months ended September 30, 2021, the weighted average effective interest rate on the outstanding term loans that were hedged, including the effect of the amortization of debt issuance costs and the effect of the interest rate swap, was 9.1%.

NSM's obligations under the swap are secured by the same collateral securing the NSM Bank Facility on a pari passu basis. NSM does not currently hold any collateral deposits from or provide any collateral deposits to the swap counterparty.

NSM evaluated the effectiveness of the swap to hedge its interest rate risk associated with its variable rate debt and concluded at the swap inception date that the swap was highly effective in hedging that risk. NSM evaluates the effectiveness of the hedging relationship on an ongoing basis.

For the three and nine months ended September 30, 2021, White Mountains recognized net interest expense of \$0.6 million and \$1.9 million for the periodic net settlement payments on the swap. For the three and nine months ended September 30, 2020, White Mountains recognized net interest expense of \$0.6 million and \$1.9 million for the periodic net settlement payments on the swap. As of September 30, 2021 and December 31, 2020, the estimated fair value of the swap and the accrual of the periodic net settlement payments recorded in other liabilities was \$6.0 million and \$8.2 million. There was no ineffectiveness in the hedge for the three and nine months ended September 30, 2021 and 2020. For the three and nine months ended September 30, 2021, the \$(0.6) million and \$(2.2) million change in the fair value of the swap is included within White Mountains's accumulated other comprehensive income (loss). For the three and nine months ended September 30, 2020, the \$0.5 million and \$(2.3) million change in the fair value of the swap is included within White Mountains's accumulated other comprehensive income (loss).

### **NSM Interest Rate Cap**

On June 4, 2020, NSM entered into an interest rate cap agreement to limit its exposure to the risk of interest rate increases on the GBP denominated term loan under the NSM Bank Facility. The notional amount of the interest rate cap is £42.5 million (\$52.4 million based upon the foreign exchange spot rate as of the date of the transaction) and the termination date is June 4, 2022. On August 18, 2020, NSM entered into a separate interest rate cap agreement to extend the term of the original interest rate cap agreement by one year. The second interest rate cap agreement has an effective date of June 15, 2022 and a termination date of June 15, 2023.

NSM paid total initial premiums of \$0.1 million for the interest rate caps. Under the terms of the interest rate cap agreements, if the GBP-LIBOR rate at the measurement date exceeds 1.25%, NSM will receive payments from the counterparty equal to the GBP-LIBOR rate, less the 1.25% cap rate. As of September 30, 2021, the GBP-LIBOR rate was 0.08%.

NSM accounts for the interest rate caps as derivatives at fair value, with changes in fair value recognized in current period earnings within interest expense. For the three and nine months ended September 30, 2021, White Mountains recognized a negligible amount related to the change in fair value on the interest rate caps within interest expense. For the three and nine months ended September 30, 2020, White Mountains recognized a change in fair value of \$(0.1) million on the interest rate caps within interest expense. As of September 30, 2021 and December 31, 2020, the estimated fair value of the caps recorded in other assets was less than \$0.1 million.

#### **Note 10. Municipal Bond Guarantee Insurance**

HG Global was established to fund the startup of BAM, a mutual municipal bond insurer. HG Global, together with its subsidiaries, provided the initial capitalization of BAM through the purchase of \$503.0 million of BAM Surplus Notes.

#### **Reinsurance Treaties**

##### *FLRT*

BAM is a party to a first loss reinsurance treaty (“FLRT”) with HG Re under which HG Re provides first loss protection up to 15%-of-par outstanding on each municipal bond insured by BAM. For capital appreciation bonds, par is adjusted to the estimated equivalent par value for current interest paying bonds. In return, BAM cedes up to 60% of the risk premium charged for insuring the municipal bond, which is net of a ceding commission. The FLRT is a perpetual agreement, with an initial term through the end of 2022.

##### *Fidus Re*

BAM is party to two collateralized financial guarantee excess of loss reinsurance agreements that serve to increase BAM’s claims paying resources and are provided by Fidus Re, a Bermuda based special purpose insurer created in 2018 solely to provide reinsurance protection to BAM.

In the second quarter of 2018, Fidus Re was initially capitalized by the issuance of \$100.0 million of insurance linked securities (the “Fidus Re 2018 Agreement”). The proceeds from issuance were placed in a collateral trust supporting Fidus Re’s obligations to BAM. The insurance linked securities were issued by Fidus Re with an initial term of 12 years and are callable five years after the date of issuance. Under the Fidus Re 2018 Agreement, Fidus Re reinsures 90% of aggregate losses exceeding \$165.0 million on a portion of BAM’s financial guarantee portfolio (the “2018 Covered Portfolio”) up to a total reimbursement of \$100.0 million. The Fidus Re 2018 Agreement does not provide coverage for losses in excess of \$276.1 million. The 2018 Covered Portfolio consists of approximately 36% of BAM’s portfolio of financial guaranty policies issued through September 30, 2021.

In the first quarter of 2021, Fidus Re issued an additional \$150.0 million of insurance linked securities (the “Fidus Re 2021 Agreement”) with an initial term of 12 years and are callable five years after the date of issuance. Under the Fidus Re 2021 Agreement, Fidus Re reinsures 90% of aggregate losses exceeding \$135.0 million on a portion of BAM’s financial guarantee portfolio (the “2021 Covered Portfolio”) up to a total reimbursement of \$150.0 million. The Fidus Re 2021 Agreement does not provide coverage for losses in excess of \$301.7 million. The 2021 Covered Portfolio consists of approximately 40% of BAM’s portfolio of financial guaranty policies issued through September 30, 2021.

The Fidus Re Agreements are accounted for using deposit accounting and any related financing expenses are recorded in general and administrative expenses as they do not meet the risk transfer requirements necessary to be accounted for as reinsurance.

##### *XOLT*

In January 2020, BAM entered into an excess of loss reinsurance agreement (the “XOLT”) with HG Re. Under the XOLT, HG Re provides last dollar protection for exposures on municipal bonds insured by BAM in excess of NYDFS single issuer limits. The XOLT is subject to an aggregate limit equal to the lesser of \$75.0 million or the assets held in the Supplemental Trust at any point in time. The agreement is accounted for using deposit accounting and any related financing expenses are recorded in general and administrative expenses as the agreement does not meet the risk transfer requirements necessary to be accounted for as reinsurance.

## Collateral Trusts

HG Re's obligations under the FLRT are limited to the assets in two collateral trusts: a Regulation 114 Trust and a supplemental collateral trust (the "Supplemental Trust" and together with the Regulation 114 Trust, the "Collateral Trusts"). Losses required to be reimbursed under the FLRT are subject to an aggregate limit equal to the assets held in the Collateral Trusts at any point in time.

On a monthly basis, BAM deposits cash equal to ceded premiums, net of ceding commissions, due to HG Re under the FLRT directly into the Regulation 114 Trust. The Regulation 114 Trust target balance is equal to gross ceded unearned premiums and unpaid ceded loss and LAE expenses, if any. If, at the end of any quarter, the Regulation 114 Trust balance is below the target balance, funds will be withdrawn from the Supplemental Trust and deposited into the Regulation 114 Trust in an amount equal to the shortfall. If, at the end of any quarter, the Regulation 114 Trust balance is above 102% of the target balance, funds will be withdrawn from the Regulation 114 Trust and deposited into the Supplemental Trust. The Regulation 114 Trust balance as of September 30, 2021 and December 31, 2020 was \$241.0 million and \$222.8 million.

The Supplemental Trust target balance is \$603.0 million, less the amount of cash and securities in the Regulation 114 Trust in excess of its target balance (the "Supplemental Trust Target Balance"). If, at the end of any quarter, the Supplemental Trust balance exceeds the Supplemental Trust Target Balance, such excess may be distributed to HG Re. The distribution will be made first as an assignment of accrued interest on the BAM Surplus Notes and second in cash and/or fixed income securities.

As the BAM Surplus Notes are repaid over time, the BAM Surplus Notes will be replaced in the Supplemental Trust by cash and fixed income securities. The Supplemental Trust balance as of September 30, 2021 and December 31, 2020 was \$603.8 million and \$604.3 million.

As of September 30, 2021 and December 31, 2020, the Collateral Trusts held assets of \$844.8 million and \$827.1 million, which included \$449.7 million and \$434.5 million of cash and investments, \$388.2 million and \$388.2 million of BAM Surplus Notes and \$6.9 million and \$4.4 million of interest receivable on the BAM Surplus Notes.

## BAM Surplus Notes

Through 2024, the interest rate on the BAM Surplus Notes is a variable rate equal to the one-year U.S. Treasury rate plus 300 basis points, set annually. During 2021, the interest rate on the BAM Surplus Notes is 3.1%. Beginning in 2025, the interest rate will be fixed at the higher of the then current variable rate or 8.0%. BAM is required to seek regulatory approval to pay interest and principal on the BAM Surplus Notes only to the extent that its remaining qualified statutory capital and other capital resources continue to support its outstanding obligations, its business plan and its "AA/stable" rating from Standard & Poor's. No payment of principal or interest on the BAM Surplus Notes may be made without the approval of the NYDFS.

In December 2020, BAM made a \$30.1 million cash payment of principal and interest on the BAM Surplus Notes held by HG Global. Of this payment, \$21.5 million was a repayment of principal held in the Supplemental Trust, \$0.2 million was a payment of accrued interest held inside the Supplemental Trust and \$8.4 million was a payment of accrued interest held outside the Supplemental Trust.

In January 2020, BAM made a one-time \$65.0 million cash payment of principal and interest on the BAM Surplus Notes held by HG Global. Of this payment, \$47.9 million was a repayment of principal held in the Supplemental Trust, \$0.9 million was a payment of accrued interest held inside the Supplemental Trust and \$16.2 million was a payment of accrued interest held outside the Supplemental Trust.

During the three and nine months ended September 30, 2021, BAM made no repayments of the BAM Surplus Notes or accrued interest.

As of September 30, 2021 and December 31, 2020, the principal balance on the BAM Surplus Notes was \$388.2 million and \$388.2 million and total interest receivable on the BAM Surplus Notes was \$164.8 million and \$155.7 million.

## Insured Obligations and Premiums

The following table presents a schedule of BAM's insured obligations as of September 30, 2021 and December 31, 2020:

	September 30, 2021	December 31, 2020
Contracts outstanding	11,877	10,997
Remaining weighted average contract period outstanding (in years)	10.7	10.7
Contractual debt service outstanding (in millions):		
Principal	\$ 83,829.0	\$ 75,287.7
Interest	39,528.4	36,448.8
Total debt service outstanding	\$ 123,357.4	\$ 111,736.5
Gross unearned insurance premiums (in millions)	\$ 257.0	\$ 237.5

The following table presents a schedule of BAM's future premium revenues as of September 30, 2021:

Millions	September 30, 2021
October 1, 2021 - December 31, 2021	\$ 6.2
January 1, 2022 - March 31, 2022	6.1
April 1, 2022 - June 30, 2022	6.1
July 1, 2022 - September 30, 2022	6.0
October 1, 2022 - December 31, 2022	5.9
Total 2022	24.1
2023	22.8
2024	21.1
2025	19.6
2026	18.1
2027 and thereafter	145.1
Total gross unearned insurance premiums	\$ 257.0

The following table presents a schedule of written premiums and earned premiums included in White Mountains's HG Global/BAM segment for the three and nine months ended September 30, 2021 and 2020:

Millions	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Written premiums:				
Direct	\$ 12.8	\$ 14.4	\$ 34.5	\$ 45.5
Assumed	—	—	4.5	.1
Gross written premiums <sup>(1)</sup>	\$ 12.8	\$ 14.4	\$ 39.0	\$ 45.6
Earned premiums:				
Direct	\$ 5.9	\$ 5.3	\$ 16.8	\$ 14.5
Assumed	.8	.9	2.8	2.7
Gross earned premiums <sup>(1)</sup>	\$ 6.7	\$ 6.2	\$ 19.6	\$ 17.2

<sup>(1)</sup> There are no ceded premium amounts in the periods presented. Gross written premiums and Gross earned premium are equivalent to net written premiums and net earned premiums.

In the second quarter of 2020, BAM assumed a municipal bond guarantee contract with a par value of \$36.9 million through an endorsement to the facultative quota share reinsurance agreement. In January 2021, BAM entered into a 100% facultative quota share reinsurance agreement under which it assumed a portfolio of municipal bond guarantee contracts with a par value of \$0.8 billion.



None of the contracts assumed were non-performing and no loss reserves have been established for any of the contracts, either as of the transaction dates or as of September 30, 2021. The agreements, which cover future claims exposure only, meet the risk transfer criteria under ASC 944-20, *Insurance Activities* and accordingly have been accounted for as reinsurance.

#### Note 11. Earnings Per Share

White Mountains calculates earnings per share using the two-class method, which allocates earnings between common shares and unvested restricted common shares. Both classes of shares participate equally in dividends and earnings on a per share basis. Basic earnings per share amounts are based on the weighted average number of common shares outstanding adjusted for unvested restricted common shares.

The following table presents the Company's computation of earnings per share from continuing operations for the three and nine months ended September 30, 2021 and 2020. See Note 19 — "Held for Sale and Discontinued Operations".

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
<b>Basic and diluted earnings per share numerators (in millions):</b>				
Net (loss) income attributable to White Mountains's common shareholders	\$ (371.4)	\$ 232.9	\$ (308.2)	\$ 219.5
Less: total income (loss) from discontinued operations, net of tax	—	(.7)	18.7	(.8)
Net (loss) income from continuing operations attributable to White Mountains's common shareholders	\$ (371.4)	\$ 233.6	\$ (326.9)	\$ 220.3
Allocation of losses (earnings) to participating restricted common shares <sup>(1)</sup>	4.5	(3.2)	3.8	(2.9)
Basic and diluted (losses) earnings per share numerators	\$ (366.9)	\$ 230.4	\$ (323.1)	\$ 217.4
<b>Basic earnings per share denominators (in thousands):</b>				
Total average common shares outstanding during the period	3,090.3	3,101.8	3,099.4	3,129.0
Average unvested restricted common shares <sup>(2)</sup>	(37.8)	(43.1)	(36.0)	(40.0)
Basic earnings (losses) per share denominator	3,052.5	3,058.7	3,063.4	3,089.0
<b>Diluted earnings per share denominator (in thousands):</b>				
Total average common shares outstanding during the period	3,090.3	3,101.8	3,099.4	3,129.0
Average unvested restricted common shares <sup>(2)</sup>	(37.8)	(43.1)	(36.0)	(40.0)
Diluted earnings (losses) per share denominator	3,052.5	3,058.7	3,063.4	3,089.0
<b>Basic and diluted earnings per share (in dollars) - continuing operations:</b>				
Distributed earnings - dividends declared and paid	\$ —	\$ —	\$ 1.00	\$ 1.00
Undistributed (losses) earnings	(120.18)	75.32	(106.48)	69.40
Basic and diluted (losses) earnings per share	\$ (120.18)	\$ 75.32	\$ (105.48)	\$ 70.40

<sup>(1)</sup> Restricted shares issued by White Mountains receive dividends, and therefore, are considered participating securities.

<sup>(2)</sup> Restricted shares outstanding vest upon a stated date. See Note 12 — "Employee Share-Based Incentive Compensation Plans".

The following table presents the undistributed net earnings (losses) from continuing operations for the three and nine months ended September 30, 2021 and 2020. See Note 19 — "Held for Sale and Discontinued Operations".

Millions	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
<b>Undistributed net earnings (losses) - continuing operations:</b>				
Net (losses) earnings attributable to White Mountains's common shareholders, net of restricted common share amounts	\$ (366.9)	\$ 230.4	\$ (323.1)	\$ 217.4
Dividends declared, net of restricted common share amounts <sup>(1)</sup>	—	—	(3.1)	(3.1)
Total undistributed net (losses) earnings, net of restricted common share amounts	\$ (366.9)	\$ 230.4	\$ (326.2)	\$ 214.3

<sup>(1)</sup> Restricted shares issued by White Mountains receive dividends, and are therefore considered participating securities.

## Note 12. Employee Share-Based Incentive Compensation Plans

White Mountains's Long-Term Incentive Plan (the "WTM Incentive Plan") provides for grants of various types of share-based and non-share-based incentive awards to key employees of White Mountains. As of September 30, 2021, White Mountains's share-based compensation incentive awards consist of performance shares and restricted shares.

### Performance Shares

Performance shares are designed to reward employees for meeting company-wide performance targets. Performance shares are conditional grants of a specified maximum number of common shares or an equivalent amount of cash. Awards generally vest at the end of a three-year service period, are subject to the attainment of pre-specified performance goals, and are valued based on the market value of common shares at the time awards are paid. Performance shares earned under the WTM Incentive Plan are typically paid in cash but may be paid in common shares. Compensation expense is recognized for the vested portion of the awards over the related service periods. The level of payout ranges from zero to two times the number of shares initially granted, depending on White Mountains's financial performance. Performance shares become payable at the conclusion of a performance cycle (typically 3 years) if pre-defined financial targets are met. The performance measures used for determining performance share payouts are growth in White Mountains's adjusted book value per share and intrinsic value per share. Intrinsic value per share is generally calculated by adjusting adjusted book value per share for differences between the adjusted book value of certain assets and liabilities and White Mountains's estimate of their underlying intrinsic values.

The following table presents the performance share activity for the three and nine months ended September 30, 2021 and 2020 for performance shares granted under the WTM Incentive Plan:

Millions, except share amounts	Three Months Ended September 30,				Nine Months Ended September 30,			
	2021		2020		2021		2020	
	Target Performance Shares Outstanding	Accrued Expense	Target Performance Shares Outstanding	Accrued Expense	Target Performance Shares Outstanding	Accrued Expense	Target Performance Shares Outstanding	Accrued Expense
Beginning of period	41,252	\$ 45.7	42,458	\$ 15.8	42,458	\$ 56.3	42,473	\$ 43.7
Shares paid <sup>(1)</sup>	(219)	(.6)	—	—	(14,336)	(35.2)	(14,070)	(27.7)
New grants	—	—	—	—	13,475	—	14,055	—
Forfeitures and cancellations <sup>(2)</sup>	(205)	.2	—	(.3)	(769)	.4	—	.1
Expense recognized	—	(6.5)	—	13.6	—	17.3	—	13.0
End of period	40,828	\$ 38.8	42,458	\$ 29.1	40,828	\$ 38.8	42,458	\$ 29.1

<sup>(1)</sup> WTM performance share payments in 2021 for the 2018-2020 performance cycle, which were paid in cash in March 2021 at 200% of target. WTM performance share payments in 2020 for the 2017-2019 performance cycle, which were paid in cash in March 2020, ranged from 174% to 180% of target.

<sup>(2)</sup> Amounts include changes in assumed forfeitures, as required under GAAP.

During the nine months ended September 30, 2021, White Mountains granted 13,475 performance shares for the 2021-2023 performance cycle. During the nine months ended September 30, 2020, White Mountains granted 14,055 performance shares for the 2020-2022 performance cycle.

All performance shares earned were settled in cash. If all the outstanding WTM performance shares had vested on September 30, 2021, the total additional compensation cost to be recognized would have been \$17.2 million, based on accrual factors (common share price and payout assumptions) as of September 30, 2021.

The following table presents performance shares outstanding and accrued expense for performance shares awarded under the WTM Incentive Plan as of September 30, 2021 for each performance cycle:

Millions, except share amounts	Nine Months Ended September 30, 2021	
	Target Performance Shares Outstanding	Accrued Expense
Performance cycle:		
2019 – 2021	14,625	\$ 24.4
2020 – 2022	13,350	13.4
2021 – 2023	13,475	1.6
Sub-total	41,450	39.4
Assumed forfeitures	(622)	(.6)
<b>September 30, 2021</b>	<b>40,828</b>	<b>\$ 38.8</b>

### Restricted Shares

Restricted shares are grants of a specified number of common shares that generally vest at the end of a 34-month service period. The following table presents the unrecognized compensation cost associated with the outstanding restricted share awards for the three and nine months ended September 30, 2021 and 2020:

Millions, except share amounts	Three Months Ended September 30,				Nine Months Ended September 30,			
	2021		2020		2021		2020	
	Restricted Shares	Unamortized Issue Date Fair Value	Restricted Shares	Unamortized Issue Date Fair Value	Restricted Shares	Unamortized Issue Date Fair Value	Restricted Shares	Unamortized Issue Date Fair Value
<b>Non-vested,</b>								
Beginning of period	38,280	\$ 23.2	43,105	\$ 23.0	43,105	\$ 15.2	43,395	\$ 16.7
Issued	—	—	—	—	13,475	16.1	14,055	15.1
Vested	(219)	—	—	—	(17,936)	—	(14,345)	—
Forfeited	(211)	(.2)	—	—	(794)	(.8)	—	—
Expense recognized	—	(3.6)	—	(3.6)	—	(11.1)	—	(12.4)
End of period	<b>37,850</b>	<b>\$ 19.4</b>	<b>43,105</b>	<b>\$ 19.4</b>	<b>37,850</b>	<b>\$ 19.4</b>	<b>43,105</b>	<b>\$ 19.4</b>

During the nine months ended September 30, 2021, White Mountains issued 13,475 restricted shares that vest on January 1, 2024. During the nine months ended September 30, 2020, White Mountains issued 14,055 restricted shares that vest on January 1, 2023. The unamortized issue date fair value as of September 30, 2021 is expected to be recognized ratably over the remaining vesting periods.

**Note 13. Leases**

White Mountains has entered into lease agreements, primarily for office space. These leases are classified as operating leases, with lease expense recognized on a straight-line basis over the term of the lease. Lease incentives, such as free rent or landlord reimbursements for leasehold improvements, are recognized at lease inception and amortized on a straight-line basis over the term of the lease. Lease expense and the amortization of leasehold improvements are recognized within general and administrative expenses. Lease payments related to options to extend or renew the lease term are excluded from the calculation of lease liabilities unless White Mountains is reasonably certain of exercising those options.

As of September 30, 2021 and December 31, 2020, the right of use ("ROU") asset was \$42.9 million and \$37.6 million and lease liabilities were \$45.9 million and \$38.3 million.

The following table summarizes net lease expense recognized in White Mountains's consolidated statement of operations for the three and nine months ended September 30, 2021 and 2020:

Millions	Three Months Ended September 30,				Nine Months Ended September 30,	
	2021		2020		2021	2020
Lease cost	\$	2.7	\$	1.6	\$	5.7
Less: sublease income		.1		.1		.3
Net lease cost	\$	2.6	\$	1.5	\$	5.4

The following table presents the contractual maturities of the lease liabilities associated with White Mountains's operating lease agreements as of September 30, 2021:

Millions	As of September 30, 2021	
Remainder of 2021	\$	2.0
2022		10.8
2023		9.8
2024		8.5
2025		6.7
Thereafter		16.4
Total undiscounted lease payments		54.2
Less: present value adjustment		8.3
Operating lease liability	\$	45.9

The following tables present lease related assets and liabilities by reportable segment as of September 30, 2021 and December 31, 2020:

Millions	As of September 30, 2021						Total	Weighted Average Incremental Borrowing Rate <sup>(1)</sup>
	HG/BAM	Ark	NSM	Kudu	Other Operations			
ROU lease asset	\$ 8.0	\$ 7.0	\$ 13.8	\$ 6.7	\$ 7.4	\$ 42.9		
Lease liability	\$ 8.6	\$ 7.0	\$ 15.0	\$ 7.1	\$ 8.2	\$ 45.9	5.0%	

<sup>(1)</sup> The present value of the remaining lease payments was determined by discounting the lease payments using the incremental borrowing rate.

Millions	As of December 31, 2020						Total	Weighted Average Incremental Borrowing Rate <sup>(1)</sup>
	HG/BAM	NSM	Kudu	Other Operations				
ROU lease asset	\$ 10.1	\$ 17.1	\$ 2.0	\$ 8.4	\$ 37.6			
Lease liability	\$ 10.1	\$ 17.1	\$ 2.0	\$ 9.1	\$ 38.3	4.6%		

<sup>(1)</sup> The present value of the remaining lease payments was determined by discounting the lease payments using the incremental borrowing rate.

#### Note 14. Non-controlling Interests

Non-controlling interests consist of the ownership interests of non-controlling shareholders in consolidated entities and are presented separately on the balance sheet.

The following table presents the balance of non-controlling interests included in White Mountains's total equity and the related percentage of each consolidated entity's total equity owned by non-controlling shareholders as of September 30, 2021 and December 31, 2020:

\$ in Millions	September 30, 2021		December 31, 2020	
	Non-controlling Percentage	Non-controlling Equity	Non-controlling Percentage	Non-controlling Equity
Non-controlling interests, excluding BAM				
HG Global	3.1 %	\$ 10.1	3.1 %	\$ 13.5
Ark	28.0 %	216.1	— %	—
NSM	3.5 %	16.5	3.4 %	17.0
Kudu	.7 %	3.1	.7 %	2.3
Other	various	12.1	various	2.4
Total, excluding BAM		257.9		35.2
BAM	100.0 %	(125.3)	100.0 %	(123.3)
Total non-controlling interests		\$ 132.6		\$ (88.1)

**Note 15. Segment Information**

As of September 30, 2021, White Mountains conducted its operations through five segments: (1) HG Global/BAM, (2) Ark, (3) NSM, (4) Kudu and (5) Other Operations. A discussion of White Mountains's consolidated investment operations is included after the discussion of operations by segment.

As a result of the Ark Transaction, White Mountains began consolidating Ark in its financial statements as of January 1, 2021.

White Mountains has made its segment determination based on consideration of the following criteria: (i) the nature of the business activities of each of the Company's subsidiaries and affiliates; (ii) the manner in which the Company's subsidiaries and affiliates are organized; (iii) the existence of primary managers responsible for specific subsidiaries and affiliates; and (iv) the organization of information provided to the chief operating decision makers and the Board of Directors. Significant intercompany transactions among White Mountains's segments have been eliminated herein.

The following tables present the financial information for White Mountains's segments:

Millions	HG Global/ BAM	Ark	NSM	Kudu	Other Operations	Total
<b>Three Months Ended September 30, 2021</b>						
Earned insurance premiums	\$ 6.7	\$ 213.4	\$ —	\$ —	\$ —	\$ 220.1
Net investment income	4.4	.6	—	9.5	5.0	19.5
Net realized and unrealized investment (losses) gains	(4.0)	.3	—	18.9	15.3	30.5
Net realized and unrealized investment losses from investment in MediaAlpha	—	—	—	—	(396.8)	(396.8)
Commission revenues	—	—	67.0	—	2.4	69.4
Other revenue	.3	3.4	15.3	.1	28.1	47.2
Total revenues	<u>7.4</u>	<u>217.7</u>	<u>82.3</u>	<u>28.5</u>	<u>(346.0)</u>	<u>(10.1)</u>
Loss and loss adjustment expenses	—	129.2	—	—	—	129.2
Insurance acquisition expenses	3.0	53.7	—	—	—	56.7
Cost of sales	—	—	—	—	24.0	24.0
General and administrative expenses	12.4	21.8	48.8	3.3	14.5	100.8
Broker commission expense	—	—	20.4	—	—	20.4
Change in fair value of contingent consideration liabilities	—	—	.6	—	—	.6
Amortization of other intangible assets	—	—	8.2	—	2.0	10.2
Interest expense	—	2.1	5.9	1.9	.4	10.3
Total expenses	<u>15.4</u>	<u>206.8</u>	<u>83.9</u>	<u>5.2</u>	<u>40.9</u>	<u>352.2</u>
Pre-tax (loss) income	\$ (8.0)	\$ 10.9	\$ (1.6)	\$ 23.3	\$ (386.9)	\$ (362.3)

Millions	HG Global/ BAM	NSM	Kudu	Other Operations	Total
<b>Three Months Ended September 30, 2020</b>					
Earned insurance premiums	\$ 6.2	\$ —	\$ —	\$ —	\$ 6.2
Net investment income	4.7	—	6.4	60.1	71.2
Net realized and unrealized investment gains	3.2	—	9.8	43.6	56.6
Net unrealized investment gains from investment in MediaAlpha	—	—	—	250.0	250.0
Commission revenues	—	58.2	—	2.1	60.3
Other revenue	.4	12.5	.1	2.2	15.2
Total revenues	14.5	70.7	16.3	358.0	459.5
Insurance acquisition expenses	1.6	—	—	—	1.6
Cost of sales	—	—	—	2.3	2.3
General and administrative expenses	14.0	42.9	2.2	44.3	103.4
Broker commission expense	—	17.1	—	—	17.1
Change in fair value of contingent consideration liabilities	—	.7	—	—	.7
Amortization of other intangible assets	—	5.1	.1	.2	5.4
Interest expense	—	6.1	1.4	.3	7.8
Total expenses	15.6	71.9	3.7	47.1	138.3
Pre-tax (loss) income	\$ (1.1)	\$ (1.2)	\$ 12.6	\$ 310.9	\$ 321.2

Millions	HG Global/ BAM	Ark	NSM	Kudu	Other Operations	Total
<b>Nine Months Ended September 30, 2021</b>						
Earned insurance premiums	\$ 19.6	\$ 435.8	\$ —	\$ —	\$ —	\$ 455.4
Net investment income	13.2	1.8	—	26.1	16.1	57.2
Net realized and unrealized investment (losses) gains	(15.6)	10.3	—	62.5	34.0	91.2
Net realized and unrealized investment losses from investment in MediaAlpha	—	—	—	—	(325.5)	(325.5)
Commission revenues	—	—	194.6	—	7.0	201.6
Other revenue	.9	9.4	46.8	.2	57.6	114.9
Total revenues	18.1	457.3	241.4	88.8	(210.8)	594.8
Loss and loss adjustment expenses	—	247.8	—	—	—	247.8
Insurance acquisition expenses	6.5	124.4	—	—	—	130.9
Cost of sales	—	—	—	—	45.9	45.9
General and administrative expenses	42.7	84.4	142.1	9.0	79.7	357.9
Broker commission expense	—	—	60.9	—	—	60.9
Change in fair value of contingent consideration liabilities	—	—	.8	—	—	.8
Amortization of other intangible assets	—	—	25.0	.2	2.9	28.1
Loss on assets held for sale	—	—	28.7	—	—	28.7
Interest expense	—	4.5	17.7	9.2	1.1	32.5
Total expenses	49.2	461.1	275.2	18.4	129.6	933.5
Pre-tax (loss) income	\$ (31.1)	\$ (3.8)	\$ (33.8)	\$ 70.4	\$ (340.4)	\$ (338.7)

Millions	HG Global/ BAM	NSM	Kudu	Other Operations	Total
<b>Nine Months Ended September 30, 2020</b>					
Earned insurance premiums	\$ 17.2	\$ —	\$ —	\$ —	\$ 17
Net investment income	15.1	—	19.3	79.3	113
Net realized and unrealized investment gains (losses)	23.7	—	1.5	(17.4)	7
Net unrealized investment gains from investment in MediaAlpha	—	—	—	295.0	295
Commission revenues	—	174.2	—	6.1	180
Other revenue	2.1	37.6	.2	6.0	45
Total revenues	58.1	211.8	21.0	369.0	659
Insurance acquisition expenses	5.4	—	—	—	5
Cost of sales	—	—	—	6.5	6
General and administrative expenses	41.4	131.0	7.5	87.1	267
Broker commission expense	—	56.4	—	—	56
Change in fair value of contingent consideration liabilities	—	(1.6)	—	—	(1)
Amortization of other intangible assets	—	16.2	.3	.6	17
Interest expense	—	16.1	4.3	.8	21
Total expenses	46.8	218.1	12.1	95.0	372
Pre-tax income (loss)	\$ 11.3	\$ (6.3)	\$ 8.9	\$ 274.0	\$ 287

In compliance with ASC 606, *Revenues from Contracts with Customers*, the following tables present White Mountains's total revenues by revenue source for the three and nine months ended September 30, 2021 and 2020:

Millions	HG Global/BAM	Ark	NSM	Kudu	Other Operations	Total
<b>Three Months Ended September 30, 2021</b>						
Commission and other revenue						
Specialty Transportation <sup>(1)</sup>	\$ —	\$ —	\$ 25.7	\$ —	\$ —	\$ 25.7
Real Estate	—	—	6.2	—	—	6.2
Social Services	—	—	10.2	—	—	10.2
Pet	—	—	19.9	—	—	19.9
United Kingdom	—	—	13.0	—	—	13.0
Other	—	—	7.3	—	2.4	9.7
Total commission and other revenue	—	—	82.3	—	2.4	84.7
Product and service revenues	—	—	—	—	28.2	28.2
Revenues from contracts with customers	—	—	82.3	—	30.6	112.9
Other <sup>(2)</sup>	7.4	217.7	—	28.5	(376.6)	(123.0)
Total revenues	\$ 7.4	\$ 217.7	\$ 82.3	\$ 28.5	\$ (346.0)	\$ (10.1)

<sup>(1)</sup> Includes the results of J.C. Taylor from August 6, 2021, the date of the J.C. Taylor transaction.

<sup>(2)</sup> Other consists of premiums, investment income, investment gains and losses and other revenues outside the scope of ASC 606, *Revenues from Contracts with Customers*.



Millions	HG Global/BAM	NSM	Kudu	Other Operations	Total
<b>Three Months Ended September 30, 2020</b>					
Commission and other revenue					
Specialty Transportation	\$ —	\$ 21.9	\$ —	\$ —	21.9
Real Estate	—	6.0	—	—	6.0
Social Services	—	8.6	—	—	8.6
Pet	—	14.7	—	—	14.7
United Kingdom	—	13.9	—	—	13.9
Other	—	5.6	—	2.1	7.7
Total commission and other revenue	—	70.7	—	2.1	72.8
Product revenues	—	—	—	2.0	2.0
Revenues from contracts with customers	—	70.7	—	4.1	74.8
Other <sup>(1)</sup>	14.5	—	16.3	353.9	384.7
<b>Total revenues</b>	<b>\$ 14.5</b>	<b>\$ 70.7</b>	<b>\$ 16.3</b>	<b>\$ 358.0</b>	<b>459.5</b>

<sup>(1)</sup> Other consists of premiums, investment income, investment gains and losses and other revenues outside the scope of ASC 606, *Revenues from Contracts with Customers*.

Millions	HG Global/BAM	Ark	NSM	Kudu	Other Operations	Total
<b>Nine Months Ended September 30, 2021</b>						
Commission and other revenue						
Specialty Transportation <sup>(1)</sup>	\$ —	\$ —	\$ 73.0	\$ —	\$ —	73.0
Real Estate	—	—	25.2	—	—	25.2
Social Services	—	—	26.2	—	—	26.2
Pet	—	—	55.6	—	—	55.6
United Kingdom	—	—	39.9	—	—	39.9
Other	—	—	21.5	—	7.0	28.5
Total commission and other revenue	—	—	241.4	—	7.0	248.4
Product and service revenues	—	—	—	—	57.5	57.5
Revenues from contracts with customers	—	—	241.4	—	64.5	305.9
Other <sup>(2)</sup>	18.1	457.3	—	88.8	(275.3)	288.9
<b>Total revenues</b>	<b>\$ 18.1</b>	<b>\$ 457.3</b>	<b>\$ 241.4</b>	<b>\$ 88.8</b>	<b>(210.8)</b>	<b>594.8</b>

<sup>(1)</sup> Includes the results of J.C. Taylor from August 6, 2021, the date of the J.C. Taylor transaction.

<sup>(2)</sup> Other consists of premiums, investment income, investment gains and losses and other revenues outside the scope of ASC 606, *Revenues from Contracts with Customers*.

Millions	HG Global/BAM	NSM	Kudu	Other Operations	Total
<b>Three Months Ended September 30, 2020</b>					
Commission and other revenue					
Specialty Transportation	\$ —	\$ 66.1	\$ —	\$ —	66.1
Real Estate	—	32.7	—	—	32.7
Social Services	—	22.2	—	—	22.2
Pet	—	39.8	—	—	39.8
United Kingdom <sup>(2)</sup>	—	36.3	—	—	36.3
Other	—	14.7	—	6.1	20.8
Total commission and other revenue	—	211.8	—	6.1	217.9
Product revenues	—	—	—	6.4	6.4
Revenues from contracts with customers	—	211.8	—	12.5	224.3
Other <sup>(1)</sup>	58.1	—	21.0	356.5	435.6
Total revenues	\$ 58.1	\$ 211.8	\$ 21.0	\$ 369.0	\$ 659.9

<sup>(1)</sup> Other consists of premiums, investment income, investment gains and losses and other revenues outside the scope of ASC 606, *Revenues from Contracts with Customers*.

<sup>(2)</sup> Includes the results of Kingsbridge from April 7, 2020, the date of the Kingsbridge transaction.

#### Note 16. Equity-Method Eligible Investments

White Mountains's equity method eligible investments include White Mountains's investment in MediaAlpha, certain other unconsolidated entities, including Kudu's Participation Contracts, private equity funds and hedge funds in which White Mountains has the ability to exert significant influence over the investee's operating and financial policies.

The following table presents the basic ownership interests and carrying values of White Mountains's equity method eligible investments as of September 30, 2021 and December 31, 2020:

Millions	September 30, 2021		December 31, 2020	
	Basic Ownership Interest	Carrying Value	Basic Ownership Interest	Carrying Value
Kudu Participation Contracts	3.2 - 32.7%	604.7	3.2 - 35.0%	400.6
Investment in MediaAlpha	28.4 %	\$ 316.4	35.0 %	\$ 802.2
PassportCard/DavidShield	53.8 %	105.0	53.8 %	95.0
Elementum Holdings, L.P.	29.7 %	56.7	28.9 %	55.1
Other equity method eligible investments, at fair value	<b>Under 50.0%</b>	<b>95.6</b>	Under 50.0%	132.2
Other equity method eligible investments, at fair value	<b>50.0% and over</b>	<b>17.2</b>	50.0% and over	15.2

For the three and nine months ended September 30, 2021, White Mountains received dividend and income distributions from equity method eligible investments of \$13.0 million and \$37.7 million, which were recorded within net investment income in the consolidated statement of operations. For the three and nine months ended September 30, 2020, White Mountains received dividend and income distributions from equity method eligible investments of \$63.9 million and \$85.3 million, which were recorded within net investment income in the consolidated statement of operations.

Subsequent to the MediaAlpha IPO, White Mountains's investment in MediaAlpha is accounted for at fair value based on the publicly traded share price of MediaAlpha's common stock and White Mountains presents its investment in MediaAlpha as a separate line item on the balance sheet. See Note 2 — "Significant Transactions". For the nine months ended September 30, 2021 and 2020, MediaAlpha was considered a significant subsidiary.

The following tables present summarized financial information for MediaAlpha as of September 30, 2021 and December 31, 2020 and for the three and nine months ended September 30, 2021 and 2020:

Millions	September 30, 2021	December 31, 2020
<b>Balance sheet data:</b>		
Total assets	\$ 245.5	\$ 210.3
Total liabilities	\$ 318.4	\$ 315.5

Millions	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
<b>Income statement data:</b>				
Total revenues	\$ 152.7	\$ 151.5	\$ 483.7	\$ 394.6
Total expenses	\$ 157.0	\$ 146.7	\$ 488.2	\$ 370.8
Net (loss) income	\$ (4.3)	\$ 4.8	\$ (4.5)	\$ 23.8

**Note 17. Fair Value of Financial Instruments**

White Mountains records its financial instruments at fair value with the exception of debt obligations, which are recorded as debt at face value less unamortized original issue discount. See **Note 7 — “Debt”**.

The following table presents the fair value and carrying value of these financial instruments as of September 30, 2021 and December 31, 2020:

Millions	September 30, 2021		December 31, 2020	
	Fair Value	Carrying Value	Fair Value	Carrying Value
Ark 2007 Subordinated Notes	\$ 42.0	\$ 43.9	\$ —	\$ —
Ark 2021 Subordinated Notes	\$ 163.1	\$ 156.8	\$ —	\$ —
NSM Bank Facility	\$ 300.6	\$ 293.7	\$ 279.3	\$ 271.3
Other NSM debt	\$ 1.3	\$ 1.3	\$ 1.3	\$ 1.3
Kudu Credit Facility	\$ 218.2	\$ 195.6	\$ —	\$ —
Kudu Bank Facility	\$ —	\$ —	\$ 89.3	\$ 86.3
Other Operations debt	\$ 20.5	\$ 19.1	\$ 18.8	\$ 17.5

The fair value estimates for the Ark 2007 Subordinated Notes, the Ark 2021 Subordinated Notes, NSM Bank Facility, the Other NSM debt, the Kudu Credit Facility, the Kudu Bank Facility and Other Operations debt have been determined based on a discounted cash flow approach and are considered to be Level 3 measurements.

## **Note 18. Commitments and Contingencies**

### **Legal Contingencies**

White Mountains is subject to litigation and arbitration in the normal course of business. White Mountains considers the requirements of ASC 450 when evaluating its exposure to litigation and arbitration. ASC 450 requires that accruals be established for litigation and arbitration if it is probable that a loss has been incurred and it can be reasonably estimated. ASC 450 also requires that litigation and arbitration be disclosed if it is probable that a loss has been incurred or if there is a reasonable possibility that a loss may have been incurred. White Mountains does not have any current litigation that may have a material adverse effect on White Mountains's financial condition, results of operations or cash flows.

The following description presents significant legal contingencies, ongoing non-claims related litigation or arbitration as of September 30, 2021:

#### ***Esurance***

On October 7, 2011, the Company completed the sale of its Esurance Holdings, Inc. and its subsidiaries and Answer Financial Inc. and its subsidiaries (collectively, "Esurance") to The Allstate Corporation ("Allstate") pursuant to a Stock Purchase Agreement dated as of May 17, 2011. Subject to specified thresholds and limits, the Company remains contingently liable to Allstate for specified matters related to the pre-closing period, including (a) losses of Esurance arising from extra-contractual claims and claims in excess of policy limits, (b) certain corporate reorganizations effected to remove entities from Esurance that were not being sold in the transaction, and (c) certain tax matters, including certain net operating losses being less than stated levels. No claims relating to these matters were outstanding as of September 30, 2021.

#### ***Sirius Group Tax Contingency***

In the first quarter of 2021, White Mountains recorded a \$17.6 million gain within discontinued operations as a result of reversing a liability arising from the tax indemnification provided in connection with the sale of Sirius Group in 2016. The liability related to certain interest deductions claimed by Sirius Group that had been disputed by the Swedish Tax Agency (STA). In April 2021, the STA informed the Swedish Administrative Court of Appeal that Sirius Group should prevail in its appeal (and that the interest deductions should not be disallowed). In June 2021, the Swedish Administrative Court of Appeal ruled in Sirius Group's favor.

## **Note 19. Held for Sale and Discontinued Operations**

### **Sirius Group**

As of December 31, 2020, White Mountains recorded a liability of \$18.7 million, related to the tax indemnification provided in connection with the sale of Sirius Group in 2016. For the nine months ended September 30, 2021, White Mountains recorded a gain of \$17.6 million in discontinued operations to reverse the liability accrued as of December 31, 2020 and \$1.1 million gain related to foreign currency translation. See **Note 18 — "Commitments and Contingencies"**.

### **NSM**

On April 12, 2021, NSM completed the sale of the Fresh Insurance motor business for net proceeds of £1.1 million (\$1.5 million based upon the foreign exchange spot rate as of the transaction date). The assets and liabilities included in the transaction, were measured at their estimated fair values, net of disposal and classified as held for sale at March 31, 2021. However, the transaction did not meet the criteria to be classified as discontinued operations. In the first quarter of 2021, NSM recorded a loss of \$28.7 million related to the sale.

## Earnings Per Share from Discontinued Operations

White Mountains calculates earnings per share using the two-class method, which allocates earnings between common and unvested restricted common shares. Both classes of shares participate equally in earnings on a per share basis. Basic earnings per share amounts are based on the weighted average number of common shares outstanding adjusted for unvested restricted common shares. Diluted earnings per share amounts are also impacted by the net effect of potentially dilutive common shares outstanding.

The following table presents the Company's computation of earnings per share for discontinued operations for the three and nine months ended September 30, 2021 and 2020:

	Three Months Ended		Nine Months Ended	
	September 30,		September 30,	
	2021	2020	2021	2020
<b>Basic and diluted earnings per share numerators (in millions):</b>				
Net income (loss) attributable to White Mountains's common shareholders	\$ (371.4)	\$ 232.9	\$ (308.2)	\$ 219.5
Less: total income (loss) from continuing operations, net of tax	(371.4)	233.6	(326.9)	220.3
Net (loss) gain from discontinued operations attributable to White Mountains's common shareholders	\$ —	\$ (.7)	\$ 18.7	\$ (.8)
Allocation of earnings to participating restricted common shares <sup>(1)</sup>	—	—	(.2)	—
Basic and diluted earnings(losses) per share numerators <sup>(2)</sup>	\$ —	\$ (.7)	\$ 18.5	\$ (.8)
<b>Basic earnings per share denominators (in thousands):</b>				
Total average common shares outstanding during the period	3,090.3	3,101.8	3,099.4	3,129.0
Average unvested restricted common shares <sup>(3)</sup>	(37.8)	(43.1)	(36.0)	(40.0)
Basic earnings per share denominator	3,052.5	3,058.7	3,063.4	3,089.0
<b>Diluted earnings per share denominator (in thousands):</b>				
Total average common shares outstanding during the period	3,090.3	3,101.8	3,099.4	3,129.0
Average unvested restricted common shares <sup>(3)</sup>	(37.8)	(43.1)	(36.0)	(40.0)
Diluted earnings per share denominator	3,052.5	3,058.7	3,063.4	3,089.0
<b>Basic and diluted earnings (losses) per share (in dollars) - discontinued operations:</b>	\$ —	\$ (.23)	\$ 6.03	\$ (.26)

<sup>(1)</sup> Restricted shares issued by White Mountains contain dividend participation features, and therefore, are considered participating securities.

<sup>(2)</sup> Net earnings attributable to White Mountains's common shareholders, net of restricted share amounts, is equal to undistributed earnings for the three and nine months ended September 30, 2021 and 2020.

<sup>(3)</sup> Restricted common shares outstanding vest upon a stated date. See Note 12 — "Employee Share-Based Incentive Compensation Plans".

## Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations.

The following discussion contains "forward-looking statements". White Mountains intends statements that are not historical in nature, which are hereby identified as forward-looking statements, to be covered by the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. White Mountains cannot promise that its expectations in such forward-looking statements will turn out to be correct. White Mountains's actual results could be materially different from and worse than its expectations. See "FORWARD-LOOKING STATEMENTS" on page 91 for specific important factors that could cause actual results to differ materially from those contained in forward-looking statements.

The following discussion also includes twelve non-GAAP financial measures: (i) adjusted book value per share, (ii) BAM's gross written premiums and member surplus contributions ("MSC") from new business, (iii) Ark's adjusted loss and loss adjustment expense ratio, (iv) Ark's adjusted insurance acquisition expense ratio, (v) Ark's adjusted other underwriting expense ratio, (vi) Ark's adjusted combined ratio (vii) NSM's earnings before interest, taxes, depreciation and amortization ("EBITDA"), (viii) NSM's adjusted EBITDA, (ix) Kudu's EBITDA, (x) Kudu's adjusted EBITDA, (xi) total consolidated portfolio returns excluding MediaAlpha and (xii) adjusted capital, that have been reconciled from their most comparable GAAP financial measures on page 85. White Mountains believes these measures to be useful in evaluating White Mountains's financial performance and condition.

### RESULTS OF OPERATIONS FOR THE THREE AND NINE MONTHS ENDED SEPTEMBER 30, 2021 AND 2020

#### Overview

White Mountains reported book value per share of \$1,162 and adjusted book value per share of \$1,176 as of September 30, 2021. Book value per share and adjusted book value per share both decreased 9% in the third quarter of 2021. Book value per share decreased 8% and adjusted book value per share decreased 7% in the first nine months of 2021, including dividends. Book value per share and adjusted book value per share both increased 8% in the third quarter of 2020. Book value per share increased 7% and adjusted book value per share increased 8% in the first nine months of 2020, including dividends.

Results in the third quarter and first nine months of 2021 were driven primarily by \$397 million and \$326 million of net realized and unrealized investment losses from White Mountains's investment in MediaAlpha, resulting from decreases in the MediaAlpha share price (from \$39.07 as of December 31, 2020 and from \$42.10 as of June 30, 2021) to \$18.68 as of September 30, 2021. Results in the first nine months of 2021 also included realized investment gains on shares sold in a secondary offering completed by MediaAlpha. On March 23, 2021, MediaAlpha completed a secondary offering of 8.05 million shares at \$46.00 per share (\$44.62 per share net of underwriting fees). In the secondary offering, White Mountains sold 3.6 million shares for net proceeds of \$160 million. As of September 30, 2021, White Mountains owned 16.9 million shares of MediaAlpha, representing a 28% basic ownership interest (26% on a fully-diluted/fully-converted basis). At the September 30, 2021 closing price of \$18.68 per share, the value of White Mountains's investment in MediaAlpha was \$316 million. At this level of ownership, each \$1.00 per share increase or decrease in the share price of MediaAlpha will result in an approximate \$5.60 per share increase or decrease in White Mountains's book value per share and adjusted book value per share.

Excluding net realized and unrealized investment losses from White Mountains's investment in MediaAlpha, book value and adjusted book value both increased in the third quarter and first nine months of 2021, reflecting solid performance within White Mountains's operating businesses.

Gross written premiums and MSC collected in the HG Global/BAM segment totaled \$28 million and \$84 million in the third quarter and first nine months of 2021 compared to \$30 million and \$93 million in the third quarter and first nine months of 2020. BAM insured municipal bonds with par value of \$4.0 billion and \$12.6 billion in the third quarter and first nine months of 2021 compared to \$4.7 billion and \$11.8 billion in the third quarter and first nine months of 2020. Total pricing was 69 and 66 basis points in the third quarter and first nine months of 2021 compared to 63 and 79 basis points in the third quarter and first nine months of 2020. BAM's total claims paying resources were \$1,181 million as of September 30, 2021 compared to \$987 million as of December 31, 2020 and \$968 million as of September 30, 2020. In the first quarter of 2021, BAM completed a reinsurance agreement with Fidus Re that increased BAM's claims paying resources by \$150 million. In July 2021, S&P Global Ratings completed its annual review and affirmed BAM's "AA/stable" rating.

Ark's GAAP combined ratio was 92% and 95% in the third quarter and first nine months of 2021. Ark's adjusted combined ratio, which adds back amounts ceded to third-party capital providers, was 89% and 93% in the third quarter and first nine months of 2021. The adjusted combined ratio in the third quarter and first nine months of 2021 included 21 points and 16 points of catastrophe losses and six points and five points of net favorable prior year reserve development. In the third quarter of 2021 Ark reported gross written premiums of \$162 million, net written premiums of \$121 million and net earned premiums of \$213 million. Ark's gross written premiums in the third quarter of 2021 were up 79% from the third quarter of 2020 (prior to White Mountains's ownership of Ark), with risk-adjusted rate change approximately up 7%. In the first nine months of 2021, Ark reported gross written premiums of \$895 million, net written premiums of \$726 million and net earned premiums of \$436 million. Ark's gross written premiums in the first nine months of 2021 were up 90% from the first nine months of 2020 (prior to White Mountains's ownership of Ark), with risk-adjusted rate change up approximately 9%. Ark reported pre-tax income (loss) of \$11 million and \$(4) million in the third quarter and first nine months of 2021. Ark's pre-tax loss for the first nine months of 2021 included \$25 million of transaction expenses related to White Mountains's transaction with Ark.

NSM reported pre-tax loss of \$2 million, adjusted EBITDA of \$19 million, and commission and other revenues of \$82 million in the third quarter of 2021 compared to pre-tax loss of \$1 million, adjusted EBITDA of \$15 million, and commission and other revenues of \$71 million in the third quarter of 2020. NSM reported pre-tax loss of \$34 million, adjusted EBITDA of \$53 million, and commission and other revenues of \$241 million in the first nine months of 2021 compared to pre-tax loss of \$6 million, adjusted EBITDA of \$44 million, and commission and other revenues of \$212 million in the first nine months of 2020. On April 12, 2021, NSM sold its Fresh Insurance motor business, which resulted in a loss of \$29 million recorded in the first quarter of 2021. Results in the third quarter and first nine months of 2021 include the results of J.C. Taylor, an MGA offering classic and antique collector car insurance, from August 6, 2021, the date of its acquisition. Results in the third quarter and first nine months of 2021 and 2020 include the results of Kingsbridge Group Limited, a leading provider of commercial lines insurance and consulting services to the contingent workforce in the United Kingdom, from April 7, 2020, the date of its acquisition.

Kudu reported pre-tax income of \$23 million, adjusted EBITDA of \$7 million and total revenues of \$29 million in the third quarter of 2021 compared to pre-tax income of \$13 million, adjusted EBITDA of \$5 million and total revenues of \$16 million in the third quarter of 2020. Pre-tax income and total revenues in the third quarter of 2021 included \$19 million of net unrealized investment gains on Kudu's participation contracts compared to \$10 million of net unrealized investment gains on Kudu's participation contracts in the third quarter of 2020. Kudu reported pre-tax income of \$70 million, adjusted EBITDA of \$19 million and total revenues of \$89 million in the first nine months of 2021 compared to pre-tax loss of \$9 million, adjusted EBITDA of \$14 million and total revenues of \$21 million in the first nine months of 2020. Pre-tax income and total revenues in the first nine months of 2021 included \$63 million of net unrealized investment gains on Kudu's participation contracts compared to \$2 million of net unrealized investment gains on Kudu's participation contracts in the first nine months of 2020. In the third quarter of 2021, Kudu deployed \$131 million, including transaction costs, in two investment management firms.

White Mountains's pre-tax total consolidated portfolio return on invested assets was -8.0% in the third quarter of 2021. This return included \$397 million of net unrealized investment losses from White Mountains's investment in MediaAlpha. Excluding MediaAlpha, the total consolidated portfolio return on invested assets was 1.4% in the third quarter of 2021. Excluding MediaAlpha, investment returns in the third quarter were driven primarily by favorable other long-term investments results. White Mountains's pre-tax total consolidated portfolio return on invested assets was 13.5% in the third quarter of 2020. This return included \$305 million of net investment income and unrealized investment gains from White Mountains's investment in MediaAlpha. Excluding MediaAlpha, the total consolidated portfolio return on invested assets was 2.8% in the third quarter of 2020. Excluding MediaAlpha, investment returns in the third quarter of 2020 were driven primarily by a rebound in equity markets following the decline experienced in the first quarter of 2020 in reaction to the COVID-19 pandemic.

White Mountains's pre-tax total consolidated portfolio return on invested assets was -3.7% in the first nine months of 2021. This return included \$325 million of net realized and unrealized investment losses from White Mountains's investment in MediaAlpha. Excluding MediaAlpha, the total consolidated portfolio return on invested assets was 4.6% in first nine months of 2021. Excluding MediaAlpha, investment returns in the third quarter were driven primarily by favorable other long-term investment results. White Mountains's pre-tax total consolidated portfolio return on invested assets was 15.4% in the first nine months of 2020. This return included \$355 million of net investment income and unrealized investment gains from White Mountains's investment in MediaAlpha. Excluding MediaAlpha, the total consolidated portfolio return on invested assets was 2.8% in the first nine months of 2020. Excluding MediaAlpha, returns in the first nine months of 2020 were driven primarily by the impact of the decline in interest rates on fixed income markets.

### Adjusted Book Value Per Share

The following table presents White Mountains's book value per share and reconciles it to adjusted book value per share, a non-GAAP measure. See **NON-GAAP FINANCIAL MEASURES** on page 85.

	September 30, 2021	June 30, 2021	December 31, 2020	September 30, 2020
<b>Book value per share numerators (in millions):</b>				
White Mountains's common shareholders' equity - GAAP book value per share numerator	\$ 3,521.7	\$ 3,978.2	\$ 3,906.0	\$ 3,407.7
Time value of money discount on expected future payments on the BAM Surplus Notes <sup>(1)</sup>	(128.0)	(132.8)	(142.5)	(144.3)
HG Global's unearned premium reserve <sup>(1)</sup>	206.8	201.5	190.0	181.0
HG Global's net deferred acquisition costs <sup>(1)</sup>	(58.1)	(56.3)	(52.4)	(49.5)
Adjusted book value per share numerator	\$ 3,542.4	\$ 3,990.6	\$ 3,901.1	\$ 3,394.9
<b>Book value per share denominators (in thousands of shares):</b>				
Common shares outstanding - GAAP book value per share denominator	3,029.6	3,109.2	3,102.0	3,102.0
Unearned restricted common shares	(17.0)	(20.6)	(14.8)	(19.3)
Adjusted book value per share denominator	3,012.6	3,088.6	3,087.2	3,082.7
GAAP book value per share	\$ 1,162.44	\$ 1,279.49	\$ 1,259.18	\$ 1,098.56
Adjusted book value per share	\$ 1,175.86	\$ 1,292.03	\$ 1,263.64	\$ 1,101.28
Year-to-date dividends paid per share	\$ 1.00	\$ 1.00	\$ 1.00	\$ 1.00

<sup>(1)</sup> Amount reflects White Mountains's preferred share ownership in HG Global of 96.9%.

### Goodwill and Other Intangible Assets

The following table presents a summary of goodwill and other intangible assets that are included in White Mountains's book value as of September 30, 2021, December 31, 2020, and September 30, 2020:

Millions	September 30, 2021	June 30, 2021	December 31, 2020	September 30, 2020
<b>Goodwill:</b>				
Ark	\$ 116.8	\$ 116.8	\$ —	\$ —
NSM	529.6 <sup>(2)</sup>	477.9	506.4	511.8 <sup>(4)</sup>
Kudu	7.6	7.6	7.6	7.6
Other Operations	17.4	27.1 <sup>(3)</sup>	11.5	20.7 <sup>(5)</sup>
<b>Total goodwill</b>	<b>671.4</b>	<b>629.4</b>	<b>525.5</b>	<b>540.1</b>
<b>Other intangible assets:</b>				
Ark	175.7	175.7	—	—
NSM	205.2	213.7	230.4	218.5
Kudu	1.4	1.5	1.6	1.7
Other Operations	31.3	23.9	24.9	16.0
<b>Total other intangible assets</b>	<b>413.6</b>	<b>414.8</b>	<b>256.9</b>	<b>236.2</b>
<b>Total goodwill and other intangible assets <sup>(1)</sup></b>	<b>1,085</b>	<b>1,044.2</b>	<b>782.4</b>	<b>776.3</b>
<b>Goodwill and other intangible assets attributed to non-controlling interests</b>				
	(118.0)	(115.9)	(28.1)	(27.1)
<b>Goodwill and other intangible assets included in White Mountains's common shareholders' equity</b>				
	\$ 967.0	\$ 928.3	\$ 754.3	\$ 749.2

<sup>(1)</sup> See **Note 4 — "Goodwill and Other Intangible Assets"** for details of goodwill and other intangible assets.

<sup>(2)</sup> The relative fair values of goodwill and other intangible assets recognized in connection with the acquisition of J.C. Taylor had not yet been finalized at September 30, 2021.

<sup>(3)</sup> The relative fair values of goodwill and other intangible assets recognized in connection with an acquisition within Other Operations had not yet been finalized at June 30, 2021.

<sup>(4)</sup> The relative fair values of goodwill and other intangible assets recognized in connection with the acquisition of Kingsbridge had not yet been finalized at September 30, 2020.

<sup>(5)</sup> The relative fair values of goodwill and other intangible assets recognized in connection with an acquisition within Other Operations had not yet been finalized at September 30, 2020.



## Summary of Consolidated Results

The following table presents White Mountains's consolidated financial results for the three and nine months ended September 30, 2021 and 2020:

Millions	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
<b>Revenues</b>				
Financial Guarantee revenues	\$ 7.4	\$ 14.5	\$ 18.1	\$ 58.1
P&C Insurance and Reinsurance revenues	217.7	—	457.3	—
Specialty Insurance Distribution revenues	82.3	70.7	241.4	211.8
Asset Management revenues	28.5	16.3	88.8	21.0
Other Operations revenues	(346.0)	358.0	(210.8)	369.0
Total revenues	(10.1)	459.5	594.8	659.9
<b>Expenses</b>				
Financial Guarantee expenses	15.4	15.6	49.2	46.8
P&C Insurance and Reinsurance expenses	206.8	—	461.1	—
Specialty Insurance Distribution expenses	83.9	71.9	275.2	218.1
Asset Management expenses	5.2	3.7	18.4	12.1
Other Operations expenses	40.9	47.1	129.6	95.0
Total expenses	352.2	138.3	933.5	372.0
<b>Pre-tax income (loss)</b>				
Financial Guarantee pre-tax income (loss)	(8.0)	(1.1)	(31.1)	11.3
P&C Insurance and Reinsurance pre-tax income (loss)	10.9	—	(3.8)	—
Specialty Insurance Distribution pre-tax income (loss)	(1.6)	(1.2)	(33.8)	(6.3)
Asset Management pre-tax income (loss)	23.3	12.6	70.4	8.9
Other Operations pre-tax income (loss)	(386.9)	310.9	(340.4)	274.0
Total pre-tax income (loss)	(362.3)	321.2	(338.7)	287.9
Income tax (expense) benefit	(21.6)	(98.5)	(41.9)	(97.1)
<b>Net income (loss) from continuing operations</b>	<b>(383.9)</b>	<b>222.7</b>	<b>(380.6)</b>	<b>190.8</b>
Net (loss) gain from sale of discontinued operations, net of tax	—	(.7)	18.7	(.8)
<b>Net income (loss)</b>	<b>(383.9)</b>	<b>222.0</b>	<b>(361.9)</b>	<b>190.0</b>
Net loss attributable to non-controlling interests	12.5	10.9	53.7	29.5
<b>Net income (loss) attributable to White Mountains's common shareholders</b>	<b>(371.4)</b>	<b>232.9</b>	<b>(308.2)</b>	<b>219.5</b>
Other comprehensive income (loss), net of tax	(2.2)	3.9	.6	1.0
<b>Comprehensive income (loss)</b>	<b>(373.6)</b>	<b>236.8</b>	<b>(307.6)</b>	<b>220.5</b>
Comprehensive income attributable to non-controlling interests	.2	(.1)	—	(.3)
<b>Comprehensive income (loss) attributable to White Mountains's common shareholders</b>	<b>\$ (373.4)</b>	<b>\$ 236.7</b>	<b>\$ (307.6)</b>	<b>\$ 220.2</b>

## I. Summary of Operations By Segment

As of September 30, 2021, White Mountains conducted its operations through five segments: (1) HG Global/BAM, (2) Ark, (3) NSM, (4) Kudu and (5) Other Operations. A discussion of White Mountains's consolidated investment operations is included after the discussion of operations by segment. White Mountains's segment information is presented in **Note 15 — "Segment Information"** to the Consolidated Financial Statements.

As a result of the Ark Transaction, White Mountains began consolidating Ark in its financial statements as of January 1, 2021. See **Note 2 — "Significant Transactions"**.

### HG Global/BAM

The following tables present the components of pre-tax income (loss) included in White Mountains's HG Global/BAM segment related to the consolidation of HG Global, which includes HG Re and its other wholly-owned subsidiaries, and BAM for the three and nine months ended September 30, 2021 and 2020:

Millions	Three Months Ended September 30, 2021			
	HG Global	BAM	Eliminations	Total
Direct written premiums	\$ —	\$ 12.8	\$ —	\$ 12.8
Assumed written premiums	10.9	—	(10.9)	—
Gross written premiums	10.9	12.8	(10.9)	12.8
Ceded written premiums	—	(10.9)	10.9	—
Net written premiums	\$ 10.9	\$ 1.9	\$ —	\$ 12.8
Earned insurance premiums	\$ 5.5	\$ 1.2	\$ —	\$ 6.7
Net investment income	1.9	2.5	—	4.4
Net investment income - BAM Surplus Notes	3.1	—	(3.1)	—
Net realized and unrealized investment gains	(2.0)	(2.0)	—	(4.0)
Other revenue	.1	.2	—	.3
Total revenues	8.6	1.9	(3.1)	7.4
Insurance acquisition expenses	1.5	1.5	—	3.0
General and administrative expenses	.2	12.2	—	12.4
Interest expense - BAM Surplus Notes	—	3.1	(3.1)	—
Total expenses	1.7	16.8	(3.1)	15.4
<b>Pre-tax income (loss)</b>	<b>\$ 6.9</b>	<b>\$ (14.9)</b>	<b>\$ —</b>	<b>\$ (8.0)</b>
<b>Supplemental information:</b>				
MSC collected <sup>(1)</sup>	\$ —	\$ 14.7	\$ —	\$ 14.7

<sup>(1)</sup>MSC are recorded directly to BAM's equity, which is recorded as non-controlling interest on White Mountains's balance sheet.

Millions	Three Months Ended September 30, 2020			
	HG Global	BAM	Eliminations	Total
Direct written premiums	\$ —	\$ 14.5	\$ —	\$ 14.5
Assumed (ceded) written premiums	12.5	—	(12.5)	—
Gross written premiums	12.5	14.5	(12.5)	14.5
Ceded written premiums	—	(12.5)	12.5	—
Net written premiums	\$ 12.5	\$ 2.0	\$ —	\$ 14.5
Earned insurance premiums	\$ 5.1	\$ 1.1	\$ —	\$ 6.2
Net investment income	1.8	2.9	—	4.7
Net investment income - BAM Surplus Notes	4.6	—	(4.6)	—
Net realized and unrealized investment gains	—	3.2	—	3.2
Other revenue	.2	.2	—	.4
Total revenues	11.7	7.4	(4.6)	14.5
Insurance acquisition expenses	1.1	.5	—	1.6
General and administrative expenses	.6	13.4	—	14.0
Interest expense - BAM Surplus Notes	—	4.6	(4.6)	—
Total expenses	1.7	18.5	(4.6)	15.6
<b>Pre-tax income (loss)</b>	<b>\$ 10.0</b>	<b>\$ (11.1)</b>	<b>\$ —</b>	<b>\$ (1.1)</b>
<b>Supplemental information:</b>				
MSC collected <sup>(1)</sup>	\$ —	\$ 15.4	\$ —	\$ 15.4

<sup>(1)</sup>MSC are recorded directly to BAM's equity, which is recorded as non-controlling interest on White Mountains's balance sheet.

Millions	Nine Months Ended September 30, 2021			
	HG Global	BAM	Eliminations	Total
Direct written premiums	\$ —	\$ 34.5	\$ —	\$ 34.5
Assumed written premiums	33.4	4.5	(33.4)	4.5
Gross written premiums	33.4	39.0	(33.4)	39.0
Ceded written premiums	—	(33.4)	33.4	—
Net written premiums	\$ 33.4	\$ 5.6	\$ —	\$ 39.0
Earned insurance premiums	\$ 16.1	\$ 3.5	\$ —	\$ 19.6
Net investment income	5.4	7.8	—	13.2
Net investment income - BAM Surplus Notes	9.1	—	(9.1)	—
Net realized and unrealized investment losses	(9.5)	(6.1)	—	(15.6)
Other revenue	.3	.6	—	.9
Total revenues	21.4	5.8	(9.1)	18.1
Insurance acquisition expenses	4.3	2.2	—	6.5
General and administrative expenses	1.3	41.4	—	42.7
Interest expense - BAM Surplus Notes	—	9.1	(9.1)	—
Total expenses	5.6	52.7	(9.1)	49.2
<b>Pre-tax income (loss)</b>	<b>\$ 15.8</b>	<b>\$ (46.9)</b>	<b>\$ —</b>	<b>\$ (31.1)</b>
<b>Supplemental information:</b>				
MSC collected <sup>(1)</sup>	\$ —	\$ 44.8	\$ —	\$ 44.8

<sup>(1)</sup>MSC are recorded directly to BAM's equity, which is recorded as non-controlling interest on White Mountains's balance sheet.

Millions	Nine Months Ended September 30, 2020			
	HG Global	BAM	Eliminations	Total
Direct written premiums	\$ —	\$ 45.5	\$ —	\$ 45.5
Assumed (ceded) written premiums	39.1	.1	(39.1)	.1
Gross written premiums	39.1	45.6	(39.1)	45.6
Ceded written premiums	—	(39.1)	39.1	—
Net written premiums	\$ 39.1	\$ 6.5	\$ —	\$ 45.6
Earned insurance premiums	\$ 14.1	\$ 3.1	\$ —	\$ 17.2
Net investment income	6.1	9.0	—	15.1
Net investment income - BAM Surplus Notes	14.1	—	(14.1)	—
Net realized and unrealized investment gains	12.1	11.6	—	23.7
Other revenue	.3	1.8	—	2.1
Total revenues	46.7	25.5	(14.1)	58.1
Insurance acquisition expenses	3.3	2.1	—	5.4
General and administrative expenses	1.6	39.8	—	41.4
Interest expense - BAM Surplus Notes	—	14.1	(14.1)	—
Total expenses	4.9	56.0	(14.1)	46.8
<b>Pre-tax income (loss)</b>	<b>\$ 41.8</b>	<b>\$ (30.5)</b>	<b>\$ —</b>	<b>\$ 11.3</b>
<b>Supplemental information:</b>				
MSC collected <sup>(1)</sup>	\$ —	\$ 46.9	\$ —	\$ 46.9

<sup>(1)</sup> MSC are recorded directly to BAM's equity, which is recorded as non-controlling interest on White Mountains's balance sheet.

#### **HG Global/BAM Results—Three Months Ended September 30, 2021 versus Three Months Ended September 30, 2020**

BAM is required to prepare its financial statements on a statutory accounting basis for the NYDFS and does not report stand-alone GAAP financial results. BAM is owned by its members, the municipalities that purchase BAM's insurance for their debt issuances. BAM charges an insurance premium on each municipal bond insurance policy it writes. A portion of the premium is MSC and the remainder is a risk premium. In the event of a municipal bond refunding, a portion of the MSC from original issuance can be reutilized, in effect serving as a credit against the total insurance premium on the refunding of the municipal bond. Issuers of debt insured by BAM are members of BAM so long as any of their BAM-insured debt is outstanding, and as members they have certain interests in BAM, including the right to vote for BAM's directors and to receive dividends in the future, if declared.

Gross written premiums and MSC collected in the HG Global/BAM segment totaled \$28 million in the third quarter of 2021 compared to \$30 million in the third quarter of 2020. BAM insured \$4.0 billion of municipal bonds, \$3.8 billion of which were in the primary market, in the third quarter of 2021 compared to \$4.7 billion of municipal bonds, \$4.4 billion of which were in the primary market, in the third quarter of 2020. Demand remained strong for insured bonds in the primary market, as insured penetration in the primary market was 8.6% in the third quarter of 2021 compared to 8.0% in the third quarter of 2020.

Total pricing, which reflects both gross written premiums and MSC from new business, increased to 69 basis points in the third quarter of 2021 compared to 63 basis points in the third quarter of 2020. See "**NON-GAAP FINANCIAL MEASURES**" on page 85. The increase in total pricing was driven primarily by an increase in pricing in the primary and secondary markets in the third quarter of 2021. Pricing in the primary market increased to 59 basis points in the third quarter of 2021 compared to 57 basis points in the third quarter of 2020. Pricing in the secondary and assumed reinsurance markets, which is more transaction specific than pricing in the primary market, increased to 309 basis points in the third quarter of 2021 compared to 154 basis points in the third quarter of 2020. Demand remained strong for insured bonds of issuers rated double-A minus or higher.

The following table presents the gross par value of primary and secondary market policies issued, the gross par value of assumed reinsurance, the gross written premiums and MSC collected and total pricing for the three months ended September 30, 2021 and 2020:

\$ in Millions	Three Months Ended September 30,	
	2021	2020
Gross par value of primary market policies issued	\$ 3,813.7	\$ 4,420.8
Gross par value of secondary market policies issued	157.4	318.7
Gross par value of assumed reinsurance	—	—
<b>Total gross par value of market policies issued</b>	<b>\$ 3,971.1</b>	<b>\$ 4,739.5</b>
Gross written premiums	\$ 12.8	\$ 14.4
MSC collected	14.7	15.4
<b>Total gross written premiums and MSC collected</b>	<b>\$ 27.5</b>	<b>\$ 29.8</b>
Present value of future installment MSC collections	—	—
Gross written premium adjustments on existing installment policies	.1	.1
<b>Gross written premiums and MSC from new business</b>	<b>\$ 27.6</b>	<b>\$ 29.9</b>
<b>Total pricing</b>	<b>69 bps</b>	<b>63 bps</b>

HG Global reported pre-tax income of \$7 million in the third quarter of 2021 compared to pre-tax income of \$10 million in the third quarter of 2020. The change in pre-tax income was driven primarily by lower investment returns on the HG Global investment portfolio, as interest rates increased in the third quarter of 2021 resulting in net unrealized losses, and a decrease in interest income on the BAM Surplus Notes. Results in the third quarter of 2021 included \$3 million of interest income on the BAM Surplus Notes compared to \$5 million in the third quarter of 2020. Interest income on the BAM Surplus Notes decreased due to both a decrease in the balance of the BAM Surplus Notes and a decrease in the interest rate earned on the BAM Surplus Notes in the third quarter of 2021 compared to the third quarter of 2020.

BAM is a mutual insurance company that is owned by its members. BAM's results are consolidated into White Mountains's GAAP financial statements and attributed to non-controlling interests. White Mountains reported \$15 million of GAAP pre-tax loss from BAM in the third quarter of 2021 compared to \$11 million third quarter of 2020. The change in pre-tax loss was driven primarily by lower investment returns on the BAM investment portfolio, as interest rates increased in the third quarter of 2021 resulting in net unrealized losses, partially offset by a decrease in interest expense on the BAM Surplus Notes. Results in the third quarter of 2021 included \$3 million of interest expense on the BAM Surplus Notes compared to \$5 million in the third quarter of 2020. Interest expense on the BAM Surplus Notes decreased due to both a decrease in the balance of the BAM Surplus Notes and a decrease in the interest rate earned on the BAM Surplus Notes in the third quarter of 2021 compared to the third quarter of 2020. Results in the third quarter of 2021 also included \$12 million of general and administrative expenses compared to \$13 million in the third quarter of 2020.

#### COVID-19

BAM expects that investor concerns about the impact of the COVID-19 pandemic should continue to result in both increased insured penetration in the primary market and opportunities in the secondary market. The COVID-19 pandemic is negatively impacting the finances of municipalities to varying degrees, and, over time, financial stress could emerge. BAM's existing credit portfolio is of high quality and structured to be resilient during economic slowdowns. BAM views consumption-based tax-backed credits (sales, hotel, excise), transportation-related credits (airports, mass transportation, ports and toll roads) and higher education-related credits as those most likely to be affected by pandemic-related impacts on the economy. Combined, these sectors total approximately 17% of BAM's outstanding insured par. All BAM-insured bond payments due through November 1, 2021 have been made by insureds. BAM currently has no insured bonds on its insured credit watchlist.

**HG Global/BAM Results—Nine Months Ended September 30, 2021 versus Nine Months Ended September 30, 2020**

Gross written premiums and MSC collected in the HG Global/BAM segment totaled \$84 million in the first nine months of 2021 compared to \$93 million in the first nine months of 2020. BAM insured \$12.6 billion of municipal bonds, \$11.2 billion of which were in the primary market, in the first nine months of 2021 compared to \$11.8 billion of municipal bonds, \$10.1 billion of which were in the primary market, in the first nine months of 2020. In the first quarter of 2021, BAM completed an assumed reinsurance transaction to reinsure municipal bonds with a par value of \$805 million. Demand remained strong for insured bonds in the primary market, as insured penetration in the primary market was 8.1% in the first nine months of 2021 compared to 7.1% in the first nine months of 2020.

Total pricing, which reflects both gross written premiums and MSC from new business, decreased to 66 basis points in the first nine months of 2021 compared to 79 basis points in the first nine months of 2020. See “**NON-GAAP FINANCIAL MEASURES**” on page 85. The decrease in total pricing was driven primarily by a decrease in pricing and the amount of par insured in the secondary market in the first nine months of 2021, partially offset by the assumed reinsurance transaction in the first quarter of 2021. Pricing in the primary market was 56 basis points in both the first nine months of 2021 and 2020. Pricing in the secondary and assumed reinsurance markets, which is more transaction specific than pricing in the primary market, decreased to 150 basis points in the first nine months of 2021 compared to 210 basis points in the first nine months of 2020. Demand remained strong for insured bonds of issuers rated double-A minus or higher.

The following table presents the gross par value of primary and secondary market policies issued, the gross par value of assumed reinsurance, the gross written premiums and MSC collected and total pricing for the nine months ended September 30, 2021 and 2020:

<b>\$ in Millions</b>	<b>Nine Months Ended September 30,</b>	
	<b>2021</b>	<b>2020</b>
Gross par value of primary market policies issued	\$ 11,171.2	\$ 10,125.0
Gross par value of secondary market policies issued	646.6	1,665.7
Gross par value of assumed reinsurance	805.5	36.9
Total gross par value of market policies issued	\$ 12,623.3	\$ 11,827.6
Gross written premiums	39.0	\$ 45.6
MSC collected	44.8	46.9
Total gross written premiums and MSC collected	\$ 83.8	\$ 92.5
Present value of future installment MSC collections	—	.3
Gross written premium adjustments on existing installment policies	.1	.1
Gross written premiums and MSC from new business	\$ 83.9	\$ 92.9
Total pricing	66 bps	79 bps

HG Global reported pre-tax income of \$16 million in the first nine months of 2021 compared to pre-tax income of \$42 million in the first nine months of 2020. The change in pre-tax income was driven primarily by lower investment returns on the HG Global investment portfolio, as interest rates rose in the first nine months of 2021 resulting in unrealized losses and declined in the first nine months of 2020 resulting in unrealized gains, and a decrease in interest income on the BAM Surplus Notes. Results in the first nine months of 2021 included \$9 million of interest income on the BAM Surplus Notes compared to \$14 million in the first nine months of 2020. Interest income on the BAM Surplus Notes decreased due to both a decrease in the balance of the BAM Surplus Notes and a decrease in the interest rate earned on the BAM Surplus Notes in the first nine months of 2021 compared to the first nine months of 2020.

White Mountains reported \$47 million of GAAP pre-tax loss from BAM in the first nine months of 2021 compared to \$31 million in the first nine months of 2020. The change in pre-tax loss was driven primarily by lower investment returns on BAM's investment portfolio, as interest rates rose in the first nine months of 2021 resulting in unrealized losses and declined in the first nine months of 2020 resulting in unrealized gains, partially offset by a decrease in interest expense on the BAM Surplus Notes. Results in the first nine months of 2021 included \$9 million of interest expense on the BAM Surplus Notes compared to \$14 million in the first nine months of 2020. Interest expense on the BAM Surplus Notes decreased due to both a decrease in the balance of the BAM Surplus Notes and a decrease in the interest rate earned on the BAM Surplus Notes in the first nine months of 2021 compared to the first nine months of 2020. Results in the first nine months of 2021 also included \$41 million of general and administrative expenses compared to \$40 million in the first nine months of 2020.

#### **Claims Paying Resources**

BAM's "claims paying resources" represents the capital and other financial resources BAM has available to pay claims and, as such, is a key indication of BAM's financial strength.

BAM's claims paying resources were \$1,181 million as of September 30, 2021 compared to \$987 million as of December 31, 2020 and \$968 million as of September 30, 2020. In the first quarter of 2021, BAM completed a reinsurance agreement with Fidus Re that increased BAM's claims paying resources by \$150 million. The reinsurance agreement with Fidus Re is accounted for using deposit accounting and any related financing expenses are recorded in general and administrative expenses as the agreement does not meet the risk transfer requirements necessary to be accounted for as reinsurance.

The following table presents BAM's total claims paying resources as of September 30, 2021, December 31, 2020 and September 30, 2020:

<b>Millions</b>	<b>September 30, 2021</b>	<b>December 31, 2020</b>	<b>September 30, 2020</b>
Policyholders' surplus	\$ 322.8	324.7	347.2
Contingency reserve	102.7	86.4	81.6
Qualified statutory capital	425.5	411.1	428.8
Net unearned premiums	48.3	45.2	43.6
Present value of future installment premiums and MSC	13.9	14.0	14.4
HG Re, Ltd. collateral trusts at statutory value	442.8	417.0	381.0
Fidus Re, Ltd. collateral trust at statutory value	250.0	100.0	100.0
<b>Claims paying resources</b>	<b>\$ 1,180.5</b>	<b>987.3</b>	<b>967.8</b>

**HG Global/BAM Balance Sheets**

The following tables present amounts from HG Global, which includes HG Re and its other wholly-owned subsidiaries, and BAM that are contained within White Mountains's consolidated balance sheet as of September 30, 2021 and December 31, 2020:

Millions	September 30, 2021			
	HG Global	BAM	Eliminations and Segment Adjustment	Total
<b>Assets</b>				
Fixed maturity investments	\$ 417.9	\$ 480.5	\$ —	\$ 898.4
Short-term investments	29.5	20.8	—	50.3
Total investments	447.4	501.3	—	948.7
Cash	3.9	17.9	—	21.8
BAM Surplus Notes	388.2	—	(388.2)	—
Accrued interest receivable on BAM Surplus Notes	164.8	—	(164.8)	—
Deferred acquisition costs	59.9	31.7	(59.9)	31.7
Insurance premiums receivable	4.6	6.9	(4.6)	6.9
Accrued investment income	2.2	3.1	—	5.3
Other assets	—	13.6	(.2)	13.4
Total assets	\$ 1,071.0	\$ 574.5	\$ (617.7)	\$ 1,027.8
<b>Liabilities</b>				
BAM Surplus Notes <sup>(1)</sup>	\$ —	\$ 388.2	\$ (388.2)	\$ —
Accrued interest payable on BAM Surplus Notes <sup>(2)</sup>	—	164.8	(164.8)	—
Preferred dividends payable to White Mountains's subsidiaries <sup>(3)</sup>	385.7	—	—	385.7
Preferred dividends payable to non-controlling interests	13.7	—	—	13.7
Unearned insurance premiums	213.4	43.6	—	257.0
Accrued incentive compensation	.8	20.2	—	21.0
Accounts payable on unsettled investment purchases	—	5.4	—	5.4
Other liabilities	.5	77.6	(64.7)	13.4
Total liabilities	614.1	699.8	(617.7)	696.2
<b>Equity</b>				
White Mountains's common shareholders' equity	446.8	—	—	446.8
Non-controlling interests	10.1	(125.3)	—	(115.2)
<b>Total equity</b>	<b>456.9</b>	<b>(125.3)</b>	<b>—</b>	<b>331.6</b>
<b>Total liabilities and equity</b>	<b>\$ 1,071.0</b>	<b>\$ 574.5</b>	<b>\$ (617.7)</b>	<b>\$ 1,027.8</b>

<sup>(1)</sup> Under GAAP, the BAM Surplus Notes are classified as debt by the issuer. Under statutory accounting principles, they are classified as policyholders' surplus.

<sup>(2)</sup> Under GAAP, interest accrues daily on the BAM Surplus Notes. Under statutory accounting principles, interest is not accrued on the BAM Surplus Notes until it has been approved for payment by insurance regulators.

<sup>(3)</sup> HG Global preferred dividends payable to White Mountains's subsidiaries is eliminated in White Mountains's consolidated financial statements. For segment reporting, the HG Global preferred dividends payable to White Mountains's subsidiaries included within the HG Global/BAM segment are eliminated against the offsetting receivable included within the Other Operations segment, and therefore are added back to White Mountains's common shareholders' equity within the HG Global/BAM segment.



Millions	December 31, 2020			
	HG Global	BAM	Eliminations and Segment Adjustment	Total Segment
<b>Assets</b>				
Fixed maturity investments	\$ 415.9	\$ 443.6	\$ —	\$ 859.5
Short-term investments	16.5	43.9	—	60.4
Total investments	432.4	487.5	—	919.9
Cash	23.8	19.0	—	42.8
BAM Surplus Notes	388.2	—	(388.2)	—
Accrued interest receivable on BAM Surplus Notes	155.7	—	(155.7)	—
Deferred acquisition costs	54.1	27.8	(54.1)	27.8
Insurance premiums receivable	4.4	6.9	(4.4)	6.9
Accrued investment income	2.0	3.0	—	5.0
Other assets	—	15.8	(.4)	15.4
Total assets	\$ 1,060.6	\$ 560.0	\$ (602.8)	\$ 1,017.8
<b>Liabilities</b>				
BAM Surplus Notes <sup>(1)</sup>	\$ —	\$ 388.2	\$ (388.2)	\$ —
Accrued interest payable on BAM Surplus Notes <sup>(2)</sup>	—	155.7	(155.7)	—
Preferred dividends payable to White Mountains's subsidiaries <sup>(3)</sup>	363.9	—	—	363.9
Preferred dividends payable to non-controlling interests	12.7	—	—	12.7
Unearned insurance premiums	196.1	41.4	—	237.5
Other liabilities	2.2	98.0	(58.9)	41.3
Total liabilities	574.9	683.3	(602.8)	655.4
<b>Equity</b>				
White Mountains's common shareholders' equity	472.2	—	—	472.2
Non-controlling interests	13.5	(123.3)	—	(109.8)
<b>Total equity</b>	<b>485.7</b>	<b>(123.3)</b>	<b>—</b>	<b>362.4</b>
<b>Total liabilities and equity</b>	<b>\$ 1,060.6</b>	<b>\$ 560.0</b>	<b>\$ (602.8)</b>	<b>\$ 1,017.8</b>

<sup>(1)</sup> Under GAAP, the BAM Surplus Notes are classified as debt by the issuer. Under statutory accounting principles, they are classified as policyholders' surplus.

<sup>(2)</sup> Under GAAP, interest accrues daily on the BAM Surplus Notes. Under statutory accounting principles, interest is not accrued on the BAM Surplus Notes until it has been approved for payment by insurance regulators.

<sup>(3)</sup> HG Global preferred dividends payable to White Mountains's subsidiaries is eliminated in White Mountains's consolidated financial statements. For segment reporting, the HG Global preferred dividends payable to White Mountains's subsidiaries included within the HG Global/BAM segment are eliminated against the offsetting receivable included within the Other Operations segment, and therefore are added back to White Mountains's common shareholders' equity within the HG Global/BAM segment.

## Ark

On January 1, 2021, White Mountains completed the Ark Transaction. See **Note 2 — “Significant Transactions”**. In the third quarter of 2021, Ark issued \$163 million of floating rate unsecured subordinated notes in three separate transactions. See **Note 7 — “Debt”**. In connection with the issuance of the Ark 2021 Subordinated Notes, White Mountains and Ark terminated White Mountains’s commitment to provide up to \$200 million of additional equity capital to Ark.

Ark writes a diversified portfolio of insurance and reinsurance, including property, marine & energy, specialty, accident & health and casualty, through the Syndicates. Beginning in January 2021, Ark began writing certain classes of its business through GAIL.

The following table presents the components of pre-tax loss included in White Mountains’s Ark segment for the three and nine months ended September 30, 2021:

<b>Millions</b>	<b>Three Months Ended September 30, 2021</b>	<b>Nine Months Ended September 30, 2021</b>
Earned insurance and reinsurance premiums	\$ 213.4	\$ 435.8
Net investment income	.6	1.8
Net realized and unrealized investment gains	.3	10.3
Other revenues	3.4	9.4
Total revenues	217.7	457.3
Losses and LAE	129.2	247.8
Insurance and reinsurance acquisition expenses	53.7	124.4
General and administrative expenses - other underwriting	13.3	43.6
General and administrative expenses - all other	8.5	40.8
Interest expense	2.1	4.5
Total expenses	206.8	461.1
<b>Pre-tax income (loss)</b>	<b>\$ 10.9</b>	<b>\$ (3.8)</b>

For the years of account prior to the Ark Transaction, a significant proportion of the Syndicates’ underwriting capital was provided by TPC Providers using whole account reinsurance contracts through Ark’s corporate member. The TPC Providers’ economic participation in the Syndicates for the remaining open years of account prior to the Ark Transaction is approximately 51% of the total net result of the Syndicates. Captions within Ark’s results of operations are shown net of amounts relating to the TPC Providers share of the Syndicates’ results, including investment results.

**Ark Results—Three Months Ended September 30, 2021**

Ark's GAAP combined ratio was 92% in the third quarter of 2021. The GAAP combined ratio included 23 points of catastrophes, driven primarily by Hurricane Ida (16 points) and the European floods (6 points), partially offset by 6 points of net favorable prior year reserve development, driven primarily by the Property line of business.

Ark's adjusted combined ratio, which adds back amounts ceded to TPC Providers, was 89% in the third quarter of 2021. The adjusted combined ratio included 21 points of catastrophes, driven primarily by Hurricane Ida (16 points) and the European floods (6 points), partially offset by 6 points of net favorable prior year reserve development, driven primarily by the Property line of business.

Ark reported pre-tax income of \$11 million in the third quarter of 2021.

The following table presents Ark's loss and loss adjustment expense, insurance acquisition expense, other underwriting expense and combined ratios on both a GAAP-basis and an adjusted basis, which adds back amounts ceded to TPC Providers, for the three months ended September 30, 2021:

\$ in Millions	Three Months Ended September 30, 2021		
	GAAP	TPC Providers' Share <sup>(1)</sup>	Adjusted
<i>Insurance premiums:</i>			
Gross written premiums	\$ 162.4	\$ —	\$ 162.4
Net written premiums	\$ 120.9	\$ 2.0	\$ 122.9
Net earned premiums	\$ 213.4	\$ 18.2	\$ 231.6
<i>Insurance expenses:</i>			
Loss and loss adjustment expenses	\$ 129.2	\$ 9.0	\$ 138.2
Insurance acquisition expenses	53.7	—	53.7
Other underwriting expenses	13.3	.4	13.7
Total insurance expenses	\$ 196.2	\$ 9.4	\$ 205.6
<i>Ratios:</i>			
Loss and loss adjustment expense	60.5 %		59.7 %
Insurance acquisition expense	25.2 %		23.2 %
Other underwriting expense	6.2 %		5.9 %
Combined Ratio	91.9 %		88.8 %

<sup>(1)</sup> See "NON-GAAP FINANCIAL MEASURES" on page 85.

**Gross Written Premiums**

The following table presents Ark's gross written premiums by line of business for the three months ended September 30, 2021 and the three months ended September 30, 2020, which was prior to White Mountains's ownership of Ark. White Mountains believes this is useful in understanding the underwriting growth in the newly acquired business. Gross written premiums increased 79% to \$162 million in the third quarter of 2021 compared to the third quarter of 2020, with risk adjusted rate change up approximately 7%.

Millions	Three Months Ended September 30,	
	2021	2020
Property	\$ 74.7	45.2
Specialty	32.0	18.4
Marine & Energy	29.5	15.4
Casualty	17.3	2.2
Accident & Health	8.9	9.5
Total Gross Written Premium	\$ 162.4	90.7

**Ark Results—Nine Months Ended September 30, 2021**

Ark's GAAP combined ratio was 95% in the first nine months of 2021. The GAAP combined ratio included 16 points of catastrophe losses, driven primarily by Hurricane Ida (8 points), Winter Storm Uri (5 points) and the European floods (3 points), partially offset by 5 points of net favorable prior year reserve development, driven primarily by the Property, Marine & Energy and Accident & Health lines of business.

Ark's adjusted combined ratio, which adds back amounts ceded to TPC Providers, was 93% in the first nine months of 2021. The adjusted combined ratio included 16 points of catastrophe losses, driven primarily by Hurricane Ida (7 points), Winter Storm Uri (5 points) and the European floods (3 points), partially offset by 5 points of net favorable prior year reserve development, driven primarily by the Property, Marine & Energy and Accident & Health lines of business.

Ark reported pre-tax loss of \$4 million in the first nine months of 2021, which included \$25 million of transaction expenses related to the Ark Transaction.

The following table presents Ark's loss and loss adjustment expense, insurance acquisition expense, other underwriting expense and combined ratios on both a GAAP-basis and an adjusted basis, which adds back amounts ceded to TPC Providers, for the nine months ended September 30, 2021:

\$ in Millions	Nine Months Ended September 30, 2021			
	GAAP	TPC Providers' Share <sup>(1)</sup>	Adjusted	
<i>Insurance premiums:</i>				
Gross written premiums	\$ 895.0	\$ —	\$ 895.0	
Net written premiums	\$ 725.5	\$ (5.9)	\$ 719.6	
Net earned premiums	\$ 435.8	\$ 65.0	\$ 500.8	
<i>Insurance expenses:</i>				
Loss and loss adjustment expenses	\$ 247.8	\$ 47.2	\$ 295.0	
Insurance acquisition expenses	124.4	—	124.4	
Other underwriting expenses	43.6	1.6	45.2	
Total insurance expenses	<u>\$ 415.8</u>	<u>\$ 48.8</u>	<u>\$ 464.6</u>	
<i>Ratios:</i>				
Loss and loss adjustment expense	56.9	%	58.9	%
Insurance acquisition expense	28.5	%	24.8	%
Other underwriting expense	10.0	%	9.0	%
Combined Ratio	<u>95.4</u>	<u>%</u>	<u>92.7</u>	<u>%</u>

<sup>(1)</sup> See "NON-GAAP FINANCIAL MEASURES" on page 85.

### Gross Written Premiums

The following table presents Ark's gross written premiums by line of business for the first nine months of 2021 and 2020, which was prior to White Mountains's ownership of Ark. White Mountains believes this is useful in understanding the underwriting growth in the newly acquired business. Gross written premiums increased 90% to \$895 million in the first nine months of 2021 compared to the first nine months of 2020, with risk adjusted rate change up approximately 9%.

Millions	For the Nine Months Ended	
	September 30, 2021	September 30, 2020
Property	\$ 355.0	177.1
Marine & Energy	219.7	109.8
Specialty	210.5	88.0
Accident & Health	61.7	74.1
Casualty	48.1	22.2
Total Gross Written Premium	\$ 895.0	471.2

### Catastrophe Risk Management

Ark has exposure to losses caused by natural catastrophe events including hurricanes, windstorms, earthquakes, floods, wildfires and severe winter weather. Catastrophes can also include large losses driven by public health crises, terrorist attacks, explosions, infrastructure failures and cyber-attacks. The extent of a catastrophe loss is a function of both the severity of the event and total amount of insured exposure affected by the event as well as the unique coverage provided to customers.

Ark seeks to manage its exposure to catastrophic losses by limiting the aggregate insured value of policies in geographic areas with exposure to catastrophic events. To manage, monitor and analyze insured values and potential losses, Ark utilizes proprietary and third-party catastrophe management software to estimate potential losses for many different catastrophe scenarios. As a part of its enterprise risk management function, Ark seeks to protect its downside risk from catastrophes and large loss events by purchasing reinsurance, including excess of loss protections, aggregate covers, and industry loss warranties.

Based upon its business plan for 2021, Ark estimates that its two largest modeled probable maximum loss natural catastrophe scenarios on a net occurrence basis at a 1-in-250-year return period are U.S. windstorm and U.S. earthquake. In each case, the estimated net impact of a 1-in-250-year return period loss is expected to be less than 25% of total tangible capital (shareholders equity and subordinated debt). The net impact is before income tax but after reinstatement premiums, amounts ceded to third-party reinsurers, and amounts ceded to TPC Providers. In addition, Ark also has loss exposures to other global events including, but not limited to, Japanese earthquakes, Japanese windstorms, European windstorms, Southeast U.S. windstorms, and U.S. wildfires.

Ark's estimates of potential losses are dependent on many variables, including assumptions about demand surge and storm surge, loss adjustment expenses, insurance-to-value and storm intensity in the aftermath of weather-related catastrophes. In addition, in the case of our reinsurance operations, Ark has to account for quality of data provided by ceding companies. Accordingly, if the assumptions are incorrect, the losses Ark might incur from an actual catastrophe could be materially higher than the expectation of losses generated from modeled catastrophe scenarios. There could also be unmodelled losses which exceed the amounts estimated for U.S. windstorm and U.S. earthquake. For a further discussion, see "**Risk Factors – Unpredictable catastrophic events could adversely affect our results of operations and financial condition**" in White Mountains's Annual Report on Form 10-K for the year ended December 31, 2020.

**NSM**

The following table presents the components of GAAP net loss, EBITDA and adjusted EBITDA included in White Mountains's NSM segment for the three and nine months ended September 30, 2021 and 2020. NSM's pre-tax loss for the first nine months of 2021 ended September 30, 2021 included a loss of \$29 million related to the sale of its Fresh Insurance's motor business. See **Note 2** — **"Significant Transactions"**.

Millions	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Commission revenues	\$ 67.0	\$ 58.2	\$ 194.6	\$ 174.2
Broker commission expenses	20.4	17.1	60.9	56.4
Gross profit	46.6	41.1	133.7	117.8
Other revenues	15.3	12.5	46.8	37.6
General and administrative expenses	48.8	42.9	142.1	131.0
Change in fair value of contingent consideration	.6	.7	.8	(1.6)
Amortization of other intangible assets	8.2	5.1	25.0	16.2
Loss on assets held for sale	—	—	28.7	—
Interest expense	5.9	6.1	17.7	16.1
<b>GAAP pre-tax loss</b>	<b>(1.6)</b>	<b>(1.2)</b>	<b>(33.8)</b>	<b>(6.3)</b>
Income tax (benefit) expense	(.8)	.1	(7.6)	(2.8)
<b>GAAP net loss</b>	<b>(.8)</b>	<b>(1.3)</b>	<b>(26.2)</b>	<b>(3.5)</b>
Add back:				
Interest expense	5.9	6.1	17.7	16.1
Income tax (benefit) expense	(.8)	.1	(7.6)	(2.8)
General and administrative expenses — depreciation	1.4	1.2	3.7	2.9
Amortization of other intangible assets	8.2	5.1	25.0	16.2
<b>EBITDA <sup>(1)</sup></b>	<b>13.9</b>	<b>11.2</b>	<b>12.6</b>	<b>28.9</b>
Exclude:				
Change in fair value of contingent consideration liabilities	.6	.7	.8	(1.6)
Non-cash equity-based compensation expense	.2	1.0	1.3	1.0
Impairments of intangible assets	—	—	—	6.2
Loss on assets held for sale	—	—	28.7	—
Acquisition-related transaction expenses	3.4	.6	3.6	5.6
Investments made in the development of new business lines	.3	.2	.4	.6
Restructuring expenses	.7	1.7	5.1	3.2
<b>Adjusted EBITDA <sup>(1)</sup></b>	<b>\$ 19.1</b>	<b>\$ 15.4</b>	<b>\$ 52.5</b>	<b>\$ 43.9</b>

<sup>(1)</sup> See **"NON-GAAP FINANCIAL MEASURES"** on page 85.

**NSM Results—Three Months Ended September 30, 2021 versus Three Months Ended September 30, 2020**

NSM reported pre-tax loss of \$2 million, adjusted EBITDA of \$19 million and commission and other revenues of \$82 million in the third quarter of 2021 compared to pre-tax loss of \$1 million, adjusted EBITDA of \$15 million and commission and other revenues of \$71 million in the third quarter of 2020. Results for the third quarter of 2021 include the results of J.C. Taylor, an MGA offering classic and antique collector car insurance, from August 6, 2021, the date of its acquisition. See **Note 2 — “Significant Transactions”**. NSM’s general and administrative expenses were \$49 million in the third quarter of 2021 compared to \$43 million in the third quarter of 2020. The increase in NSM’s general and administrative expenses in the third quarter of 2021 compared to the third quarter of 2020 was driven primarily by the acquisition of J.C. Taylor and increased technology costs and professional fees related to information systems projects.

NSM’s business consists of over 25 active programs that are broadly categorized into six market verticals. J.C. Taylor was added to the Specialty Transportation vertical in the third quarter of 2021. The following table presents the controlled premium and commission and other revenues by vertical for the three months ended September 30, 2021 and 2020:

\$ in Millions	Three Months Ended September 30,			
	2021		2020	
	Controlled Premium <sup>(1)</sup>	Commission and Other Revenues	Controlled Premium <sup>(1)</sup>	Commission and Other Revenues
Specialty Transportation	\$ 94.2	\$ 25.7	\$ 81.6	\$ 21.9
Real Estate	27.0	6.2	28.5	6.0
Social Services	41.2	10.2	34.6	8.6
Pet	48.3	19.9	35.3	14.7
United Kingdom	53.4	13.0	53.6	13.9
Other	46.1	7.3	32.2	5.6
<b>Total</b>	<b>\$ 310.2</b>	<b>\$ 82.3</b>	<b>\$ 265.8</b>	<b>\$ 70.7</b>

<sup>(1)</sup> Controlled Premium are total premiums placed by NSM during the period.

**Specialty Transportation:** NSM’s specialty transportation controlled premium and commission and other revenues increased 15% and 17%, respectively, in the third quarter of 2021 compared to the third quarter of 2020, driven primarily by the impact of higher commission levels and fees in the collector car and trucking businesses and the acquisition of J.C. Taylor, slightly offset by lower contingent commissions. J.C. Taylor contributed \$6 million of controlled premium and \$2 million of commission and other revenues from the date of acquisition. The higher commission levels and fees in the collector car business will continue to flow through this program’s results over the balance of the year.

**Real Estate:** NSM’s real estate controlled premium decreased 5% while commission and other revenues increased 3% in the third quarter of 2021 compared to the third quarter of 2020. The decrease in controlled premiums was driven primarily by declines in both rate and units in the coastal condominium program. The declines in the coastal condominium program were driven primarily by lower insurance carrier capacity available for the program as NSM is transitioning to a new insurance carrier platform. Until additional capacity is raised, the impact of lower capacity in the coastal condominium program will continue to flow through this program’s results over the remainder of the year. The increase in commission and other revenues was driven primarily by profit commission in the excess and surplus habitational program offsetting the decline in controlled premium.

**Social Services:** NSM’s social services controlled premium and commission and other revenues both increased 19% in the third quarter of 2021 compared to the third quarter of 2020, driven primarily by rate increases and unit growth.

**Pet:** NSM’s pet controlled premium and commission and other revenues increased 37% and 35%, respectively, in the third quarter of 2021 compared to the third quarter of 2020, driven primarily by substantial growth in units. The increase in commission and other revenues was slightly less than premium as lower rate affinity business grew faster than direct market business.

**United Kingdom:** NSM’s United Kingdom controlled premium was flat while commission and other revenues decreased 6% in the third quarter of 2021 compared to the third quarter of 2020. Controlled premium was flat as growth in the MGA business offset declines in the brokerage business and from the sale of Fresh Insurance motor business. The decrease in commission and other revenues was driven primarily by the sale of the Fresh Insurance motor business in April 2021 and changes in product mix, as the decline in travel and leisure brokerage programs which have higher commission rates than the MGA business, declined while the MGA business grew.

**Other:** NSM’s other controlled premium and commission and other revenues increased 43% and 30%, respectively, in the third quarter of 2021 compared to the third quarter of 2020, driven primarily by increases in the workers compensation and staffing markets resulting from the emergence from COVID-19 lockdowns. Commission and other revenues increased less than controlled premium driven primarily by product mix shifts into lower rate retail programs.

#### COVID-19

The COVID-19 pandemic negatively impacted certain programs (e.g., lower volumes in the travel and outdoor leisure businesses in the United Kingdom) while others have been positively impacted (e.g., higher volumes in pet). Results at NSM could still be negatively impacted in the coming quarters, but White Mountains does not currently anticipate dramatic impacts over the fullness of time.

#### NSM Results—Nine Months Ended September 30, 2021 versus Nine Months Ended September 30, 2020

NSM reported pre-tax loss of \$34 million, adjusted EBITDA of \$53 million and commission and other revenues of \$241 million in the first nine months of 2021 compared to pre-tax loss of \$6 million, adjusted EBITDA of \$44 million and commission and other revenues of \$212 million in the first nine months of 2020. Results in the first nine months of 2021, include the results of J.C. Taylor, an MGA offering classic and antique collector car insurance, from August 6, 2021, the date of its acquisition. See **Note 2 — “Significant Transactions”**. NSM’s pre-tax loss in the first quarter of 2021 includes a loss of \$29 million related to the sale of its Fresh Insurance motor business. Results in the third quarter and first nine months of 2021 and 2020 include the results of Kingsbridge Group Limited, a leading provider of commercial lines insurance and consulting services to the contingent workforce in the United Kingdom, from April 7, 2020, the date of its acquisition. See **Note 2 — “Significant Transactions”**. NSM’s general and administrative expenses were \$142 million in the first nine months of 2021 compared to \$131 million in the first nine months of 2020. The increase in NSM’s general and administrative expenses in the first nine months of 2021 compared to the first nine months of 2020 was driven primarily by the acquisitions of J.C. Taylor and Kingsbridge and increased technology costs and professional fees related to information systems projects.

The following table presents the controlled premium and commission and other revenues by vertical for the nine months ended September 30, 2021 and 2020:

\$ in Millions	Nine Months Ended September 30,			
	2021		2020	
	Controlled Premium <sup>(1)</sup>	Commission and Other Revenues	Controlled Premium <sup>(1)</sup>	Commission and Other Revenues
Specialty Transportation	\$ 261.7	\$ 73.0	\$ 240.4	\$ 66.1
Real Estate	112.1	25.2	142.6	32.7
Social Services	106.3	26.2	88.3	22.2
Pet	137.3	55.6	96.6	39.8
United Kingdom	156.0	39.9	134.0	36.3
Other	126.0	21.5	95.5	14.7
Total	\$ 899.4	\$ 241.4	\$ 797.4	\$ 211.8

<sup>(1)</sup> Controlled Premium are total premiums placed by NSM during the period.

**Specialty Transportation:** NSM’s specialty transportation controlled premium and commission and other revenues increased 9% and 10%, respectively, in the first nine months of 2021 compared to the first nine months of 2020, driven primarily by the impact of higher commission levels and fees, unit growth and the acquisition of J.C. Taylor in the collector car business and higher commission levels in the trucking business, slightly offset by lower contingent commissions. J.C. Taylor contributed \$6 million of controlled premium and \$2 million of commission and other revenues from the date of acquisition. The higher commission levels and fees in the collector car business will continue to flow through this program’s results over the balance of the year.

**Real Estate:** NSM’s real estate controlled premium and commission and other revenues decreased 21% and 23%, respectively, in the first nine months of 2021 compared to the first nine months of 2020, driven primarily by declines in both rate and units in the coastal condominium program, partially offset by unit growth in NSM’s excess and surplus habitational program. The declines in the coastal condominium program were driven primarily by lower insurance carrier capacity available for the program as NSM is transitioning to a new insurance carrier platform. Until additional capacity is raised, the impact of lower capacity in the coastal condominium program will continue to flow through this program’s results over the remainder of the year.

**Social Services:** NSM’s social services controlled premium and commission and other revenues increased 20% and 18%, respectively, in the first nine months of 2021 compared to the first nine months of 2020, driven primarily by rate increases and unit growth.

**Pet:** NSM’s pet controlled premium and commission and other revenues increased 42% and 40%, respectively, in the first nine months of 2021 compared to the first nine months of 2020, driven by substantial growth in units. The increase in commission and other revenues was slightly less than premium as lower rate affinity business grew faster than direct market business.



**United Kingdom:** NSM's United Kingdom controlled premium and commission and other revenues increased 16% and 10%, respectively, in the first nine months of 2021 compared to the first nine months of 2020, driven primarily by the acquisition of Kingsbridge and growth in the MGA business. Excluding Kingsbridge, which was acquired on April 7, 2020, United Kingdom controlled premium increased 6% in the first nine months of 2021 compared to the first nine months of 2020, as the COVID-19 pandemic restrictions in the United Kingdom began to lift and unit growth increased in the MGA business partially offset by declines in the brokerage business and from the sale of Fresh Insurance motor business. Excluding Kingsbridge, commission and other revenues declined 5% due to the sale of the Fresh Insurance motor business in April 2021 and changes in product mix, as a decline in travel and leisure brokerage programs, which have higher commission rates than the MGA business, declined while the MGA business grew.

**Other:** NSM's other controlled premium and commission and other revenues increased 32% and 46%, respectively, in the first nine months of 2021 compared to the first nine months of 2020, driven primarily by increases in the workers compensation and staffing markets resulting from the emergence of COVID-19 lockdowns. Commission and other revenues increased more than controlled premium due to product mix shifts into higher rate workers compensation and an increase in contingent commissions.

## Kudu

During the third quarter of 2021, Kudu deployed \$131 million, including transaction costs, into two investment management firms: Third Eye Capital, a Canadian private credit manager, and Douglass Winthrop Advisors, a New York-based registered investment advisor. During the nine months ended September 30, 2021, Kudu also deployed \$12 million into two of its existing portfolio companies. As of September 30, 2021, Kudu has deployed a total of \$529 million, including transaction costs, in 15 asset and wealth management firms globally, which have combined assets under management of approximately \$60 billion, spanning a range of asset classes, including real estate, real assets, wealth management, hedge funds, private equity, and alternative credit strategies. Kudu's capital was deployed at an average gross cash yield at inception of 10.0%.

On March 23, 2021, Kudu replaced its existing secured bank facility with the Kudu Credit Facility. Subject to maximum LTV levels, the total borrowing capacity of the Kudu Credit Facility is \$300 million (which includes the current advanced amount of \$203 million). See **Note 7 — "Debt"**.

The following table presents the components of GAAP net income, EBITDA and adjusted EBITDA included in White Mountains's Kudu segment for the three and nine months ended September 30, 2021 and 2020:

Millions	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Net investment income	\$ 9.5	\$ 6.4	\$ 26.1	\$ 19.3
Net unrealized investment gains	18.9	9.8	62.5	1.5
Other revenues	.1	.1	.2	.2
Total revenues	28.5	16.3	88.8	21.0
General and administrative expenses	3.3	2.2	9.0	7.5
Amortization of other intangible assets	—	.1	.2	.3
Interest expense	1.9	1.4	9.2	4.3
Total expenses	5.2	3.7	18.4	12.1
<b>GAAP pre-tax income</b>	<b>23.3</b>	<b>12.6</b>	<b>70.4</b>	<b>8.9</b>
Income tax expense	7.9	3.8	25.4	3.2
<b>GAAP net income</b>	<b>15.4</b>	<b>8.8</b>	<b>45.0</b>	<b>5.7</b>
Add back:				
Interest expense	1.9	1.4	9.2	4.3
Income tax expense	7.9	3.8	25.4	3.2
Amortization of other intangible assets	—	.1	.2	.3
<b>EBITDA <sup>(1)</sup></b>	<b>25.2</b>	<b>14.1</b>	<b>79.8</b>	<b>13.5</b>
Exclude:				
Net unrealized investment gains	(18.9)	(9.8)	(62.5)	(1.5)
Non-cash equity-based compensation expense	.2	.1	.4	.1
Acquisition-related transaction expenses	.9	.1	.9	1.6
<b>Adjusted EBITDA <sup>(1)</sup></b>	<b>\$ 7.4</b>	<b>\$ 4.5</b>	<b>\$ 18.6</b>	<b>\$ 13.7</b>

<sup>(1)</sup> See "NON-GAAP FINANCIAL MEASURES" on page 85.

**Kudu Results—Three Months Ended September 30, 2021 versus Three Months Ended September 30, 2020**

Kudu reported pre-tax income of \$23 million, adjusted EBITDA of \$7 million and total revenues of \$29 million in the third quarter of 2021 compared to pre-tax income of \$13 million, adjusted EBITDA of \$5 million and total revenues of \$16 million in the third quarter of 2020. Pre-tax income and total revenues in the third quarter of 2021 included \$19 million of net unrealized investment gains on Kudu's Participation Contracts compared to \$10 million in the third quarter of 2020. The increase in net unrealized investment gains on Kudu's Participation Contracts was driven primarily by asset growth, the performance of Kudu's underlying asset management businesses and the expected value to be received in potential sale transactions. Pre-tax income and total revenues in the third quarter of 2021 included \$10 million of net investment income compared to \$6 million in the third quarter of 2020. The increase in net investment income was driven primarily by amounts earned from the \$205 million (including approximately \$3 million of transaction costs) in new deployments that Kudu made subsequent to the second quarter of 2020.

**COVID-19**

Over time, Kudu's revenues will fluctuate with increases and decreases in assets under management and fee levels at Kudu's underlying asset management businesses, which are impacted by increases and decreases in financial markets, such as those experienced during 2020 in response to the COVID-19 pandemic. Kudu's portfolio diversification, in particular its emphasis on private capital and its de-emphasis on long-only strategies, should continue to provide some downside protection to financial market declines.

**Kudu Results—Nine Months Ended September 30, 2021 versus Nine Months Ended September 30, 2020**

Kudu reported pre-tax income of \$70 million, adjusted EBITDA of \$19 million and total revenues of \$89 million in the first nine months of 2021 compared to pre-tax income of \$9 million, adjusted EBITDA of \$14 million and total revenues of \$21 million in the first nine months of 2020. Pre-tax income in the first nine months of 2021 included \$63 million of net unrealized investment gains on Kudu's Participation Contracts compared to \$2 million in the first nine months of 2020. The increase in net unrealized investment gains on Kudu's Participation Contracts was driven primarily by asset growth, the performance of Kudu's underlying asset management businesses and the expected value to be received in potential sale transactions. Pre-tax income and total revenues in the first nine months of 2021 included \$26 million of net investment income compared to \$19 million in the first nine months of 2020. The increase in net investment income was driven primarily by amounts earned from the \$264 million (including approximately \$4 million of transaction costs) in new deployments that Kudu made in 2020 and 2021.

**Other Operations**

The following table presents a summary of White Mountains's financial results from its Other Operations segment for the three and nine months ended September 30, 2021 and 2020:

Millions	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Net investment income	\$ 5.0	\$ 60.1	\$ 16.1	\$ 79.3
Net realized and unrealized investment gains (losses)	15.3	43.6	34.0	(17.4)
Net realized and unrealized investment (losses) gains from investment in MediaAlpha	(396.8)	250.0	(325.5)	295.0
Commission revenues	2.4	2.1	7.0	6.1
Other revenues	28.1	2.2	57.6	6.0
Total revenues	(346.0)	358.0	(210.8)	369.0
Cost of sales	24.0	2.3	45.9	6.5
General and administrative expenses	14.5	44.3	79.7	87.1
Amortization of other intangible assets	2.0	.2	2.9	.6
Interest expense	.4	.3	1.1	.8
Total expenses	40.9	47.1	129.6	95.0
<b>Pre-tax (loss) income</b>	<b>\$ (386.9)</b>	<b>\$ 310.9</b>	<b>\$ (340.4)</b>	<b>\$ 274.0</b>

**Other Operations Results—Three Months Ended September 30, 2021 versus Three Months Ended September 30, 2020**

White Mountains's Other Operations segment reported pre-tax (loss) income of \$(387) million in the third quarter of 2021 compared to \$311 million in the third quarter of 2020. White Mountains's Other Operations segment reported net realized and unrealized investment (losses) gains from its investment in MediaAlpha of \$(397) million in the third quarter of 2021 compared to \$250 million in the third quarter of 2020. Excluding MediaAlpha, White Mountains's Other Operations segment reported net realized and unrealized investment gains of \$15 million in the third quarter of 2021 compared to \$44 million in the third quarter of 2020. White Mountains's Other Operations segment reported net investment income of \$5 million in the third quarter of 2021 compared to \$60 million in the third quarter of 2020. The decrease in net investment income was driven primarily by \$55 million of net proceeds received from a dividend recapitalization at MediaAlpha in the third quarter of 2020. See **Summary of Investment Results** on page 76.

The Other Operations segment reported \$28 million of other revenues in the third quarter of 2021 compared to \$2 million in the third quarter of 2020. The Other Operations segment reported \$24 million of cost of sales in the third quarter of 2021 compared to \$2 million in the third quarter of 2020. The increases in other revenues and cost of sales were driven primarily by an acquisition within the Other Operations segment.

The Other Operations segment reported general and administrative expenses of \$15 million in the third quarter of 2021 compared to \$44 million in the third quarter of 2020. The decrease in general and administrative expenses was driven primarily by lower incentive compensation costs.

**Other Operations Results—Nine Months Ended September 30, 2021 versus Nine Months Ended September 30, 2020**

White Mountains's Other Operations segment reported pre-tax (loss) income of \$(340) million in the first nine months of 2021 compared to \$274 million in the first nine months of 2020. White Mountains's Other Operations segment reported net realized and unrealized investment (losses) gains from its investment in MediaAlpha of \$(326) million in the first nine months of 2021 compared to \$295 million in the first nine months of 2020. Excluding MediaAlpha, White Mountains's Other Operations segment reported net realized and unrealized investment gains (losses) of \$34 million in the first nine months of 2021 compared to \$(17) million in the first nine months of 2020. White Mountains's Other Operations segment reported net investment income of \$16 million in the first nine months of 2021 compared to \$79 million in the first nine months of 2020. The decrease in net investment income was driven primarily by \$55 million of net proceeds received from a dividend recapitalization at MediaAlpha in the first nine months of 2020. See **Summary of Investment Results** on page 76.

The Other Operations segment reported \$58 million of other revenues in the first nine months of 2021 compared to \$6 million in the first nine months of 2020. The Other Operations segment reported \$46 million of cost of sales in the first nine months of 2021 compared to \$7 million in the first nine months of 2020. The increases in other revenues and cost of sales were driven primarily by a new acquisition within the Other Operations segment.

The Other Operation segment reported general and administrative expenses of \$80 million in the first nine months of 2021 compared to \$87 million in the first nine months of 2020. The decrease in general and administrative expenses was driven primarily by lower incentive compensation costs.

## II. Summary of Investment Results

White Mountains's total investment results include results from all segments. For purposes of discussing rates of return, all percentages are presented gross of management fees and trading expenses and are calculated before any adjustments for TPC Providers in order to produce a better comparison to benchmark returns.

### Gross Investment Returns and Benchmark Returns

Prior to the MediaAlpha IPO, White Mountains's investment in MediaAlpha was presented within other long-term investments. Subsequent to the MediaAlpha IPO, White Mountains presents its investment in MediaAlpha in a separate line item on the balance sheet. Amounts for periods prior to the MediaAlpha IPO have been reclassified to be comparable to the current period.

The following table presents the pre-tax investment returns for White Mountains's consolidated portfolio for the three and nine months ended September 30, 2021 and 2020:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Fixed income investments	— %	0.8 %	(0.1) %	4.4 %
<i>Bloomberg Barclays U.S. Intermediate Aggregate Index</i>	— %	0.5 %	(0.8) %	5.2 %
Common equity securities	1.2 %	7.9 %	7.0 %	1.6 %
Investment in MediaAlpha	(55.6) %	135.5 %	(51.8) %	197.2 %
Other long-term investments	4.0 %	2.0 %	14.5 %	(1.4) %
Total common equity securities, investment in MediaAlpha and other long-term investments	(17.2) %	34.2 %	(8.2) %	33.5 %
Total common equity securities and other long-term investments	3.7 %	5.4 %	13.5 %	0.9 %
<i>S&amp;P 500 Index (total return)</i>	0.6 %	8.9 %	15.9 %	5.6 %
Total consolidated portfolio	(8.0) %	13.5 %	(3.7) %	15.4 %
Total consolidated portfolio - excluding MediaAlpha	1.4 %	2.8 %	4.6 %	2.8 %

### Investment Returns—Three and Nine Months Ended September 30, 2021 versus Three and Nine Months Ended September 30, 2020

White Mountains's pre-tax total consolidated portfolio return on invested assets was -8.0% in the third quarter of 2021. This return included \$397 million of net unrealized investment losses from White Mountains's investment in MediaAlpha. Excluding MediaAlpha, the total consolidated portfolio return on invested assets was 1.4% in the third quarter of 2021. Excluding MediaAlpha, investment returns in the third quarter were driven primarily by favorable other long-term investments results. White Mountains's pre-tax total consolidated portfolio return on invested assets was 13.5% in the third quarter of 2020. This return included \$305 million of net investment income and unrealized investment gains from White Mountains's investment in MediaAlpha. Excluding MediaAlpha, the total consolidated portfolio return on invested assets was 2.8% in the third quarter of 2020. Excluding MediaAlpha, investment returns in the third quarter of 2020 were driven primarily by a rebound in equity markets following the decline experienced in the first quarter of 2020 in reaction to the COVID-19 pandemic.

White Mountains's pre-tax total consolidated portfolio return on invested assets was -3.7% in the first nine months of 2021. This return included \$325 million of net realized and unrealized investment losses from White Mountains's investment in MediaAlpha. Excluding MediaAlpha, the total consolidated portfolio return on invested assets was 4.6% in first nine months of 2021. Excluding MediaAlpha, investment returns in the third quarter were driven primarily by favorable other long-term investment results. White Mountains's pre-tax total consolidated portfolio return on invested assets was 15.4% in the first nine months of 2020. This return included \$355 million of net investment income and unrealized investment gains from White Mountains's investment in MediaAlpha. Excluding MediaAlpha, the total consolidated portfolio return on invested assets was 2.8% in the first nine months of 2020. Excluding MediaAlpha, returns in the first nine months of 2020 were driven primarily by the impact of the decline in interest rates on fixed income markets.

### *Fixed Income Results*

White Mountains's fixed income portfolio, including short-term investments, was \$2.4 billion and \$1.4 billion as of September 30, 2021 and December 31, 2020. The increase was driven primarily by the inclusion of invested assets relating to the Ark Transaction. The duration of White Mountains's fixed income portfolio, including short-term investments, was 2.5 years and 3.2 years as of September 30, 2021 and December 31, 2020. White Mountains's fixed income portfolio includes fixed maturity investments and short-term investments in the HG Re Collateral Trusts of \$447 million and \$432 million as of September 30, 2021 and December 31, 2020.

White Mountains's fixed income portfolio return was flat in the third quarter of 2021 compared to 0.8% in the third quarter of 2020, in line with and outperforming the Bloomberg Barclays U.S. Intermediate Aggregate Index returns of 0.0% and 0.5% for the comparable periods. White Mountains's fixed income portfolio returned -0.1% in the first nine months of 2021 compared to 4.4% in the first nine months of 2020, outperforming and underperforming the Bloomberg Barclays U.S. Intermediate Aggregate Index returns of -0.8% and 5.2% for the comparable periods.

The results in the third quarter and first nine months of 2021 were driven primarily by the short duration positioning of White Mountains's fixed income portfolio as interest rates increased during the period, partially offset by currency losses. The results in the third quarter of 2020 were driven primarily by the impact of White Mountains's overweight positioning to investment grade corporate bonds as credit spreads tightened during the period. The results in the first nine months of 2020 were driven primarily by the short duration positioning of White Mountains's fixed income portfolio as interest rates declined significantly during the period.

### *Common Equity Securities, Investment in MediaAlpha and Other Long-Term Investments Results*

White Mountains's portfolio of common equity securities, its investment in MediaAlpha and other long-term investments was \$1.8 billion and \$1.6 billion as of September 30, 2021 and December 31, 2020, which represented 42% and 54% of total invested assets. See Note 3 — "Investment Securities". The change was driven primarily by an increase in the fair value of Kudu's Participation Contracts, the inclusion of invested assets relating to the Ark Transaction and the addition of a bank loan fund at Ark, partially offset by a decline in the fair value of White Mountains's investment in MediaAlpha.

White Mountains's portfolio of common equity securities, its investment in MediaAlpha and other long-term investments returned -17.2% in the third quarter of 2021, driven primarily by \$397 million of unrealized investment losses from MediaAlpha. White Mountains's portfolio of common equity securities and other long-term investments returned 3.7% in the third quarter of 2021. White Mountains's portfolio of common equity securities, its investment in MediaAlpha and other long-term investments returned 34.2% in the third quarter of 2020, which included \$305 million of net investment income and unrealized investment gains from MediaAlpha. White Mountains's portfolio of common equity securities and other long-term investments returned 5.4% in the third quarter of 2020.

White Mountains's portfolio of common equity securities, its investment in MediaAlpha and other long-term investments returned -8.2% in the first nine months of 2021, driven primarily by \$325 million of net realized and unrealized investment losses from MediaAlpha. White Mountains's portfolio of common equity securities and other long-term investments returned 13.5% in the first nine months of 2021. White Mountains's portfolio of common equity securities, its investment in MediaAlpha and other long-term investments returned 33.5% in the first nine months of 2020, which included \$355 million of net investment income and unrealized investment gains from MediaAlpha. White Mountains's portfolio of common equity securities and other long-term investments returned 0.9% in the first nine months of 2020.

During the second half of 2020, White Mountains sold its portfolio of common equity securities, including its portfolio of ETFs and international common equity securities, in anticipation of funding the Ark Transaction. Following the Ark Transaction, White Mountains's portfolio of common equity securities consists of international listed funds held in the Ark portfolio. As of September 30, 2021, the fair value of White Mountains's international listed funds was \$160 million.

White Mountains's portfolio of common equity securities returned 1.2% in the third quarter of 2021 compared to 7.9% in the third quarter of 2020, outperforming and underperforming the S&P 500 Index returns of 0.6% and 8.9% for the comparable periods. White Mountains's portfolio of common equity securities returned 7.0% in the first nine months of 2021 compared to 1.6% in the first nine months of 2020, underperforming the S&P 500 Index returns of 15.9% and 5.6% for the comparable periods. The results for the third quarter and first nine months of 2021 were driven primarily by relative outperformance and underperformance in White Mountains's non-U.S. common equity positions versus the S&P 500 Index for these periods. The results for the third quarter and first nine months of 2020 were driven primarily by relative underperformance in White Mountains's non-U.S. common equity positions versus the S&P 500 Index for these periods.

Historically, White Mountains's portfolio of ETFs was designed to provide investment results that generally corresponded to the performance of the S&P 500 Index. White Mountains's portfolio of ETFs was fully liquidated in the fourth quarter of 2020. In the third quarter and first nine months of 2020, White Mountains's portfolio of ETFs essentially earned the effective index return, before expenses. White Mountains also maintained relationships with a small number of third-party registered investment advisers (the "actively managed common equity portfolio"), who primarily invested in non-U.S. equity securities through unit trusts. At the end of the third quarter of 2020, White Mountains fully redeemed its actively managed common equity portfolio. White Mountains's actively managed common equity portfolio returned 4.7% in the third quarter of 2020, underperforming the S&P 500 Index return of 8.9%. White Mountains's actively managed common equity portfolio returned -11.0% in the first nine months of 2020, underperforming the S&P 500 Index returns of 5.6%.

White Mountains maintains a portfolio of other long-term investments that consists primarily of unconsolidated entities, including Kudu's Participation Contracts, private equity funds, a hedge fund, Lloyd's trust deposits, a bank loan fund, ILS funds and private debt investments. White Mountains's portfolio of other long-term investments was \$1.3 billion and \$787 million as of September 30, 2021 and December 31, 2020. The change in other long-term investments was driven primarily by an increase in the fair value of Kudu's Participation Contracts, the inclusion of invested assets relating to the Ark Transaction and the addition of a bank loan fund at Ark.

White Mountains's other long-term investments portfolio returned 4.0% in the third quarter of 2021 compared to 2.0% in the third quarter of 2020. Investment returns for the third quarter of 2021 were driven primarily by \$28 million of net investment income and unrealized investment gains from Kudu's Participation Contracts, a \$10 million increase in the fair value of White Mountains's investment in PassportCard/DavidShield and net investment income and realized and unrealized investment gains from private equity funds. Investment returns from Kudu's Participation Contracts were driven primarily by asset growth, the performance of Kudu's underlying asset management businesses and the expected value to be received in potential sale transactions. Investment returns from White Mountains's investment in PassportCard/DavidShield were driven primarily by growth in leisure travel premiums and commission revenues as the global economy recovered from the COVID-19 pandemic. Investment returns in the third quarter of 2020 included \$16 million of net investment income and unrealized investment gains from Kudu's Participation Contracts, partially offset by net realized and unrealized investment losses from private equity funds.

White Mountains's other long-term investments portfolio returned 14.5% in the first nine months of 2021 compared to -1.4% in the first nine months of 2020. Investment returns for the first nine months of 2021 were driven primarily by \$89 million of net investment income and unrealized investment gains from Kudu's Participation Contracts, a \$10 million increase in the fair value of White Mountains's investment in PassportCard/DavidShield and realized and unrealized investment gains from private equity funds. Investment returns from Kudu's Participation Contracts were driven primarily by asset growth, the performance of Kudu's underlying asset management businesses and the expected value to be received in potential sale transactions. Investment returns from PassportCard/DavidShield were driven primarily by growth in leisure travel premiums and commission revenues as the global economy recovered from the COVID-19 pandemic. Investment returns for the first nine months of 2020 were driven primarily by a \$10 million decrease in the fair value of White Mountains's investment in PassportCard/DavidShield, where the global slowdown in travel activity in reaction to the COVID-19 pandemic caused a significant decline in leisure travel premium and commission revenues and net realized and unrealized investment losses from private equity funds and a private debt investment, partially offset by net investment income from Kudu's Participation Contracts.

## Foreign Currency Exposure

As of September 30, 2021, White Mountains had foreign currency exposure on \$275 million of net assets primarily related to NSM's U.K.-based operations, Kudu's non-U.S. Participation Contracts, Ark's non-U.S. business and certain other foreign consolidated and unconsolidated entities.

The following table presents the fair value of White Mountains's foreign denominated net assets by segment as of September 30, 2021:

Currency \$ in Millions	NSM	Kudu	Other Operations	Ark	Total Fair Value	% of Total Shareholders' Equity
GBP	\$ 123.4	\$ —	\$ —	\$ 16.8	\$ 140.2	3.8 %
CAD	—	79.5	—	29.6	109.1	3.0 %
AUD	—	43.7	—	12.4	56.1	1.5 %
EUR	—	—	22.1	(57.1)	(35.0)	(1.0) %
All other	—	—	4.4	—	4.4	.2 %
<b>Total</b>	<b>\$ 123.4</b>	<b>\$ 123.2</b>	<b>\$ 26.5</b>	<b>\$ 1.7</b>	<b>\$ 274.8</b>	<b>7.5 %</b>

## Income Taxes

The Company and its Bermuda domiciled subsidiaries are not subject to Bermuda income tax under current Bermuda law. In the event there is a change in the current law and taxes are imposed, the Company and its Bermuda domiciled subsidiaries would be exempt from such tax until March 31, 2035 pursuant to the Bermuda Exempted Undertakings Tax Protection Act of 1966. The Company has subsidiaries and branches that operate in various other jurisdictions around the world that are subject to tax in the jurisdictions in which they operate. The jurisdictions in which the Company's subsidiaries and branches are subject to tax are Ireland, Israel, Luxembourg, the United Kingdom and the United States.

White Mountains's income tax expense related to pre-tax loss from continuing operations for the three and nine months ended September 30, 2021 represented an effective tax rate of (6)% and (12)%. The effective tax rate was different from the U.S. statutory rate of 21%, due to losses in jurisdictions with lower tax rates than the United States, a full valuation allowance on net deferred tax assets in certain U.S. operations, consisting of the WM Adams, Inc. consolidated tax group included within the Other Operations segment and BAM, and state income taxes. For the nine months ended September 30, 2021, the effective rate was also different from the U.S. statutory rate of 21% due to additional tax expense related to the revaluation of U.K. deferred tax assets and liabilities. On June 10, 2021, the U.K. enacted an increase in its corporate tax rate from 19% to 25% for periods after April 1, 2023. On June 30, 2021, White Mountains increased its net U.K. deferred tax liability to reflect the higher tax rate on temporary differences projected to reverse after the new rate becomes effective.

White Mountains's income tax expense related to pre-tax income from continuing operations for the three and nine months ended September 30, 2020 represented an effective tax rate of 31% and 34%. The effective tax rate was different from the U.S. statutory rate of 21% due to tax expense associated with the reorganization of the Guilford Holdings, Inc. consolidated U.S. tax group included within the Other Operations segment in preparation for the MediaAlpha IPO and state income taxes, partially offset by income generated in jurisdictions with lower tax rates than the United States. The additional tax expense associated with the reorganization of the Guilford Holdings, Inc. consolidated U.S. tax group consisted of withholding taxes and the establishment of a partial valuation allowance on deferred tax assets of various service companies, other entities and investments.

## Discontinued Operations

In the first quarter of 2021, White Mountains recorded an \$18 million gain within discontinued operations as a result of reversing a liability arising from the tax indemnification provided in connection with the sale of Sirius Group in 2016. The liability related to certain interest deductions claimed by Sirius Group that had been disputed by the Swedish Tax Agency (STA). In April 2021, the STA informed the Swedish Administrative Court of Appeal that Sirius Group should prevail in its appeal (and that the interest deductions should not be disallowed). In June 2021, the Swedish Administrative Court of Appeal ruled in Sirius Group's favor.

## LIQUIDITY AND CAPITAL RESOURCES

### Operating Cash and Short-term Investments

#### *Holding Company Level*

The primary sources of cash for the Company and certain of its intermediate holding companies are expected to be distributions from its insurance, reinsurance and other operating subsidiaries, net investment income, proceeds from sales, repayments and maturities of investments, capital raising activities and, from time to time, proceeds from sales of operating subsidiaries. The primary uses of cash are expected to be general and administrative expenses, purchases of investments, payments to tax authorities, payments on and repurchases/retirements of its debt obligations, dividend payments to holders of the Company's common shares, distributions to non-controlling interest holders of consolidated subsidiaries, contributions to operating subsidiaries and, from time to time, purchases of operating subsidiaries and repurchases of the Company's common shares.

#### *Operating Subsidiary Level*

The primary sources of cash for White Mountains's insurance, reinsurance and other operating subsidiaries are expected to be premium and fee collections, commissions, net investment income, proceeds from sales, repayments and maturities of investments, contributions from holding companies and capital raising activities. The primary uses of cash are expected to be claim payments, policy acquisition costs, general and administrative expenses, broker commission expenses, insurance acquisition expenses, loss payments, costs of sales, purchases of investments, payments to tax authorities, payments on and repurchases/retirements of its debt obligations, distributions made to holding companies, distributions to non-controlling interest holders and, from time to time, purchases of operating subsidiaries.

Both internal and external forces influence White Mountains's financial condition, results of operations and cash flows. Claim settlements, premium and fee levels, loss payments, cost of sales and investment returns may be impacted by changing rates of inflation and other economic conditions. Some time may lapse between the occurrence of an insured loss, the reporting of the loss to White Mountains's operating subsidiaries and the settlement of the liability for that loss. The exact timing of the payment of losses and benefits cannot be predicted with certainty. White Mountains's insurance and reinsurance operating subsidiaries maintain portfolios of invested assets with varying maturities and a substantial amount of cash and short-term investments to provide adequate liquidity for the payment of claims.

Management believes that White Mountains's cash balances, cash flows from operations and routine sales and maturities of investments are adequate to meet expected cash requirements for the foreseeable future on both a holding company and insurance, reinsurance and other operating subsidiary level.

#### **Dividend Capacity**

The following is a description of the dividend capacity of White Mountains's insurance, reinsurance and other operating subsidiaries:

#### ***HG Global/BAM***

As of September 30, 2021, HG Global had \$619 million face value of preferred shares outstanding, of which White Mountains owned 96.9%. Holders of the HG Global preferred shares receive cumulative dividends at a fixed annual rate of 6.0% on a quarterly basis, when and if declared by HG Global. During the nine months ended September 30, 2021, HG Global declared and paid a \$22 million preferred dividend, of which White Mountains received \$21 million. As of September 30, 2021, HG Global has accrued \$399 million of dividends payable to holders of its preferred shares, \$386 million of which is payable to White Mountains and is eliminated in consolidation. As of September 30, 2021, HG Global and its subsidiaries had \$1 million of cash outside of HG Re.

HG Re is a Special Purpose Insurer subject to regulation and supervision by the BMA, but it does not require regulatory approval to pay dividends. However, HG Re's dividend capacity is limited to amounts held outside of the Collateral Trusts pursuant to the FLRT with BAM. As of September 30, 2021, HG Re had \$758 million of statutory capital and surplus and \$845 million of assets held in the Collateral Trusts pursuant to the FLRT with BAM.

On a monthly basis, BAM deposits cash equal to ceded premiums, net of ceding commissions, due to HG Re under the FLRT directly into the Regulation 114 Trust. The Regulation 114 Trust target balance is equal to gross ceded unearned premiums and unpaid ceded loss and LAE expenses, if any. If, at the end of any quarter, the Regulation 114 Trust balance is below the target balance, funds will be withdrawn from the Supplemental Trust and deposited into the Regulation 114 Trust in an amount equal to the shortfall. If, at the end of any quarter, the Regulation 114 Trust balance is above 102% of the target balance, funds will be withdrawn from the Regulation 114 Trust and deposited into the Supplemental Trust.



The Supplemental Trust Target Balance is \$603 million, less the amount of cash and securities in the Regulation 114 Trust in excess of its target balance. If, at the end of any quarter, the Supplemental Trust balance exceeds the Supplemental Trust Target Balance, such excess may be distributed to HG Re. The distribution will be made first as an assignment of accrued interest on the BAM Surplus Notes and second in cash and/or fixed income securities. As the BAM Surplus Notes are repaid over time, the BAM Surplus Notes will be replaced in the Supplemental Trust by cash and fixed income securities.

As of September 30, 2021, the Collateral Trusts held assets of \$845 million, which included \$450 million of cash and investments, \$388 million of BAM Surplus Notes and \$7 million of interest receivable on the BAM Surplus Notes.

As of September 30, 2021, HG Re had \$2 million of cash and investments and \$121 million of accrued interest on the BAM Surplus Notes held outside the Collateral Trusts.

Through 2024, the interest rate on the BAM Surplus Notes is a variable rate equal to the one-year U.S. Treasury rate plus 300 basis points, set annually. During 2021, the interest rate on the BAM Surplus Notes is 3.1%. Beginning in 2025, the interest rate will be fixed at the higher of the then current variable rate or 8.0%. BAM is required to seek regulatory approval to pay interest and principal on the BAM Surplus Notes only to the extent that its remaining qualified statutory capital and other capital resources continue to support its outstanding obligations, its business plan and its "AA/stable" rating from Standard & Poor's. No payment of principal or interest on the BAM Surplus Notes may be made without the approval of the NYDFS.

During the three and nine months ended September 30, 2021, BAM made no repayments of the BAM Surplus Notes or accrued interest. In January 2020, BAM made a one-time \$65 million cash payment of principal and interest on the BAM Surplus Notes held by HG Global. Of this payment, \$48 million was a repayment of principal held in the Supplemental Trust, \$1 million was a payment of accrued interest held in the Supplemental Trust and \$16 million was a payment of accrued interest held outside the Supplemental Trust. See **Note 10 — "Municipal Bond Guarantee Insurance"**.

#### **Ark**

GAIL, a class 4 licensed Bermuda insurer, has the ability to declare or pay dividends or make capital distributions during any 12-month period without the prior approval of Bermuda regulatory authorities on the condition that any such declaration or payment of dividends or capital distributions does not cause a breach of any of its regulatory solvency and liquidity requirements. During 2021, GAIL has the ability, subject to meeting all appropriate liquidity and solvency requirements, to make dividend or capital distributions without the prior approval of regulatory authorities, subject to meeting all appropriate liquidity and solvency requirements, of \$20 million, which is equal to 15% of its December 31, 2020 statutory capital, excluding earned surplus. The amount of dividends available to be paid by GAIL in any given year is also subject to cash flow and earnings generated by GAIL's business. During the nine months ended September 30, 2021, GAIL did not pay a dividend to its immediate parent.

As of September 30, 2021, Ark and its intermediate holding companies had \$4 million of net unrestricted cash, short-term investments and fixed maturity investments outside of its regulated and unregulated insurance and reinsurance operating subsidiaries. During the nine months ended September 30, 2021, Ark did not pay any dividends to its immediate parent.

#### **NSM**

During the nine months ended September 30, 2021, NSM distributed \$4 million to unitholders, substantially all of which was paid to White Mountains. As of September 30, 2021, NSM had \$34 million of net unrestricted cash and short-term investments.

#### **Kudu**

During the nine months ended September 30, 2021, Kudu distributed \$9 million to unitholders, substantially all of which was paid to White Mountains. As of September 30, 2021, Kudu had \$10 million of net unrestricted cash and short-term investments.

#### **Other Operations**

During the nine months ended September 30, 2021, White Mountains paid a \$3 million common share dividend. As of September 30, 2021, the Company and its intermediate holding companies had \$507 million of net unrestricted cash, short-term investments and fixed maturity investments, \$316 million of MediaAlpha common stock and \$160 million of private equity funds and ILS funds.

## Financing

The following table presents White Mountains's capital structure as of September 30, 2021 and December 31, 2020:

<u>\$ in Millions</u>	<u>September 30,</u> <u>2021</u>	<u>December 31,</u> <u>2020</u>
Ark 2007 Subordinated Notes <sup>(1)</sup>	\$ 43.9	\$ —
Ark 2021 Subordinated Notes <sup>(1)(2)</sup>	156.8	—
NSM Bank Facility <sup>(1)(2)</sup>	293.7	271.3
Other NSM debt <sup>(1)</sup>	1.3	1.3
Kudu Credit Facility <sup>(1)(2)</sup>	195.6	—
Kudu Bank Facility <sup>(1)(2)</sup>	—	86.3
Other Operations debt <sup>(1)(2)</sup>	19.1	17.5
Total debt	<u>710.4</u>	<u>376.4</u>
Non-controlling interests—excluding BAM	257.9	35.2
Total White Mountains's common shareholders' equity	<u>3,521.7</u>	<u>3,906.0</u>
Total capital	<u>4,490.0</u>	<u>4,317.6</u>
Time-value discount on expected future payments on the BAM Surplus Notes <sup>(3)</sup>	(128.0)	(142.5)
HG Global's unearned premium reserve <sup>(3)</sup>	206.8	190.0
HG Global's net deferred acquisition costs <sup>(3)</sup>	(58.1)	(52.4)
Total adjusted capital	<u>\$ 4,510.7</u>	<u>\$ 4,312.7</u>
Total debt to total adjusted capital	<u>15.7 %</u>	<u>8.7 %</u>

<sup>(1)</sup> See Note 7 — "Debt" for details of debt arrangements.

<sup>(2)</sup> Net of unamortized issuance costs

<sup>(3)</sup> Amount reflects White Mountains's preferred share ownership in HG Global of 96.9%.

Management believes that White Mountains has the flexibility and capacity to obtain funds externally through debt or equity financing on both a short-term and long-term basis. However, White Mountains can provide no assurance that, if needed, it would be able to obtain additional debt or equity financing on satisfactory terms, if at all.

It is possible that, in the future, one or more of the rating agencies may lower White Mountains's existing ratings. If one or more of its ratings were lowered, White Mountains could incur higher borrowing costs on future borrowings and its ability to access the capital markets could be impacted.

### Covenant Compliance

As of September 30, 2021, White Mountains was in compliance in all material respects with all of the covenants under all of its debt instruments.

## Share Repurchases

White Mountains's board of directors has authorized the Company to repurchase its common shares from time to time, subject to market conditions. The repurchase authorizations do not have a stated expiration date. As of September 30, 2021, White Mountains may repurchase an additional 463,223 shares under these board authorizations. In addition, from time to time White Mountains has also repurchased its common shares through tender offers that were separately approved by its board of directors.

During the third quarter of 2021, White Mountains repurchased and retired 79,294 of its common shares for \$87 million at an average share price of \$1,099, or 93% of White Mountains's September 30, 2021 adjusted book value per share. During the nine months ended September 30, 2021, White Mountains repurchased and retired 86,512 of its common shares for \$95 million, at an average share price of \$1,094, which was approximately 93% of White Mountains's September 30, 2021 adjusted book value per share. Of the shares White Mountains repurchased in the first nine months of 2021, 7,218 were to satisfy employee income tax withholding pursuant to employee benefit plans, which do not reduce the board authorizations.

During the nine months ended September 30, 2020, White Mountains repurchased and retired 99,087 of its common shares for \$85 million, at an average share price of \$859, which was approximately 78% of White Mountains's September 30, 2020 adjusted book value per share. Of the shares White Mountains repurchased in the first nine months of 2020, 5,899 were to satisfy employee income tax withholding pursuant to employee benefit plans. White Mountains did not repurchase any of its common shares in the third quarter of 2020.

## Cash Flows

Detailed information concerning White Mountains's cash flows during the nine months ended September 30, 2021 and 2020 follows:

### *Cash flows from operations for the nine months ended September 30, 2021 and September 30, 2020*

Net cash provided from operations was \$46 million in the nine months ended September 30, 2021 compared to \$12 million in the nine months ended September 30, 2020. During the first nine months ended September 30, 2021, the increase in cash provided from operations was driven primarily by the cash inflow from Ark's operations, partially offset by the deployments in Kudu's participation contracts and Ark's transaction expenses. As of September 30, 2021, the Company and its intermediate holding companies had \$507 million of net unrestricted cash, short-term investments and fixed maturity investments, \$316 million of MediaAlpha common stock and \$160 million of private equity funds and ILS funds.

### *Cash flows from investing and financing activities for the nine months ended September 30, 2021*

#### *Financing and Other Capital Activities*

During the nine months ended September 30, 2021, the Company declared and paid a \$3 million cash dividend to its common shareholders.

During the nine months ended September 30, 2021, White Mountains repurchased and retired 86,512 of its common shares for \$95 million, 7,218 of which were repurchased under employee benefit plans for statutory withholding tax payments.

During the nine months ended September 30, 2021, BAM received \$45 million in MSC.

During the nine months ended September 30, 2021, HG Global declared and paid \$22 million of preferred dividends, of which \$21 million was paid to White Mountains.

During the third quarter of 2021, Ark issued \$163 million face value floating rate unsecured subordinated notes at par in three transactions for proceeds of \$158 million, net of debt issuance costs.

During the nine months ended September 30, 2021, NSM distributed \$4 million to unitholders, substantially all of which was paid to White Mountains.

During the nine months ended September 30, 2021, NSM repaid \$2 million in term loans, borrowed \$35 million in revolving loans and repaid \$9 million in revolving loans under the NSM Bank Facility.

During the nine months ended September 30, 2021, Kudu distributed \$9 million to unitholders, substantially all of which was paid to White Mountains.

During the nine months ended September 30, 2021, Kudu borrowed \$3 million in term loans under the Kudu Bank Facility.

On March 23, 2021, Kudu entered into the Kudu Credit Facility with an initial draw of \$102 million, of which \$92 million was used to repay the outstanding principal balance on its term loans under the Kudu Bank Facility. During the nine months ended September 30, 2021, Kudu borrowed an additional \$101 million in term loans under the Kudu Credit Facility.

#### *Acquisitions and Dispositions*

On January 1, 2021 White Mountains completed the Ark Transaction, which included contributing \$605 million of equity capital to Ark, at a pre-money valuation of \$300 million, and purchasing \$41 million of shares from certain selling shareholders. In the fourth quarter of 2020, White Mountains prefunded/placed in escrow a total of \$646 million in preparation for closing the Ark Transaction.

On March 23, 2021, MediaAlpha completed a secondary offering of 8.05 million shares. In the secondary offering, White Mountains sold 3.6 million shares at \$46.00 per share (\$44.62 per share net of underwriting fees) for net proceeds of \$160 million.

On August 6, 2021, NSM acquired 100% of J.C. Taylor for \$50 million of upfront cash consideration. NSM borrowed \$35 million from the NSM Bank Facility to fund the acquisition.

#### ***Cash flows from investing and financing activities for the nine months ended September 30, 2020***

##### *Financing and Other Capital Activities*

During the nine months ended September 30, 2020, the Company declared and paid a \$3 million cash dividend to its common shareholders.

During the nine months ended September 30, 2020, White Mountains repurchased and retired 99,087 of its common shares for \$85 million, 5,899 of which were repurchased under employee benefit plans for statutory withholding tax payments.

During the nine months ended September 30, 2020, BAM received \$47 million in MSC.

During the nine months ended September 30, 2020, BAM repaid \$48 million of principal and paid \$17 million of accrued interest on the BAM Surplus Notes.

During the nine months ended September 30, 2020, HG Global declared and paid \$23 million of preferred dividends, of which \$22 million was paid to White Mountains.

During the nine months ended September 30, 2020, NSM borrowed £43 million (\$52 million based upon the foreign exchange spot rate at the date of acquisition) in term loans under the NSM Bank Facility for the Kingsbridge transaction.

During the nine months ended September 30, 2020, Kudu borrowed \$17 million in term loans under the Kudu Bank Facility and made no repayments.

##### *Acquisitions and Dispositions*

On April 7, 2020, NSM acquired 100% of Kingsbridge for £107 million (\$132 million based upon the foreign exchange spot rate at the date of acquisition) in upfront cash. White Mountains contributed \$80 million to NSM and NSM borrowed £43 million (\$52 million based upon the foreign exchange spot rate at the date of acquisition) to fund the transaction.

On May 7, 2020 White Mountains made an additional \$15 million investment in PassportCard/DavidShield.

## NON-GAAP FINANCIAL MEASURES

This report includes 12 non-GAAP financial measures that have been reconciled to their most comparable GAAP financial measures.

### *Adjusted book value per share*

Adjusted book value per share is a non-GAAP financial measure, which is derived by adjusting (i) the GAAP book value per share numerator and (ii) the common shares outstanding denominator, as described below.

The GAAP book value per share numerator is adjusted (i) to include a discount for the time value of money arising from the modeled timing of cash payments of principal and interest on the BAM Surplus Notes and (ii) to add back the unearned premium reserve, net of deferred acquisition costs, at HG Global.

Under GAAP, White Mountains is required to carry the BAM Surplus Notes, including accrued interest, at nominal value with no consideration for time value of money. Based on a debt service model that forecasts operating results for BAM through maturity of the BAM Surplus Notes, the present value of the BAM Surplus Notes, including accrued interest and using an 8% discount rate, was estimated to be \$132 million, \$137 million, \$147 million and \$149 million less than the nominal GAAP carrying values as of September 30, 2021, June 30, 2021, December 31, 2020 and September 30, 2020, respectively.

The value of HG Global's unearned premium reserve, net of deferred acquisition costs, was \$154 million, \$150 million, \$142 million and \$136 million as of September 30, 2021, June 30, 2021, December 31, 2020 and September 30, 2020, respectively.

White Mountains believes these adjustments are useful to management and investors in analyzing the intrinsic value of HG Global, including the value of the BAM Surplus Notes and the value of the in-force business at HG Re, HG Global's reinsurance subsidiary.

The denominator used in the calculation of adjusted book value per share equals the number of common shares outstanding, adjusted to exclude unearned restricted common shares, the compensation cost of which, at the date of calculation, has yet to be amortized. Restricted common shares are earned on a straight-line basis over their vesting periods. The reconciliation of GAAP book value per share to adjusted book value per share is included on page 56.

### *BAM's gross written premiums and MSC from new business*

BAM's gross written premiums and MSC from new business is a non-GAAP financial measure, which is derived by adjusting gross written premiums and MSC collected (i) to include the present value of future installment MSC not yet collected and (ii) to exclude the impact of gross written premium adjustments related to policies closed in prior periods. White Mountains believes these adjustments are useful to management and investors in evaluating the volume and pricing of new business closed during the period. The reconciliation from GAAP gross written premiums to gross written premiums and MSC from new business is included on page 61.

### *Ark's adjusted loss and loss adjustment expense, insurance acquisition expense, other underwriting expense and combined ratios*

Ark's adjusted loss and loss adjustment expense ratio, adjusted insurance acquisition expense ratio, adjusted other underwriting expense ratio and adjusted combined ratio are non-GAAP financial measures, which are derived by adjusting the GAAP ratios to add back amounts ceded to TPC Providers for the Syndicates. The impact of these reinsurance arrangements relate to years of account prior to the Ark Transaction. White Mountains believes these adjustments are useful to management and investors in evaluating Ark's results on a fully aligned basis. The reconciliation from the GAAP ratios to the adjusted ratios is included on page 67.

#### *NSM's EBITDA and NSM's adjusted EBITDA*

NSM's EBITDA and adjusted EBITDA are non-GAAP financial measures. EBITDA is a non-GAAP financial measure that excludes interest expense on debt, income tax expense (benefit), depreciation and amortization of other intangible assets from GAAP net income (loss). Adjusted EBITDA is a non-GAAP financial measure that excludes certain other items in GAAP net income (loss) in addition to those excluded from EBITDA. The adjustments relate to (i) change in fair value of contingent consideration liabilities, (ii) non-cash equity-based compensation expense, (iii) impairments of intangible assets, (iv) loss on assets held for sale, (v) acquisition-related transaction expenses, (vi) investments made in the development of new business lines and (vii) restructuring expenses. A description of each follows:

- *Change in fair value of contingent consideration liabilities* - Contingent consideration liabilities are amounts payable to the sellers of businesses purchased by NSM that are contingent on the earnings of such businesses in periods subsequent to their acquisition. Under GAAP, contingent consideration liabilities are initially recorded at fair value as part of purchase accounting, with the periodic change in the fair value of these liabilities recorded as income or an expense.
- *Non-cash equity-based compensation expense* - Represents non-cash expenses related to NSM's management compensation emanating from the grants of equity units.
- *Impairments of intangible assets* - Represents expense related to NSM's write-off of intangible assets. For the periods presented, the impairments related primarily to NSM's write-off of intangible assets in its U.K. vertical. The impairments related to lower premium volumes, including due to the impact of the COVID-19 pandemic, and certain reorganization initiatives in the U.K. vertical.
- *Loss on assets held for sale* - Represents the loss on the net assets held for sale related to the Fresh Insurance's motor business.
- *Acquisition-related transaction expenses* - Represents costs directly related to NSM's transactions to acquire businesses, such as transaction-related compensation, banking, accounting and external lawyer fees, which are not capitalized and are expensed under GAAP.
- *Investments made in the development of new business lines* - Represents the net loss related to the start-up of newly established lines of business, which NSM views as investments.
- *Restructuring expenses* - Represents expenses associated with eliminating redundant work force and facilities that often arise as a result of NSM's post-acquisition integration strategies. For the periods presented, this adjustment relates primarily to NSM's expenses incurred in certain reorganization initiatives in the U.K. vertical.

White Mountains believes that these non-GAAP financial measures are useful to management and investors in evaluating NSM's performance. The reconciliation of NSM's GAAP net income (loss) to EBITDA and adjusted EBITDA is included on page 70.

#### *Kudu's EBITDA and Kudu's adjusted EBITDA*

Kudu's EBITDA and adjusted EBITDA are non-GAAP financial measures. EBITDA is a non-GAAP financial measure that excludes interest expense on debt, income tax expense (benefit), depreciation and amortization of other intangible assets from GAAP net income (loss). Adjusted EBITDA is a non-GAAP financial measure that excludes certain other items in GAAP net income (loss) in addition to those excluded from EBITDA. The adjustments relate to (i) net unrealized investment gains (losses) on Kudu's Participation Contracts, (ii) non-cash equity-based compensation expense and (iii) acquisition-related transaction expenses. A description of each adjustment follows:

- *Net unrealized investment (gains) losses* - Represents net unrealized investment gains and losses on Kudu's Participation Contracts, which are recorded at fair value under GAAP.
- *Non-cash equity-based compensation expense* - Represents non-cash expenses related to Kudu's management compensation that are settled with equity units in Kudu.
- *Acquisition-related transaction expenses* - Represents costs directly related to Kudu's transactions to acquire Participation Contracts, such as external lawyer, banker, consulting and placement agent fees, which are not capitalized and are expensed under GAAP.

White Mountains believes that these non-GAAP financial measures are useful to management and investors in evaluating Kudu's performance. The reconciliation of Kudu's GAAP net income (loss) to EBITDA and adjusted EBITDA is included on page 73.

### Total consolidated portfolio return excluding MediaAlpha

Total consolidated portfolio return excluding MediaAlpha is a non-GAAP financial measure that removes the net investment income and net realized and unrealized investment gains (losses) from White Mountains's investment in MediaAlpha. White Mountains believes this measure to be useful to management and investors by showing the underlying performance of White Mountains's investment portfolio without regard to MediaAlpha. The following tables present reconciliations from GAAP to the reported percentages:

	Three Months Ended September 30, 2021			Three Months Ended September 30, 2020		
	GAAP Return	Remove MediaAlpha	Return - Excluding MediaAlpha	GAAP Return	Remove MediaAlpha	Return - Excluding MediaAlpha
Total consolidated portfolio return	(8.0)%	9.4%	1.4%	13.5%	(10.7)%	2.8%

	Nine Months Ended September 30, 2021			Nine Months Ended September 30, 2020		
	GAAP Return	Remove MediaAlpha	Return - Excluding MediaAlpha	GAAP Return	Remove MediaAlpha	Return - Excluding MediaAlpha
Total consolidated portfolio return	(3.7)%	8.3%	4.6%	15.4%	(12.6)%	2.8%

### Adjusted capital

Total capital at White Mountains is comprised of White Mountains's common shareholders' equity, debt and non-controlling interests other than non-controlling interests attributable to BAM. Total adjusted capital is a non-GAAP financial measure, which is derived by adjusting total capital (i) to include a discount for the time value of money arising from the expected timing of cash payments of principal and interest on the BAM Surplus Notes and (ii) to add back the unearned premium reserve, net of deferred acquisition costs, at HG Global. The reconciliation of total capital to total adjusted capital is included on page 82.

### CRITICAL ACCOUNTING ESTIMATES

Refer to the Company's 2020 Annual Report on Form 10-K for a complete discussion regarding White Mountains's critical accounting estimates. The following describes changes to White Mountains's critical accounting estimates since December 31, 2020 as of September 30, 2021.

### I. Fair Value Measurements

#### General

White Mountains records certain assets and liabilities at fair value in its consolidated financial statements, with changes therein recognized in current period earnings. In addition, White Mountains discloses estimated fair value for certain liabilities measured at historical or amortized cost. Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants (an exit price) at a particular measurement date. Fair value measurements are categorized into a hierarchy that distinguishes between inputs based on market data from independent sources (observable inputs) and a reporting entity's internal assumptions based upon the best information available when external market data is limited or unavailable (unobservable inputs). Quoted prices in active markets for identical assets have the highest priority (Level 1), followed by observable inputs other than quoted prices including prices for similar but not identical assets or liabilities (Level 2), and unobservable inputs, including the reporting entity's estimates of the assumptions that market participants would use, having the lowest priority (Level 3).

Assets and liabilities carried at fair value include substantially all of the investment portfolio, and derivative instruments, both exchange-traded and over the counter instruments. Valuation of assets and liabilities measured at fair value require management to make estimates and apply judgment to matters that may carry a significant degree of uncertainty. In determining its estimates of fair value, White Mountains uses a variety of valuation approaches and inputs. Whenever possible, White Mountains estimates fair value using valuation methods that maximize the use of quoted market prices or other observable inputs. Where appropriate, assets and liabilities measured at fair value have been adjusted for the effect of counterparty credit risk.

**Invested Assets**

White Mountains uses outside pricing services and brokers to assist in determining fair values. The outside pricing services White Mountains uses have indicated that they will only provide prices where observable inputs are available. As of September 30, 2021, approximately 69% of the investment portfolio recorded at fair value was priced based upon quoted market prices or other observable inputs.

**Level 1 Measurements**

Investments valued using Level 1 inputs include White Mountains's fixed maturity investments, primarily its investments in U.S. Treasuries and short-term investments, which include U.S. Treasury Bills, its investment in MediaAlpha subsequent to the MediaAlpha IPO, and common equity securities. For investments in active markets, White Mountains uses the quoted market prices provided by outside pricing services to determine fair value.

**Level 2 Measurements**

Investments valued using Level 2 inputs include fixed maturity investments which have been disaggregated into classes, including debt securities issued by corporations, municipal obligations, mortgage and asset-backed securities and collateralized loan obligations. Investments valued using Level 2 inputs also include certain common equity listed funds traded on foreign exchanges, which White Mountains values using the fund manager's published NAV to account for the difference in market close times.

In circumstances where quoted market prices are unavailable or are not considered reasonable, White Mountains estimates the fair value using industry standard pricing methodologies and observable inputs such as benchmark yields, reported trades, broker-dealer quotes, issuer spreads, benchmark securities, bids, offers, credit ratings, prepayment speeds, reference data including research publications and other relevant inputs. Given that many fixed maturity investments do not trade on a daily basis, the outside pricing services evaluate a wide range of fixed maturity investments by regularly drawing parallels from recent trades and quotes of comparable securities with similar features. The characteristics used to identify comparable fixed maturity investments vary by asset type and take into account market convention.

White Mountains's process to assess the reasonableness of the market prices obtained from the outside pricing sources covers substantially all of its fixed maturity investments and includes, but is not limited to, the evaluation of pricing methodologies and a review of the pricing services' quality control procedures on at least an annual basis, a comparison of its invested asset prices obtained from alternate independent pricing vendors on at least a semi-annual basis, monthly analytical reviews of certain prices and a review of the underlying assumptions utilized by the pricing services for select measurements on an ad hoc basis throughout the year. White Mountains also performs back-testing of selected investment sales activity to determine whether there are any significant differences between the market price used to value the security prior to sale and the actual sale price of the security on an ad hoc basis throughout the year. Prices provided by the pricing services that vary by more than \$0.5 million and 5% from the expected price based on these assessment procedures are considered outliers, as are prices that have not changed from period to period and prices that have trended unusually compared to market conditions. In circumstances where the results of White Mountains's review process does not appear to support the market price provided by the pricing services, White Mountains challenges the vendor provided price. If White Mountains cannot gain satisfactory evidence to support the challenged price, White Mountains will rely upon its own internal pricing methodologies to estimate the fair value of the security in question. The valuation process described above is generally applicable to all of White Mountains's fixed maturity investments

**Level 3 Measurements**

Fair value estimates for investments that trade infrequently and have few or no quoted market prices or other observable inputs are classified as Level 3 measurements. Investments valued using Level 3 fair value estimates are based upon unobservable inputs and include investments in certain fixed maturity investments, common equity securities and other long-term investments where quoted market prices or other observable inputs are unavailable or are not considered reliable or reasonable.

Level 3 valuations are generated from techniques that use assumptions not observable in the market. These unobservable inputs reflect White Mountains's assumptions of what market participants would use in valuing the investment. In certain circumstances, investment securities may start out as Level 3 when they are originally issued, but as observable inputs become available in the market, they may be reclassified to Level 2. Transfers of securities between levels are based on investments held as of the beginning of the period.



#### Other Long-Term Investments

As of September 30, 2021, White Mountains owned a portfolio of other long-term investments valued at \$1.3 billion, that consisted primarily of unconsolidated entities, including Kudu's Participation Contracts, private equity funds, a hedge fund, Lloyd's trust deposits, a bank loan fund, ILS funds and private debt investments. As of September 30, 2021, \$815 million of White Mountains's other long-term investments consisting primarily of unconsolidated entities, including Kudu's Participation Contracts and private debt investments, were classified as Level 3 investments in the GAAP fair value hierarchy, were not actively traded in public markets, and did not have readily observable market prices. The determination of the fair value of these securities involves significant management judgment and the use of valuation models and assumptions that are inherently subjective and uncertain. As of September 30, 2021, \$471 million of White Mountains's other long-term investments, consisting of private equity funds, a hedge fund, Lloyd's trust deposits, a bank loan fund, and ILS funds, were valued at fair value using NAV as a practical expedient. Investments for which fair value is measured at NAV using the practical expedient are not classified within the fair value hierarchy.

White Mountains may use a variety of valuation techniques to determine fair value depending on the nature of the investment, including a discounted cash flow analysis, market multiple approach, cost approach and/or liquidation analysis. On an ongoing basis, White Mountains also considers qualitative changes in facts and circumstances, which may impact the valuation of its unconsolidated entities, including economic and market changes in relevant industries, changes to the entity's capital structure, business strategy and key personnel, and any recent transactions relating to the unconsolidated entity. On a quarterly basis, White Mountains evaluates the most recent qualitative and quantitative information of the business and completes a fair valuation analysis for all Level 3 other long-term investments. Periodically, and at least on an annual basis, White Mountains uses a third-party valuation firm to complete an independent valuation analysis of significant unconsolidated entities.

As of September 30, 2021, White Mountains's most significant other long-term investments that are valued using Level 3 measurements include Kudu's Participation Contracts and PassportCard/DavidShield.

#### Valuation of Kudu's Participation Contracts

Kudu's Participation Contracts comprise non-controlling equity interests in the form of revenue and earnings participation contracts. As of September 30, 2021, the combined fair value of Kudu's Participation Contracts was \$605 million. On a quarterly basis, White Mountains values each of Kudu's Participation Contracts using discounted cash flow models. As of September 30, 2021, certain of Kudu's Participation Contracts with a total fair value of \$121 million were valued using a probability weighted expected return method, which was based on a discounted cash flow analysis and the expected value to be received in potential sale transactions.

The discounted cash flow models include key inputs such as projections of future revenues and earnings of Kudu's clients, a discount rate and a terminal cash flow exit multiple. The expected future cash flows are based on management judgment, considering current performance, budgets and projected future results. The discount rates reflect the weighted average cost of capital, considering comparable public company data, adjusted for risks specific to the business and industry. The terminal exit multiple is generally based on expectations of annual cash flow to Kudu from each of its clients in the terminal year of the cash flow model. In determining fair value, White Mountains considers factors such as performance of underlying products and vehicles, expected client growth rates, new fund launches, fee rates by products, capacity constraints, operating cash flow of underlying manager and other qualitative factors, including the assessment of key personnel. The inputs to each discounted cash flow analysis vary depending on the nature of each client. As of September 30, 2021, White Mountains concluded that pre-tax discount rates in the range of 18% to 23%, and terminal cash flow exit multiples in the range of 7 to 13 times were appropriate for the valuations of Kudu's Participation Contracts.

With a discounted cash flow analysis, small changes to inputs in a valuation model may result in significant changes to fair value. The following table presents the estimated effect on the fair value of Kudu's Participation Contracts as of September 30, 2021, resulting from increases and decreases to the discount rates and terminal cash flow exit multiples used in the discounted cash flow analysis:

\$ in Millions	Discount Rate <sup>(1)</sup>									
	Terminal Exit Multiple	-2%	-1%	18% - 23%	+1%	+2%				
+2	\$	701	\$	667	\$	637	\$	607	\$	581
+1	\$	682	\$	650	\$	621	\$	593	\$	567
7x - 13x	\$	663	\$	632	\$	605	\$	578	\$	554
-1	\$	644	\$	615	\$	589	\$	563	\$	540
-2	\$	625	\$	598	\$	574	\$	551	\$	530

<sup>(1)</sup> Since Kudu's Participation Contracts are not subject to corporate taxes within Kudu Investment Management, LLC, pre-tax discount rates are applied to pre-tax cash flows in determining fair values.

#### Valuation PassportCard/DavidShield

On a quarterly basis, White Mountains values its investment in PassportCard/DavidShield using a discounted cash flow model. The discounted cash flow valuation model includes key inputs such as projections of future revenues and earnings, a discount rate and a terminal revenue growth rate. The expected future cash flows are based on management judgment, considering current performance, budgets and projected future results. The discount rate reflects the weighted average cost of capital, considering comparable public company data, adjusted for risks specific to the business and industry. The terminal revenue growth rate is based on company, industry and macroeconomic expectations of perpetual revenue growth subsequent to the end of the discrete period in the discounted cash flow analysis.

When making its fair value selection, which is within a range of reasonable values derived from the discounted cash flow model, White Mountains considers all available information, including any relevant market multiples and multiples implied by recent transactions, facts and circumstances specific to PassportCard/DavidShield's businesses and industries, and any infrequent or unusual results for the period.

White Mountains concluded that an after-tax discount rate of 23% and a terminal revenue growth rate of 4% was appropriate for the valuation of its investment in PassportCard/DavidShield as of September 30, 2021. Utilizing these assumptions, White Mountains determined that the fair value of its investment in PassportCard/DavidShield was \$105 million as of September 30, 2021.

Premiums and commission revenues from leisure travel insurance placed by PassportCard declined dramatically in the twelve months ended December 31, 2020 due to the COVID-19 pandemic. This decline was modestly offset by increased premiums and commission revenues from international private medical insurance placed by DavidShield. During the third quarter of 2020, PassportCard/DavidShield curtailed its global expansion efforts in response to the impact of the COVID-19 pandemic.

In the first quarter of 2021, sustained progress with COVID-19 vaccinations in Israel and abroad led to the Israeli airport reopening in March, which resulted in increased leisure travel and the placement of leisure travel insurance by PassportCard. As a global leader in vaccination efforts, Israel was recently accepted into the EU Digital COVID Certificate program, which permits travel without restrictions to many destination countries both within and outside of the European Union. In the first nine months of 2021, PassportCard's premiums and commission revenues continued to recover significantly from 2020, with third quarter premiums and commission revenues nearly doubling from the second quarter of 2021. Premiums and commission revenues from international private medical insurance placed by DavidShield continued to grow in the first nine months of 2021.

With a discounted cash flow analysis, small changes to inputs in a valuation model may result in significant changes to fair value. The following table presents the estimated effect on the fair value of White Mountains's investment in PassportCard/DavidShield as of September 30, 2021, resulting from changes in key inputs to the discounted cash flow analysis, including the discount rate and terminal revenue growth rate:

\$ in Millions Terminal Revenue Growth Rate	Discount Rate				
	21%	22%	23%	24%	25%
4.5%	\$ 127	\$ 116	\$ 106	\$ 97	\$ 89
4.0%	\$ 124	\$ 114	\$ 105	\$ 95	\$ 88
3.5%	\$ 121	\$ 111	\$ 102	\$ 94	\$ 86

#### Other Long-term Investments - NAV

White Mountains's portfolio of other long-term investments includes investments in private equity funds, a hedge fund, Lloyd's trust deposits, a bank loan fund and ILS funds, which are valued at fair value using NAV as a practical expedient. White Mountains employs a number of procedures to assess the reasonableness of the fair value measurements for other long-term investments measured at NAV, including obtaining and reviewing periodic and audited annual financial statements as well as periodically discussing each fund's pricing with the fund manager. However, since the fund managers do not provide sufficient information to evaluate the pricing methods and inputs for each underlying investment, White Mountains considers the valuation inputs to be unobservable. The fair value of White Mountains's other long-term investments measured at NAV are generally determined using the fund manager's NAV. In the event that White Mountains believes the fair value differs from the NAV reported by the fund manager due to illiquidity or other factors, White Mountains will adjust the reported NAV to more appropriately represent the fair value of its investment.

## FORWARD-LOOKING STATEMENTS

This report may contain “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. All statements, other than statements of historical facts, included or referenced in this report which address activities, events or developments which White Mountains expects or anticipates will or may occur in the future are forward-looking statements. The words “could”, “will”, “believe”, “intend”, “expect”, “anticipate”, “project”, “estimate”, “predict” and similar expressions are also intended to identify forward-looking statements. These forward-looking statements include, among others, statements with respect to White Mountains’:

- change in book value per share or adjusted book value per share or return on equity;
- business strategy;
- financial and operating targets or plans;
- incurred loss and loss adjustment expenses and the adequacy of its loss and loss adjustment expense reserves and related reinsurance;
- projections of revenues, income (or loss), earnings (or loss) per share, EBITDA, adjusted EBITDA, dividends, market share or other financial forecasts of White Mountains or its businesses;
- expansion and growth of its business and operations; and
- future capital expenditures.

These statements are based on certain assumptions and analyses made by White Mountains in light of its experience and perception of historical trends, current conditions and expected future developments, as well as other factors believed to be appropriate in the circumstances. However, whether actual results and developments will conform to its expectations and predictions is subject to risks and uncertainties that could cause actual results to differ materially from expectations, including:

- the risks that are described from time to time in White Mountains’s filings with the Securities and Exchange Commission, including but not limited to White Mountains’s Annual Report on Form 10-K for the fiscal year ended December 31, 2020;
- claims arising from catastrophic events, such as hurricanes, earthquakes, floods, fires, terrorist attacks or severe winter weather;
- recorded loss reserves subsequently proving to have been inadequate;
- the market value of White Mountains’s investment in MediaAlpha;
- the trends and uncertainties from the COVID-19 pandemic, including judicial interpretations on the extent of insurance coverage provided by insurers for COVID-19 pandemic related claims;
- business opportunities (or lack thereof) that may be presented to it and pursued;
- actions taken by rating agencies, such as financial strength or credit ratings downgrades or placing ratings on negative watch;
- the continued availability of capital and financing;
- deterioration of general economic, market or business conditions, including due to outbreaks of contagious disease (including the COVID-19 pandemic) and corresponding mitigation efforts;
- competitive forces, including the conduct of other insurers;
- changes in domestic or foreign laws or regulations, or their interpretation, applicable to White Mountains, its competitors or its customers; and
- other factors, most of which are beyond White Mountains’s control.

Consequently, all of the forward-looking statements made in this report are qualified by these cautionary statements, and there can be no assurance that the actual results or developments anticipated by White Mountains will be realized or, even if substantially realized, that they will have the expected consequences to, or effects on, White Mountains or its business or operations. White Mountains assumes no obligation to publicly update any such forward-looking statements, whether as a result of new information, future events or otherwise.

### Item 3. Quantitative and Qualitative Disclosures About Market Risk.

Refer to White Mountains’s 2020 Annual Report on Form 10-K and in particular **Item 7A. - “Quantitative and Qualitative Disclosures About Market Risk”**.

**Item 4. Controls and Procedures.**

The Principal Executive Officer (“PEO”) and the Principal Financial Officer (“PFO”) of White Mountains have evaluated the effectiveness of its disclosure controls and procedures (as defined in Rule 13a-15(e) and 15d-15(e) of the Exchange Act) as of the end of the period covered by this report. Based on that evaluation, the PEO and PFO have concluded that White Mountains’s disclosure controls and procedures are effective.

There were no significant changes with respect to the Company’s internal control over financial reporting or in other factors that materially affected, or are reasonably likely to materially affect, internal control over financial reporting during the quarter ended September 30, 2021.

**Part II. OTHER INFORMATION****Item 1. Legal Proceedings.**

None.

**Item 1A. Risk Factors.**

There have been no material changes to any of the risk factors previously disclosed in the Registrant’s 2020 Annual Report on Form 10-K.

**Item 2. Issuer Purchases of Equity Securities.**

<u>Months</u>	<u>Total Number of Shares Purchased</u>	<u>Average Price Paid per Share</u>	<u>Total Number of Shares Purchased as Part of Publicly Announced Plans <sup>(1)</sup></u>	<u>Maximum Number of Shares that May Yet Be Purchased Under the Plans <sup>(1)</sup></u>
July 1 - July 30, 2021	2,841	\$ 1,122.87	2,784	539,733
August 1 - August 31, 2021	16,878	\$ 1,123.41	16,878	522,855
September 1 - September 30, 2021	59,632	\$ 1,090.72	59,632	463,223
<b>Total</b>	<b>79,351</b>	<b>\$ 1,098.82</b>	<b>79,294</b>	<b>463,223</b>

<sup>(1)</sup> White Mountains’s board of directors has authorized the Company to repurchase its common shares, from time to time, subject to market conditions. The repurchase authorizations do not have a stated expiration date.

**Item 3. Defaults Upon Senior Securities.**

None.

**Item 4. Mine Safety Disclosures.**

None.

**Item 5. Other Information.**

None.

**Item 6. Exhibits.**

(a)	<u>Exhibit number</u>	<u>Name</u>
	2	— Plan of Reorganization (incorporated by reference herein to the Company's Registration Statement on S-4 (No. 333-87649) dated September 23, 1999)
	3.1	— Memorandum of Continuance of the Company (incorporated by reference herein to Exhibit (3)(i) of the Company's Current Report on Form 8-K dated November 1, 1999)
	3.2	— Amended and Restated Bye-Laws of the Company (incorporated by reference herein to Exhibit 3 of the Company's Report on Form 10-Q dated May 2, 2017)
	10.1	— Loan and Servicing Agreement dated as of March 23, 2021 among Kudu Investment Management, LLC, Kudu Investment Holdings, LLC, Kudu Investments US, LLC, KFO Holdings, Ltd., KWCP Holdings UK, Ltd., Massachusetts Mutual Life Insurance Company and Alter Domus (*) (**)
	10.2	— Paying Agency Agreement dated 13 July 2021 between Group Ark Insurance Limited, The Bank of New York Mellon, London Branch and The Bank of New York Mellon SA/NV, Dublin Branch (*) (**)
	10.3	— Paying Agency Agreement dated 11 August 2021 between Group Ark Insurance Limited, The Bank of New York Mellon, London Branch and The Bank of New York Mellon SA/NV, Dublin Branch (*) (**)
	10.4	— Paying Agency Agreement dated 8 September 2021 between Group Ark Insurance Limited, The Bank of New York Mellon, London Branch and The Bank of New York Mellon SA/NV, Dublin Branch (*) (**)
	31.1	— Principal Executive Officer Certification Pursuant to Rule 13a-14 (a) of the Securities Exchange Act of 1934, as Amended. (*)
	31.2	— Principal Financial Officer Certification Pursuant to Rule 13a-14 (a) of the Securities Exchange Act of 1934, as Amended. (*)
	32.1	— Principal Executive Officer Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. (*)
	32.2	— Principal Financial Officer Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. (*)
	101	— XBRL Instance Document - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.

(\*) Included herein

(\*\*) Portions of this exhibit are redacted pursuant to Item 601(b)(10)(iv) of Regulation S-K.

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

WHITE MOUNTAINS INSURANCE GROUP, LTD.

(Registrant)

Date: November 8, 2021

By: /s/ Michaela J. Hildreth

Michaela J. Hildreth

Managing Director and Chief Accounting Officer

**Certain identified information has been omitted because it is both (i) not material and (ii) the type that the registrant treats as private or confidential.** *Execution Version*

LOAN AND SERVICING AGREEMENT

among

KUDU INVESTMENT MANAGEMENT, LLC,  
as Holdings,

KUDU INVESTMENT HOLDINGS, LLC, and

KUDU INVESTMENT US, LLC,  
as the Co-Borrowers,

KFO HOLDINGS, LTD., and

KWCP HOLDINGS UK, LTD.,  
as the UK Guarantors,

MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY and  
the other Lenders from time to time party hereto,

MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY,  
as the Servicer,

and

ALTER DOMUS (US) LLC,  
as the Administrative Agent

Dated as of March 23, 2021

## TABLE OF CONTENTS

	Page
ARTICLE I. INTERPRETATION .....	1
SECTION 1.01    Certain Defined Terms .....	1
SECTION 1.02    Other Terms .....	32
SECTION 1.03    Computation of Time Periods .....	32
SECTION 1.04    Interpretation .....	32
SECTION 1.05    Advances to Constitute Loans .....	33
SECTION 1.06    Accounting Terms and Determination .....	33
SECTION 1.07    Spot Rates.....	34
SECTION 1.08    Electronic Signatures.....	34
ARTICLE II. THE FACILITY .....	35
SECTION 2.01    Advances .....	35
SECTION 2.02    Procedure for Advances. ....	35
SECTION 2.03    Evidence of Debt. ....	36
SECTION 2.04    Repayment; Allocation, Reduction or Termination of Commitments. ....	37
SECTION 2.05    Interest and Fees.....	38
SECTION 2.06    Benchmark Replacement Setting. ....	39
SECTION 2.07    Payments and Computations, Etc. ....	40
SECTION 2.08    Collections; Payment Date Report. ....	41
SECTION 2.09    Remittance Procedures.....	42
SECTION 2.10    Grant of a Security Interest.....	43
SECTION 2.11    Sale of Portfolio Assets.....	47
SECTION 2.12    Increased Costs. ....	48
SECTION 2.13    Taxes.....	49
SECTION 2.14    Increase in Maximum Facility Amount.....	52
SECTION 2.15    Mitigation Obligations; Replacement of Lenders. ....	52
SECTION 2.16    Defaulting Lenders. ....	54
SECTION 2.17    Extension of Availability Period.....	55
SECTION 2.18    Ratings Cure .....	56
ARTICLE III. CONDITIONS PRECEDENT.....	56
SECTION 3.01    Conditions Precedent to Effectiveness .....	56

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
SECTION 3.02	Conditions Precedent to All Advances ..... 58
SECTION 3.03	Conditions to Transfers of Portfolio Assets..... 58
SECTION 3.04	Advances Do Not Constitute a Waiver ..... 59
ARTICLE IV. REPRESENTATIONS .....	59
SECTION 4.01	Representations of the Loan Parties ..... 59
SECTION 4.02	Representations of the Co-Borrowers Relating to the Agreement and the Collateral ..... 65
SECTION 4.03	Representations of the Servicer ..... 66
SECTION 4.04	Representations of each Lender ..... 67
SECTION 4.05	Representations of Holdings ..... 67
ARTICLE V. GENERAL COVENANTS .....	71
SECTION 5.01	Affirmative Covenants of the Loan Parties ..... 71
SECTION 5.02	Negative Covenants of the Loan Parties ..... 76
SECTION 5.03	Affirmative Covenants of the Servicer ..... 79
SECTION 5.04	Negative Covenants of the Servicer ..... 79
SECTION 5.05	Affirmative Covenants of Holdings..... 79
SECTION 5.06	Negative Covenants of Holdings ..... 80
ARTICLE VI. EVENTS OF DEFAULT .....	81
SECTION 6.01	Events of Default ..... 81
SECTION 6.02	Pledged Equity..... 83
SECTION 6.03	Additional Remedies. .... 85
ARTICLE VII. THE ADMINISTRATIVE AGENT.....	86
SECTION 7.01	Appointment and Authority; Rights as Lender..... 86
SECTION 7.02	Exculpatory Provisions. .... 86
SECTION 7.03	Reliance by Administrative Agent ..... 89
SECTION 7.04	Delegation of Duties..... 89
SECTION 7.05	Resignation of Administrative Agent. .... 89
SECTION 7.06	Non-Reliance on Agents and Other Lenders ..... 90
SECTION 7.07	Indemnification by Lenders..... 91
SECTION 7.08	Administrative Agent May File Proofs of Claim..... 91
SECTION 7.09	Collateral Matters. .... 91



**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
SECTION 7.10 Erroneous Payments. ....	92
ARTICLE VIII. ADMINISTRATION AND SERVICING OF COLLATERAL.....	94
SECTION 8.01 Appointment and Designation of the Servicer.....	94
SECTION 8.02 Duties of the Servicer. ....	96
SECTION 8.03 Authorization of the Servicer. ....	98
SECTION 8.04 Collection of Payments; Accounts.....	99
SECTION 8.05 Realization Upon Portfolio Assets .....	99
SECTION 8.06 Servicing Compensation .....	100
SECTION 8.07 Payment of Certain Expenses.....	100
SECTION 8.08 Reports to the Administrative Agent Account Statements; Servicing Information. ....	101
SECTION 8.09 The Servicer Not to Resign .....	101
SECTION 8.10 Indemnification of the Servicer .....	102
SECTION 8.11 Rights as a Lender.....	102
ARTICLE IX. [RESERVED]. ....	102
ARTICLE X. INDEMNIFICATION .....	102
SECTION 10.01 Indemnities by the Co-Borrowers and Holdings. ....	102
ARTICLE XI. MISCELLANEOUS.....	104
SECTION 11.01 Amendments and Waivers.....	104
SECTION 11.02 Notices, Etc.....	105
SECTION 11.03 No Waiver Remedies .....	105
SECTION 11.04 Binding Effect; Assignability; Multiple Lenders.....	105
SECTION 11.05 Term of This Agreement.....	107
SECTION 11.06 GOVERNING LAW; JURY WAIVER .....	107
SECTION 11.07 Costs, Expenses and Taxes. ....	107
SECTION 11.08 Recourse Against Certain Parties; Non-Petition.....	108
SECTION 11.09 Execution in Counterparts; Severability; Integration.....	109
SECTION 11.10 Consent to Jurisdiction; Service of Process.....	109
SECTION 11.11 Confidentiality.....	110
SECTION 11.12 Non-Confidentiality of Tax Treatment .....	111
SECTION 11.13 Waiver of Set Off .....	112

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
SECTION 11.14	Headings, Schedules and Exhibits ..... 112
SECTION 11.15	Ratable Payments..... 112
SECTION 11.16	Failure of Co-Borrowers to Perform Certain Obligations..... 112
SECTION 11.17	Power of Attorney ..... 112
SECTION 11.18	Delivery of Termination Statements, Releases, etc ..... 113
SECTION 11.19	Exclusive Remedies ..... 113
SECTION 11.20	Post-Closing Performance Conditions..... 113
SECTION 11.21	Performance Conditions..... 113
SECTION 11.22	Bail In ..... 114
SECTION 11.23	Joint and Several; Administrative Borrower ..... 114

LIST OF SCHEDULES AND EXHIBITS

SCHEDULES

SCHEDULE I	Eligible Portfolio Assets
SCHEDULE II	Conditions Precedent Documents
SCHEDULE III	Notice Information
SCHEDULE IV	Lender Commitments
SCHEDULE V	Investment Guidelines
SCHEDULE VI	Disqualified Lenders
SCHEDULE VII	Post-Closing Conditions

EXHIBITS

EXHIBIT A	Form of LTV Certificate
EXHIBIT B	Form of Notice of Borrowing
EXHIBIT C	Form of Borrowing Base Certificate
EXHIBIT D	Form of Revolving Loan Note
EXHIBIT E	Form of U.S. Tax Compliance Certificate
EXHIBIT F	Form of Payment Date Report
EXHIBIT G	Form of Assignment and Assumption Agreement
EXHIBIT H	Form of Power of Attorney

LOAN AND SERVICING AGREEMENT, dated as of March 23, 2021, by and among:

- (1) KUDU INVESTMENT MANAGEMENT, LLC, a Delaware limited liability company ("Holdings");
- (2) KUDU INVESTMENT HOLDINGS, LLC, a Delaware limited liability company ("Kudu");
- (3) KUDU INVESTMENT US, LLC, a Delaware limited liability company ("Kudu US");
- (4) KFO HOLDINGS, LTD., a limited liability company incorporated in England and Wales under number 11786202 ("KFO Holdings");
- (5) KWCP HOLDINGS UK, LTD., a limited liability company incorporated in England and Wales under number 11860833 ("KWCP Holdings");
- (6) MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY, and each of the other lenders from time to time party hereto, as Lenders (as defined herein);
- (7) MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY, as the Servicer; and
- (8) ALTER DOMUS (US) LLC, as the Administrative Agent.

The Lenders have agreed, on the terms and conditions set forth herein, to provide a senior secured revolving loan facility that provides for Advances from time to time in the amounts and in accordance with the terms set forth herein.

The proceeds of the Advances will be used by the Co-Borrowers for general corporate purposes, together with such other purposes as set forth in Section 5.02(m).

Accordingly, the parties agree as follows:

#### ARTICLE I. INTERPRETATION

SECTION 1.01 Certain Defined Terms. As used in this Agreement and the exhibits, schedules and other attachments hereto (each of which is hereby incorporated herein and made a part hereof), the following terms have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

"1940 Act" means the Investment Company Act of 1940 and the rules and regulations promulgated thereunder.

"Account Bank" means with respect to each Co-Borrower, First Republic Bank, in its capacity as the "custodian," "bank" or "securities intermediary" and each other Person acting in the capacity as the "bank", the "securities intermediary" or such other similar term or capacity pursuant to an Account Control Agreement or any agreement replacing or substituting for any such Account Control Agreement.

"Account Control Agreement" means (a) for each Account that is a deposit account, a deposit account control agreement in form reasonably acceptable to Administrative Agent, (b) for each Account

that is a securities account, a securities account control agreement in form reasonably satisfactory to Administrative Agent, and (c) any similar agreement under local law, in each case, executed by each Co-Borrower (as applicable), Administrative Agent and the Account Bank and which permits, among other things, the Administrative Agent, acting at the direction of the Servicer, on behalf of the Secured Parties to direct disposition of the funds in such Account following a Notice of Exclusive Control, as such agreement may be amended, restated, modified, replaced or otherwise supplemented from time to time.

“Accounts” means all deposit accounts and securities accounts maintained by, or for the benefit of, any Loan Party from time to time.

“Additional Amount” has the meaning assigned to that term in Section 2.13(a).

“Administrative Agent” means Alter Domus (US) LLC, in its capacity as administrative agent for the Lenders, together with its successors and permitted assigns, including any successor appointed pursuant to Article VII.

“Administrative Borrower” means Kudu.

“Advance” means each loan advanced by the Lenders to any Co-Borrower pursuant to Article II.

“Advance Date” means, with respect to any Advance, the day on which such Advance is made.

“Advance Rate” means 35.0%.

“Advances Outstanding” means, at any time, the aggregate outstanding principal amount of all Advances at such time.

“Affiliate” when used with respect to a Person, means any other Person Controlling, Controlled by or under common Control with such Person.

“Agent Fee Letter” means, the fee letter between the Administrative Agent and the Co-Borrowers, dated as of the Closing Date, as amended, restated, supplemented or otherwise modified from time to time to the extent permitted hereunder.

“Agreement” means this Loan and Servicing Agreement, as may be amended, restated, modified, replaced or otherwise supplemented from time to time.

“Anti-Corruption Laws” means the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder and, as to any person, any other comparable anti-corruption law applicable to such person.

“Anti-Money Laundering Laws” means, as to any person, any and all applicable anti-money laundering, financial recordkeeping and reporting requirements of Applicable Law relevant to such person, including those of the Bank Secrecy Act (as amended by Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act)) and any comparable anti-money laundering statutes of other jurisdictions applicable to such person, as well as the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency applicable to such person.

“Applicable Accounting Principles” shall mean GAAP, IFRS or any other internationally accepted accounting standard that may be used by Holdings and the Loan Parties for their financial reporting requirements from time to time.

“Applicable Law” means for any Person all existing and future laws, rules, regulations (including temporary and final income tax regulations), statutes, treaties, codes, and ordinances, including any binding interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof and all permits, certificates, orders, licenses of and binding interpretations by any Governmental Authority, applicable to such Person and applicable judgments, decrees, injunctions, writs, awards or orders of any court, arbitrator or other administrative, judicial, or quasi-judicial tribunal or agency of competent jurisdiction.

“Applicable Spread” means 4.30%.

“Assignment and Assumption Agreement” means an agreement among the Co-Borrowers (if required under Section 11.04), a Lender, an Eligible Assignee and the Administrative Agent, substantially in the form of Exhibit G or any other form (including electronic documentation generated by use of an electronic platform) reasonably approved by the Administrative Agent, and delivered in connection with a Person becoming a Lender hereunder after the Closing Date.

“Australian Collateral” has the meaning assigned to the term “Collateral” in the Australian Pledge Agreement.

“Australian Equity Notes” has the meaning assigned to the term “Equity Notes” in the Australian Pledge Agreement.

“Australian Pledge Agreement” means the document entitled “Specific Security Deed (Equity Notes)” dated on or around the date of this Agreement between Kudu and the Administrative Agent.

“Australian PPSA” means the Personal Property Securities Act 2009 (Cth).

“Australian PPSR” means the “Personal Property Securities Register” established under section 147 of the Australian PPSA.

“Availability Period” means the period commencing on the Closing Date and ending on the earlier of (i) March 23, 2024 or if an Availability Period Extension occurs pursuant to Section 2.17, the Availability Period Extension Date, and (ii) the date the Commitments are terminated in accordance with this Agreement, whether as a result of an Event of Default or otherwise, and subject to the suspension thereof upon the occurrence of an Event of Default or a Market Trigger Event.

“Availability Period Extension” has the meaning given to such term in Section 2.17.

“Availability Period Extension Date” has the meaning given to such term in Section 2.17.

“Available Collections” means all cash Collections and other cash proceeds with respect to any Portfolio Asset deposited in any Collection Account and all other amounts on deposit in any Collection Account from time to time, but excluding Excluded Amounts.

“Bail-In Action” means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

“Bail-In Legislation” means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time that is described in the EU Bail-In Legislation Schedule.

“Bankruptcy Code” means Title 11, United States Code, 11 U.S.C. §§ 101 *et seq.*, as amended from time to time.

“Bankruptcy Event” is deemed to have occurred with respect to a Person if either:

(a) a case or other proceeding shall be commenced, without the application or consent of such Person, in any court, seeking the liquidation, administration, reorganization, debt arrangement, dissolution, winding up, receivership, or composition or readjustment of debts of such Person, the appointment of a trustee, receiver, receiver and manager, controller, custodian, liquidator, provisional liquidator, administrator, restructuring practitioner, assignee, sequestrator or the like for such Person or all or substantially all of its assets or, in the case of any Loan Party or Holdings, or any similar action with respect to such Person under the Bankruptcy Laws, and such case or proceeding shall continue undismissed, or unstayed and in effect, for a period of sixty (60) consecutive days; or an order for relief in respect of such Person shall be entered in an involuntary case under the federal Bankruptcy Laws or other similar laws now or hereafter in effect and such case or proceeding shall continue undismissed, or unstayed and in effect, for a period of sixty (60) consecutive days; or

(b) such Person shall commence a voluntary case or other proceeding under any Bankruptcy Laws now or hereafter in effect, or shall consent to the appointment of or taking possession by a receiver, receiver and manager, controller, liquidator, provisional liquidator, administrator, restructuring practitioner, assignee, trustee, custodian, sequestrator (or other similar official) for such Person or all or substantially all of its assets under the Bankruptcy Laws, or shall make any general assignment for the benefit of creditors or enter into any arrangement, moratorium, reorganization or composition involving one or more of its creditors, or shall fail to, or admit in writing its inability to, or be presumed under any Bankruptcy Laws to be unable to, pay its debts generally as they become due, or, if a corporation or similar entity, its board of directors or members shall vote to implement any of the foregoing;

(c) the Person executes a deed of company arrangement or makes a restructuring plan under the Corporations Act 2001 (Cth); or

(d) if a corporation or similar entity, the Person is deregistered as a company or otherwise dissolved.

“Bankruptcy Laws” means the Bankruptcy Code, the Insolvency Act 1986 (U.K.), Enterprise Act 2002 (U.K.), Companies Act 2006 (U.K.), the Corporations Act 2001 (Cth) and all other applicable liquidation, conservatorship, bankruptcy, moratorium, rearrangement, receivership, insolvency, reorganization, suspension of payments, winding up, general assignment for the benefit of creditors,

administration, or similar debtor relief laws from time to time in effect affecting the rights of creditors generally.

“Benchmark Replacement” means the sum of: (a) the alternate benchmark rate (which may include Term SOFR) that has been selected by the Administrative Agent, the Initial Lender and the Administrative Borrower giving due consideration to (i) any selection or recommendation of a replacement 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 rate of interest as a replacement to LIBOR for U.S. dollar-denominated syndicated credit facilities and (b) the Benchmark Replacement Adjustment; provided that, if the Benchmark Replacement as so determined would be less than zero, the Benchmark Replacement will be deemed to be zero for the purposes of this Agreement.

“Benchmark Replacement Adjustment” means, with respect to any replacement of LIBOR with an Unadjusted Benchmark Replacement for each applicable LIBOR Period, 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 Administrative Agent, the Initial Lender and the Administrative Borrower giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of LIBOR with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (ii) 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 LIBOR with the applicable Unadjusted Benchmark Replacement 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 (including changes to the definition of “LIBOR Period,” timing and frequency of determining rates and making payments of interest and other administrative matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of the Benchmark Replacement exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement).

“Benchmark Replacement Date” means the earlier to occur of the following events with respect to LIBOR:

(1) in the case of clause (1) or (2) 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 the administrator of LIBOR permanently or indefinitely ceases to provide LIBOR; or

(2) in the case of clause (3) of the definition of “Benchmark Transition Event,” the date of the public statement or publication of information referenced therein.

“Benchmark Transition Event” means the occurrence of one or more of the following events with respect to LIBOR:



(1) a public statement or publication of information by or on behalf of the administrator of LIBOR announcing that such administrator has ceased or will cease to provide LIBOR, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide LIBOR;

(2) a public statement or publication of information by the regulatory supervisor for the administrator of LIBOR, the U.S. Federal Reserve System, an insolvency official with jurisdiction over the administrator for LIBOR, a resolution authority with jurisdiction over the administrator for LIBOR or a court or an entity with similar insolvency or resolution authority over the administrator for LIBOR, which states that the administrator of LIBOR has ceased or will cease to provide LIBOR permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide LIBOR; or

(3) a public statement or publication of information by the regulatory supervisor for the administrator of LIBOR announcing that LIBOR is no longer representative.

“Benchmark Transition Start Date” means (a) in the case of a Benchmark Transition Event, the earlier of (i) the applicable Benchmark Replacement Date and (ii) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90<sup>th</sup> day 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 days after such statement or publication, the date of such statement or publication) and (b) in the case of an Early Opt-in Election, the date specified by the Administrative Agent or the Majority Lenders, as applicable, by notice to the Administrative Borrower, the Administrative Agent (in the case of such notice by the Majority Lenders) and the Lenders.

“Benchmark Unavailability Period” means, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to LIBOR and solely to the extent that LIBOR has not been replaced with a Benchmark Replacement, the period (x) beginning at the time that such Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced LIBOR for all purposes hereunder in accordance with Section 2.06 and (y) ending at the time that a Benchmark Replacement has replaced LIBOR for all purposes hereunder pursuant to Section 2.06.

“Borrower AML and International Trade Default” means, any one of the following events: (a) any representation contained Section 4.01(cc) is or becomes false at any time; or (b) any Loan Party fails to comply with the covenant contained in Section 11.21(d)(ii) at any time.

“Borrower Covered Entity” means each of (a) the Co-Borrowers, (b) the UK Guarantors, and (c) Holdings.

“Borrowing Base” means, as of any date of determination, the Advance Rate multiplied by the aggregate Investment Value of all Eligible Portfolio Assets as of such date.

“Borrowing Base Certificate” means a certificate setting forth the calculation of the Borrowing Base as of the applicable date of determination, substantially in the form of Exhibit C prepared by the Administrative Borrower.

“Business Day” means a day of the year other than (a) Saturday or a Sunday or (b) any other day on which commercial banks in New York, New York are authorized or required by Applicable Law, regulation or executive order to close; provided that, if any determination of a Business Day shall relate

to an Advance bearing interest at LIBOR, the term "Business Day" shall also exclude any day on which banks are not open for dealings in Dollar deposits in the London interbank market.

"Capital Lease Obligations" of any Person shall mean all obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as finance leases on a balance sheet of such Person under Applicable Accounting Principles, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with Applicable Accounting Principles.

"Change in Law" means the occurrence, after the Closing Date, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty; (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority; or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

"Change of Control" is deemed to have occurred if (i) White Mountains Insurance Group, Ltd. or any of its Affiliates fails to own, directly or indirectly, 51% of the membership interests of Holdings, (ii) Holdings fails to own, directly or indirectly, 100% of the membership interests of each Co-Borrower, or (iii) Kudu fails to own, directly or indirectly, 100% of the membership interests of each UK Guarantor.

"Change of Control Denial" has the meaning assigned to that term in Section 2.04(d).

"Closing Date" means the date of this Agreement.

"Co-Borrower" and "Co-Borrowers" means, each of Kudu and Kudu US.

"Code" means the Internal Revenue Code of 1986, as amended.

"Collateral" means the US Collateral and the UK Collateral.

"Collateral Portfolio" means, all right, title and interest (whether now owned or hereafter acquired or arising, and wherever located) of a Loan Party in all assets of such Loan Party (other than any Excluded Assets) securing the Obligations pursuant to the Transaction Documents, including the property identified below in clauses (a) through (c), and all accounts, money, cash and currency, chattel paper, tangible chattel paper, electronic chattel paper, intellectual property, goods, equipment, fixtures, contract rights, general intangibles, documents, instruments, certificates of deposit, certificated securities, uncertificated securities, financial assets, securities entitlements, commercial tort claims, securities accounts, deposit accounts, inventory, investment property, letter-of-credit rights, software, supporting obligations, accessions or other property consisting of, arising out of, or related to any of the following:

- (a) the Portfolio Assets and all funds due or to become due in payment under such Portfolio Assets on and after any related Cut-Off Date, including all Available Collections;
- (b) each Collection Account and the Interest Reserve Account; and
- (c) all income and Proceeds of the foregoing.

“Collection Accounts” means one or more Accounts and any related sub-accounts established with the Account Bank in the name of a Co-Borrower, and under the “control” (within the meaning of Section 9-104 or 9-106 of the UCC, as applicable) of the Administrative Agent for the benefit of the Secured Parties pursuant to an Account Control Agreement; provided that, subject to the rights of the Administrative Agent hereunder with respect to funds, the funds deposited therein from time to time shall constitute the property and assets of such Co-Borrower, and such Co-Borrower (or its direct or indirect equityholders, as applicable) shall be solely liable for any Taxes payable with respect to the Collection Account of such Co-Borrower and each subaccount that may be established from time to time.

“Collections” means all Distributions, cash collections and other cash proceeds with respect to any Portfolio Asset (including, without limitation, dividends, distributions, fees, royalties, Management Contracts, management fees and all other amounts received in respect of such Portfolio Asset), all recoveries, all insurance proceeds and proceeds of any liquidations or Sales in each case, attributable to such Portfolio Asset and owing or owned by a Loan Party, and all other proceeds or other funds of any kind or nature received by such Loan Party, or the Account Bank with respect to any Portfolio Asset.

“Commitment” means, with respect to any Lender, (a) during the Availability Period, the amount set forth on Schedule IV or on its respective Assignment and Assumption Agreement, as the same may be increased from time to time in accordance with Section 2.14, reduced from time to time by the Administrative Borrower pursuant to Section 2.04, Section 2.12(e), Section 2.16(b) and (c) or Section 11.04, or increased or reduced by assignment to or by such Lender pursuant to Section 11.04 and (b) after the end of the Availability Period, such Lender’s Pro Rata Share of the aggregate Advances Outstanding on the last day of the Availability Period, as the same may be increased or reduced by assignment to or by such Lender pursuant to Section 11.04.

“Commitment Fee Letter” means, if applicable, any fee letter or letters between the Initial Lender and the Co-Borrowers dated as of the Closing Date, as amended, restated, supplemented or otherwise modified from time to time.

“Constituent Documents” means, for any Person, its constituent or organizational documents and any governmental or other filings related thereto, including: (a) in the case of any limited partnership, exempted limited partnership or other form of business entity, the limited partnership agreement, exempted limited partnership agreement, articles of association, statutory statement or other applicable agreement of formation and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation with the secretary of state, registrar or other department in the state or jurisdiction of its formation; (b) in the case of any limited liability company, the certificate of formation, memorandum and articles of association, limited liability company agreement and/or operating agreement for such Person; and (c) in the case of a corporation or an exempted company, the certificate of incorporation and the memorandum of association and articles of association and/or the bylaws (or equivalent) for such Person.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise.

“Cut-Off Date” means, with respect to a Portfolio Asset, the date (which may be the Closing Date) such Portfolio Asset is Transferred to a Loan Party.

“Debt Service” means, for any period, interest expense paid or payable by the Loan Parties for such period plus scheduled principal amortization and mandatory principal repayments (whether pursuant to this Agreement or otherwise) of all Indebtedness for borrowed money for such period paid or payable by the Loan Parties.

“Debt Service Coverage Ratio” means, for any four calendar quarter period then ended, beginning with such period ending on March 31, 2021, the ratio of EBITDA of the Loan Parties, for such period to Debt Service for such period; provided that the Debt Service Coverage Ratio shall be calculated (a) for the calendar quarter ending March 31, 2021, by annualizing EBITDA and Debt Service for the calendar quarter then ended by multiplying EBITDA and Debt Service by 4, (b) for the calendar quarter ending June 30, 2021, by annualizing EBITDA and Debt Service for the period equal to the two consecutive calendar quarters then ended by multiplying EBITDA and Debt Service by 2, and (c) for the calendar quarter ending September 30, 2021, by annualizing EBITDA and Debt Service for the period equal to the three consecutive calendar quarters then ended by multiplying EBITDA and Debt Service by 1.33.

“Default Rate” means, as of any date of determination, a rate per annum equal to the interest rate that is or would be applicable to the Advances at such time plus 2.0%.

“Defaulting Lender” means, subject to Section 2.16, any Lender that (a) has failed to (i) fund all or any portion of its Advances within two (2) Business Days of the date such Advances were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Administrative Borrower in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within two (2) Business Days of the date when due, (b) has notified the Administrative Borrower or the Administrative Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund an Advance hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by the Administrative Agent or the Administrative Borrower, to confirm in writing to the Administrative Agent and the Administrative Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Administrative Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a Bankruptcy Event, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity or

(iii) become the subject of a Bail-In Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.16) upon delivery of written notice of such determination to the Administrative Borrower and each Lender.

"Determination Date" means, for any Payment Date, the date that is five (5) Business Days prior to such Payment Date.

"Disqualified Lender" means (i) each Person that is set forth on Schedule VI or otherwise identified by Holdings in writing to the Administrative Agent and the Servicer prior to the Closing Date as a competitor of White Mountains Insurance Group, Ltd. or Holdings, and (ii) Affiliates of any Person identified in clause (i) above that are either identified in writing to the Administrative Agent and the Servicer by Holdings from time to time or readily identifiable solely based on similarity of such Affiliate's name. Notwithstanding anything to the contrary contained in this Agreement, (a) the Administrative Agent shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions hereof relating to Disqualified Lenders and (b) the Co-Borrowers (on behalf of themselves and the other Loan Parties) and the Lenders acknowledge and agree that the Administrative Agent shall have no responsibility or obligation to determine whether any Lender or potential Lender is a Disqualified Lender and that the Administrative Agent shall have no liability with respect to any assignment or participation made to a Disqualified Lender.

"Distribution" means (a) any dividend, distribution or payment, direct or indirect, to or for the benefit of any holder of any Equity Interests of a Person now or hereafter outstanding, except (i) a Distribution in Kind or (ii) the issuance of Equity Interests upon the exercise of outstanding warrants, options or other rights, (b) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value direct or indirect, of any Equity Interests of a Person now or hereafter outstanding, or (c) any distribution or payment of principal or interest required to be made to a Loan Party by an Obligor on a Loan Asset pursuant to the terms of the related Underlying Loan Agreement.

"Distribution in Kind" means any non-cash dividend or distribution, direct or indirect, for the benefit of a holder of Equity Interests.

"Dollar Equivalent" means (i) with respect to any amount denominated in Dollars, such amount, and (ii) with respect to any amount denominated in any other currency (the "Non-Dollar Amount"), the amount of Dollars that could be converted into the Non-Dollar Amount on the basis of the Spot Rate as reasonably determined in good faith by the Account Bank (acting upon the instructions of the Administrative Borrower) as of the most recent Determination Date or other applicable date of determination.

"Dollar(s)" and the sign "\$" means the lawful money of the United States of America.

"Early Opt-in Election" means the occurrence of:



(1) (i) a determination by the Administrative Agent or (ii) a notification by the Majority Lenders to the Administrative Agent (with a copy to the Administrative Borrower) that the Majority Lenders have determined that U.S. dollar-denominated syndicated credit facilities being executed at such time, or that include language similar to that contained in Section 2.06, are being executed or amended, as applicable, to incorporate or adopt a new benchmark interest rate to replace LIBOR; and

(2) the election by (i) the Administrative Agent or (ii) the Majority Lenders to declare that an Early Opt-in Election has occurred and the provision, as applicable, by the Administrative Agent of written notice of such election to the Administrative Borrower and the Lenders or by the Majority Lenders of written notice of such election to the Administrative Agent.

“EBITDA” means, for any specified period of measurement of Loan Parties, calculated on a consolidated basis, (a) Net Income, plus (b) to the extent reducing Net Income, the sum of (without duplication), (i) amounts for interest expense under this Agreement, (ii) Taxes, (iii) amounts for costs, fees and expenses in connection with this Agreement (iv) placement fees in connection with the consummation of the transactions pursuant to this Agreement (including without limitation in relation to any future Advances under the Agreement) and in connection with the raising of any equity, (v) transaction fees and expenses relating to Portfolio Assets and the incurrence of Indebtedness permitted under the Agreement (whether or not any transaction is actually consummated), (vi) unrealized losses attributable to the revaluation of any asset, (vii) unrealized foreign currency losses, (viii) non-cash compensation expenses (ix) depreciation and amortization, including amortization of fees related to the consummation of transactions contemplated under this Agreement, (x) non-cash losses relating to hedging activities and (xi) non-recurring or non-cash items expensed during the specified period that have been approved by the Initial Lender as add-backs to EBITDA (such approval not to be unreasonably withheld, conditioned or delayed), minus (c) to the extent increasing Net Income, the sum of, without duplication, (i) unrealized gains attributable to the revaluation of any asset, (ii) unrealized foreign currency gains, (iii) non-cash gains relating to hedging activities, (iv) amounts for other non-cash gains increasing Net Income for such period (excluding any such non-cash item to the extent it represents the reversal of an accrual or reserve for potential cash item in any prior period) and (v) other non-recurring or non-cash gains earned during the specified period.

“EEA Financial Institution” means (a) any credit institution or investment firm established in any EEA Member Country that is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country that is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country that is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

“Eligible Assignee” means (a) a Lender or any of its Affiliates, (b) any Person managed by a Lender or any of its Affiliates or (c) any financial or other institution reasonably acceptable to the Majority Lenders (such consent not to be unreasonably withheld, conditioned or delayed) (other than a

Co-Borrower or an Affiliate thereof); provided, however, prior to an Event of Default arising pursuant to Section 6.01(a) or 6.01(d) in no event shall a Disqualified Lender constitute an Eligible Assignee.

“Eligible Portfolio Asset” means (i) each of the Initial Portfolio Assets, (ii) each other General Partner Investment owned by a Loan Party which complies with the Investment Guidelines (as determined at the time such Eligible Portfolio Asset is included in the Borrowing Base) including, any assets received as Distributions In Kind, (iii) each other Portfolio Asset that constitutes a Loan Asset that is approved by the Servicer, and in each case, that is not subject to any security interest, Lien or other encumbrance other than those granted to Administrative Agent herein (subject to Permitted Liens), subject to removal from the Borrowing Base and a corresponding reduction to the LTV, at the election of the Servicer if there has been (a) a Material Investment Event, (b) a Material Modification, (c) Underlying Obligor Default, (d) proceedings pending or, to any Loan Party’s knowledge, threatened (i) with respect to a Bankruptcy Event with respect to any applicable Obligor or (ii) wherein any applicable Obligor, any other party or any governmental entity has alleged that such Portfolio Asset or its related Underlying Agreement or any of its Required Portfolio Documents is illegal or unenforceable has occurred and is continuing and (e) in connection with a Sale under Section 2.11; provided, that any Eligible Portfolio Asset so removed from the Borrowing Base shall cease to be an Eligible Portfolio Asset; provided, further, that with respect to each Initial Portfolio Asset described in Schedule VII, each such Initial Portfolio Asset shall be deemed not to be an Eligible Portfolio Asset, and shall not be included in the Borrowing Base or the calculation of the LTV until the Post Closing Condition with respect to such Initial Portfolio Asset is satisfied, as determined by the Administrative Agent, acting at the direction of the Majority Lenders.

“Eligible Receivable” means an amount which is due and owing with respect to an Eligible Portfolio Asset which is not more than 60 days past due and for which the applicable Loan Party reasonably believe such amount will be paid prior to the end of such 60 day period.

“Employee Benefit Plan” means any “employee benefit plan” as defined in Section 3(3) of ERISA which is or was subject to ERISA (other than a Pension Plan or Multiemployer Plan) and maintained by, contributed to, or required to be maintained or contributed to by a Co-Borrower, Holdings or any ERISA Affiliate.

“Environmental Laws” means any and all foreign, federal, State and local laws, statutes, ordinances, rules, regulations, permits, licenses, approvals, interpretations and orders of courts or Governmental Authorities, relating to the protection of human health or the environment, including, but not limited to, requirements pertaining to the manufacture, processing, distribution, use, treatment, storage, disposal, transportation, handling, reporting, licensing, permitting, investigation or remediation of Hazardous Materials.

“Equity Interests” means, all shares, options, warrants, general or limited partnership interests, membership interests or other equivalents (regardless of how designated) of or in a corporation, partnership, limited liability company or equivalent entity, whether voting or nonvoting, including common stock, preferred stock or any other “equity security” (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the Securities and Exchange Commission under the Exchange Act).

“Equity Investment” means any investment or co-investment made by a Loan Party directly in the Equity Interests of another Person.

“Equity Investment Agreement” means, the investment agreement, co-investment agreement, partnership agreement, limited liability company agreement, shareholder agreement, subscription agreement, or other similar document governing and evidencing an Equity Investment, including any side letters relating thereto to which a Loan Party is a party or is otherwise binding on such Loan Party.

“Equity Investment Capital Call” means with respect to an Equity Investment, a call upon all or any Obligor for payment of all or any portion of their Equity Investment Capital Commitment.

“Equity Investment Capital Commitment” means, with respect to any Equity Investment, the commitment, if any, of an Obligor to make Equity Investment Capital Contributions or otherwise providing funding to any Obligor in response to an Equity Investment Capital Call pursuant to the Equity Investment Agreement and any related subscription agreement or other offering materials governing such Equity Investment from time to time.

“Equity Investment Capital Contribution” means, for any Obligor with respect to any Equity Investment, any capital contribution or other funding made by such Obligor in response to an Equity Investment Capital Call.

“Equity Investment Obligations” means, the obligations of any Person with respect to any Equity Investments (including any related Equity Investment Capital Commitment).

“Equity Investment Transfer Agreement” means, any transfer agreement or consent to transfer relating to an Equity Investment, to the extent required in connection with such transfer.

“ERISA” means the United States Employee Retirement Income Security Act of 1974, as amended from time to time.

“ERISA Affiliate” means any trade or business (whether or not incorporated) under common control with a Loan Party or Holdings within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code or Section 302 of ERISA).

“ERISA Event” means (a) the occurrence of any Reportable Event; (b) the failure by Holdings, a Loan Party or any ERISA Affiliate to meet the minimum funding standard of Section 412 or 430 of the Code and Section 302 or 303 of ERISA with respect to any Pension Plan (whether or not waived), the failure to make by its due date a required installment under Section 430(j) of the Code or Section 303(j) of ERISA with respect to any Pension Plan or the failure by Holdings, a Loan Party or any ERISA Affiliate to make any required contribution to a Multiemployer Plan; (c) the determination that any Pension Plan is considered an at-risk plan or that any Multiemployer Plan is endangered or is in critical status within the meaning of Section 430, 431 or 432 of the IRC or Section 303, 304 or 305 of ERISA, as applicable; (d) the incurrence by Holdings, a Loan Party or any ERISA Affiliate of any liability under Title IV of ERISA, other than for PBGC premiums not yet due; (e) the provision to Holdings, a Loan Party or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Pension Plan or Multiemployer Plan or to appoint a trustee to administer any Pension Plan or Multiemployer Plan or the occurrence of any event or condition which would reasonably be expected to constitute grounds under Section 4041 or 4042 of ERISA for the termination of, or the appointment of a trustee to administer any Pension Plan or Multiemployer Plan or the institution by the PBGC of proceedings to terminate any Pension Plan or Multiemployer Plan; (f) the withdrawal of a Holdings, Loan Party or any ERISA Affiliate from a Pension Plan or the termination of any such Pension Plan resulting in



liability pursuant to Section 4063 or 4064 of ERISA or the cessation of operations by Holdings, a Loan Party or any ERISA Affiliate that would be treated as a withdrawal from a Pension Plan under Section 4062(e) of ERISA; (g) the imposition of liability on a Holdings, Loan Party or any ERISA Affiliate pursuant to Section 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA; (h) the partial or complete withdrawal (within the meaning of Section 4203 and 4205 of ERISA) by Holdings, a Loan Party or any ERISA Affiliate from any Multiemployer Plan or the receipt by Holdings, a Loan Party or any ERISA Affiliate of notice from any Multiemployer Plan that it is in insolvency pursuant to Section 4245 of ERISA, or that it intends to terminate or has terminated under Section 4041A or 4042 of ERISA; (i) the assertion of a material claim (other than routine claims for benefits) against any Employee Benefit Plan, or the assets thereof, or against a Holdings, Loan Party, or any ERISA Affiliate in connection with any Employee Benefit Plan; or (j) the imposition of a Lien on the property of Holdings, a Loan Party pursuant to Section 430(k) of the Code or pursuant to Section 303(k) or 4068 of ERISA or otherwise.

“Erroneous Payment” has the meaning assigned to it in Section 7.10(a).

“Event of Default” has the meaning assigned to that term in Section 6.01.

“Excepted Persons” has the meaning assigned to that term in Section 11.11(a).

“Exchange Act” means the United States Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“Excluded Amounts” means, without duplication, (a) any amount received in any Collection Account which is attributable to the payment of any non-income Tax, fee or other charge imposed by any Governmental Authority on any Portfolio Asset or on any Underlying Collateral, and (b) any amount received in the Collection Account with respect to any Portfolio Asset that is no longer owned by a Loan Party pursuant to a Sale pursuant to Section 2.11(a) to the extent such received amount is attributable to a time after the effective date of such Sale and (c) amounts deposited in any Collection Account which were not required to be deposited therein or were deposited in error.

“Excluded Assets” has the meaning assigned to that term in Section 2.10(c).

“Excluded Taxes” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient under any Transaction Document: (a) any Taxes imposed on (or measured by) net income (however denominated), any franchise Taxes, and any branch profits Taxes, in each case by (i) the jurisdiction under the laws of which such Recipient is organized or in which such Recipient’s principal office is located or, in the case of any Lender, in which such Lender’s applicable lending office is located or (ii) a jurisdiction as the result of any other present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Transaction Document, or sold or assigned an interest in any Transaction Document or any Advance, loan or commitment made pursuant to this Agreement); (b) in the case of a Lender, United States federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in an Advance or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Advance or Commitment (other than pursuant to an assignment requested by Section 2.15(b)) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.13, amounts with

respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office; (c) Taxes attributable to such Recipient's failure to comply with Section 2.13(e) or (f); and (d) any withholding Taxes imposed under FATCA.

"Facility Increase" has the meaning assigned to that term in Section 2.14(a).

"Facility Increase Notice" has the meaning assigned to that term in Section 2.14(a).

"Facility Termination Date" means the date on which the aggregate outstanding principal amount of the Advances have been repaid in full and all accrued and unpaid interest thereon, all Fees and all other Obligations (other than contingent indemnification obligations not then due and owing) have been paid in full, the Commitments of the Lenders hereunder have been terminated and the Co-Borrowers have no further right to request any additional Advances.

"Facility Upsize Denial" has the meaning assigned to that term in Section 2.04(d).

"FATCA" means Sections 1471 through 1474 of the Code as in effect on the date hereof (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any current or future regulations promulgated thereunder or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code as of the date hereof (or any amended or successor version described above) and any intergovernmental agreements (or related rules, legislation or official administrative guidance) implementing such provisions of the Code or any non-U.S. laws implementing the foregoing.

"Federal Reserve Bank of New York's Website" means the website of the Federal Reserve Bank of New York at <http://www.newyorkfed.org>, or any successor source.

"Fee Letters" means the Agent Fee Letter, the Servicer Fee Letter, the Commitment Fee Letter and each other fee letter agreement entered into by and among the Co-Borrowers and any of the Administrative Agent, the Servicer, and any Lender in connection with the transactions contemplated by this Agreement.

"Fees" means the fees payable to the Servicer, the Administrative Agent, any Account Bank, any Lender or any other applicable agent or party pursuant to the terms of the Fee Letters or the other Transaction Documents.

"Foreign Pledge Agreements" means collectively, the Australian Pledge Agreement, the Guernsey Pledge Agreement, and the UK Pledge Agreement

"GAAP" means, generally accepted accounting principles as in effect from time to time in the United States.

"General Partner" means an entity into which a General Partner Investment was made.

"General Partner Investment" means, an Equity Investment the recipient of which is an entity that is responsible, either alone or with others, for managing, operating or Controlling an Investment Fund as a general partner, managing member or other Person of similar authority.

“Governmental Authority” means, with respect to any Person, any nation or government, any state or other political subdivision thereof or any entity, authority, agency, division or department exercising the executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to a government and any court or arbitrator having jurisdiction over such Person (including any supra-national bodies such as the European Union or the European Central Bank) and any group or body charged with setting financial accounting or regulatory capital rules or standards (including the Financial Accounting Standards Board, the Bank for International Settlements or the Basel Committee on Banking Supervision or any successor or similar authority to any of the foregoing).

“Guarantee” of or by any Person (the “guarantor”) shall mean any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the “primary obligor”) in any manner, whether directly or indirectly and including any obligation, direct or indirect, of the guarantor (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (ii) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (iv) as an account party in respect of any letter of credit or letter of guaranty issued in support of such Indebtedness or obligation; provided that the term “Guarantee” shall not include endorsements for collection or deposit in the ordinary course of business. The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee is made or, if not so stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder) as determined by such Person in good faith. The term “Guarantee” used as a verb has a corresponding meaning.

“Guarantors” means each UK Guarantor and each other Person that from time to time guaranties the Obligations.

“Guaranty Agreement” means that certain Guaranty Agreement, dated as of the date hereof, by and among the UK Guarantors from time to time party thereto and the Administrative Agent.

“Guernsey Pledge Agreement” means the Guernsey law governed document entitled "Security Interest Agreement" dated on or around the date of this Agreement between Kudu and the Administrative Agent and creating a security interest in and to the collateral described therein to the Administrative Agent in favor of the Lenders

“Hazardous Materials” means any substances or materials (a) that are or become defined as hazardous wastes, hazardous substances, pollutants, contaminants, chemical substances or mixtures or toxic substances under any Environmental Law; (b) that are toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise harmful to human health or the environment and are or become regulated as such by any Governmental Authority; (c) the presence of which require investigation or remediation under any Environmental Law or common law, (d) the discharge or emission or release of which requires a permit or license under any Environmental Law or other approval by a Governmental Authority; (e) that are deemed to constitute a nuisance or a trespass that pose a health or safety hazard to Persons or neighboring properties; (f) that consist of underground or aboveground storage tanks, whether empty, filled or partially filled with any substance; or (g) that

contain, without limitation, asbestos, polychlorinated biphenyls, urea formaldehyde foam insulation, petroleum hydrocarbons, petroleum derived substances or waste, crude oil, nuclear fuel, natural gas or synthetic gas.

“Holdings” has the meaning assigned to that term in the preamble hereto.

“Holdings AML and International Trade Default” means, any one of the following events: (a) that any representation contained Section 4.05(l) is or becomes false at any time; or (b) a Loan Party fails to comply with the covenant contained in Section 11.21(d)(i) in any material respect at any time.

“IFRS” means international accounting standards within the meaning of International Accounting Standards Regulation 1606/2002 to the extent applicable to the relevant financial statements delivered under or referred to herein.

“Indebtedness” of any Person means, without duplication, (i) all obligations of such Person for borrowed money, (ii) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (iii) all obligations of such Person in respect of the deferred purchase price of property or services (other than trade payables incurred in the ordinary course of business), (iv) all obligations of such Person under any conditional sale or other title retention agreement(s) relating to property acquired by such Person, (v) all Capital Lease Obligations of such Person, (vi) all obligations, contingent or otherwise, of such Person in respect of letters of credit, acceptances or similar extensions of credit, (vii) all Guarantees of such Person of the type of Indebtedness described in clauses (i) through (vi) above, (viii) all Indebtedness of a third party secured by any Lien on property owned by such Person, whether or not such Indebtedness has been assumed by such Person, (ix) all obligations of such Person, contingent or otherwise, to purchase, redeem, retire or otherwise acquire for value any Equity Interests of such Person (other than pursuant to any repurchase or redemption offer voluntarily made by such Person), (x) all net obligations of such Person in respect of derivative transactions and (xi) all Off-Balance Sheet Liabilities.

“Indemnified Amounts” has the meaning assigned to that term in Section 10.01(a).

“Indemnified Party” has the meaning assigned to that term in Section 10.01(a).

“Indemnified Taxes” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of a Loan Party or Holdings under any Transaction Document and (b) to the extent not otherwise described in (a), Other Taxes.

“Indorsement” has the meaning specified in Section 8-102(a)(11) of the UCC, and “Indorsed” has a corresponding meaning.

“Information” has the meaning assigned to that term in Section 11.11(e).

“Initial Advance” means the first Advance made to a Co-Borrower pursuant to Article II.

“Initial Lender” means, Massachusetts Mutual Life Insurance Company.

“Initial Portfolio Assets” means, the General Partnership Investments owned by a Loan Party on the Closing Date, as set forth on Schedule I delivered on the Closing Date.

“Interest Reserve Account” means the account established at the Account Bank which shall be subject to an Account Control Agreement pursuant to which the Co-Borrowers shall maintain the Interest Reserve Amount.

“Interest Reserve Amount” means as of any date of determination an amount equal to the aggregate amount of interest payments payable on Indebtedness arising under this Agreement for the most recent quarter then ended multiplied by (4) four, which amount may consist of cash and/or Eligible Receivables expected to accrue as of such quarter-end; provided that the aggregate amount of Eligible Receivables may not exceed more than 30% of the Interest Reserve Amount.

“Investment Advisers Act” means the U.S. Investment Advisers Act of 1940, as amended from time to time.

“Investment Fund” means any investment vehicle (regardless of form), including any intermediate vehicle, for which a General Partner acts as the general partner, managing member or other Person of similar authority or having a similar role.

“Investment Fund Agreements” means for any Investment Fund, its organizational documents of which a Responsible Person of a Co-Borrower has knowledge, including: (a) in the case of any limited partnership, exempted limited partnership or similar form of business entity, the limited partnership agreement, exempted limited partnership agreement of such Person, agreement with any investor or partner, offering document, private placement memorandum, or other agreement to which the Investment Fund is a party; (b) in the case of any limited liability company, the certificate of formation, limited liability company agreement and/or operating agreement of such Person, agreement with any investor or partner, offering document, private placement memorandum, or other agreement to which the Investment Fund is a party; and (c) in the case of a corporation or an exempted company, the certificate of incorporation and the memorandum of association and articles of association and/or the bylaws (or equivalent) of such Person, agreement with any investor or partner, offering document, private placement memorandum, or other agreement to which the Investment Fund is a party.

“Investment Guidelines” means the investment guidelines set forth on Schedule V as may be amended from time to time with the prior written consent of the Servicer, not to be unreasonably withheld, conditioned or delayed.

“Investment Value” means, as of any date of determination, with respect to any Eligible Portfolio Asset, the fair value calculated in accordance with Applicable Accounting Principles and subject to the Valuation Policy, as reported by the Loan Parties in their latest quarterly reports delivered by the Administrative Borrower to the Administrative Agent; provided that if the Initial Lender believes in good faith and determines in a commercially reasonable manner that the valuation does not reflect the accurate value of an Eligible Portfolio Asset then the Initial Lender may select a third party valuation firm with the consent of the Administrative Borrower, and the value for such Eligible Portfolio Asset shall be the Lender’s new valuation (the reasonable and documented out-of-pocket costs and expenses of the first new valuation requested by the Initial Lender during any twelve-month period will be paid, on a joint and several basis, by the Co-Borrowers and the costs and expenses of each subsequent new valuation requested by the Initial Lender during such twelve-month period will be paid by the Lenders).

“Kudu” has the meaning given to that term in the preamble hereto.

“Kudu US” has the meaning given to that term in the preamble hereto.



“Lender” means collectively, the Initial Lender and any other Person to whom any Lender assigns any part of its rights and obligations under this Agreement and the other Transaction Documents in accordance with the terms of Section 11.04 and any other party that becomes a lender pursuant to an Assignment and Assumption Agreement.

“Lender Covered Entity” means each (a) Lender and its subsidiaries and (b) each Person that, directly or indirectly, is in control of a Person described in clause (a) above. For purposes of this definition, control of a Person shall mean the direct or indirect (i) ownership of, or power to vote, 25% or more of the issued and outstanding Equity Interests having ordinary voting power for the election of directors of such Person or other Persons performing similar functions for such Person or (ii) power to direct or cause the direction of the management and policies of such Person whether by ownership of Equity Interests, contract or otherwise.

“LIBOR” means, for any Advance for any LIBOR Period, the greater of (a) the rate per annum appearing on the applicable Bloomberg LIBOR Screen Page (or any successor or substitute page or such other commercially available source providing such quotations as may be designated by the Initial Lender from time to time) (the “LIBOR Screen Rate”) as the London interbank offered rate for deposits in Dollars for a LIBOR Period equal to three (3) months at approximately 11:00 a.m., London time, two (2) Business Days prior to the beginning of such LIBOR Period and (b) 0.25%; provided that if such rate does not appear on such page or service or such page or service shall not be available but LIBOR is still ascertainable, then LIBOR shall be the rate per annum equal to the rate determined by the Administrative Agent to be the average of the rates per annum at which deposits in Dollars for delivery on the first day of such LIBOR Period in same day funds in the approximate amount of the LIBOR Advance with a term equivalent to such LIBOR Period would be offered by three major banks in the London interbank eurodollar market at their request, determined as of approximately 11:00 A.M. (London time), two (2) Business Days prior to the first (1st) day of such LIBOR Period.

“LIBOR Period” means, with respect to any Advance, (a) if there are no Advances Outstanding prior to an Advance being made, the period commencing on the Advance Date for such Advance to but excluding the immediately following Determination Date with respect to a Payment Date, and (b) otherwise, each successive period from and including each Determination Date with respect to a Payment Date to but excluding the following Determination Date; provided that, if a LIBOR Period would extend beyond the Maturity Date, then such LIBOR Period shall end on the Maturity Date.

“LIBOR Screen Rate” has the meaning assigned to that term in the definition of “LIBOR”.

“Lien” means any mortgage or deed of trust, pledge, hypothecation, collateral assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, claim, preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale, lease or other title retention agreement, sale subject to a repurchase obligation, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing and including any “security interest” under the Australian PPSA, but excluding any interest described in section 12(3) of the Australian PPSA that does not, in substance, secure payment or performance of an obligation), or the filing of or financing statement perfecting a security interest under the UCC or comparable law of any jurisdiction.

“Loan Asset” means (a) any loan interest in the loan obligations of any applicable Obligor, (b) any note, bond, debenture or other debt security, (c) any such Loan Asset owned by or Transferred to a Loan Party and (d) the Australian Collateral, which includes (i) the Portfolio Asset File therefor, and (ii) all right, title and interest in and to (A) such loan interest, note, bond, debenture or other debt security, (B) the related Underlying Loan Agreement and (C) any Underlying Collateral.

“Loan Parties” means, each Co-Borrower, each UK Guarantor, and each other Person that (i) executes a guaranty of the Obligations and/or (ii) grants a Lien on all or substantially all of its assets to secure payment of the Obligations.

“LTV” means, as of any date of determination, the ratio of (i) Advances Outstanding as of such date to (ii) the aggregate Investment Value of all Eligible Portfolio Assets plus cash and cash equivalents which are deposited in an Account subject to an Account Control Agreement as of such date.

“LTV Certificate” means, a certificate setting forth the calculation of LTV as of the applicable date of determination, substantially in the form of Exhibit A, prepared by the Administrative Borrower and in form reasonably acceptable to the Servicer.

“LTV Trigger Event” means, if, as of any date of determination, after the six month anniversary of the Closing Date, the LTV exceeds the Maximum LTV Percentage.

“Majority Lenders” means the Lenders representing an aggregate of more than 50% of the aggregate Commitments. The Commitments of any Defaulting Lender shall be disregarded in determining the Majority Lenders at any time.

“Management Contracts” means the management contracts entered into by any Loan Party in connection with the management of a Portfolio Asset.

“Market Trigger Event” means, as of any date of determination, (i) an Event of Default has occurred and is continuing, (ii) an LTV Trigger Event has occurred and is continuing, (iii) the Debt Service Coverage Ratio (commencing with the period ending September 30, 2021) as of such date is less than 3.0:1.0, (iv) [reserved], (v) a Material Investment Event or a Material Modification has occurred and is continuing, (vi) the Eligible Portfolio Assets consist of less than six (6) separate General Partnership Investments or the aggregate Investment Value of all Eligible Portfolio Assets is less than \$300,000,000, or (vii) the occurrence of a Ratings Event. For the avoidance of doubt, the occurrence of a Market Trigger Event under this Agreement shall not constitute an Event of Default.

“Material Adverse Effect” means (a) a material adverse effect on the business, financial condition, operations, liabilities (actual or contingent) or performance of Holdings and the Loan Parties, taken as a whole, (b) a material adverse effect on the validity or enforceability of this Agreement or any other Transaction Document, (c) a material impairment of the rights and remedies of the Administrative Agent, the Servicer, any Lender or any other Secured Parties with respect to matters arising under this Agreement or any other Transaction Document, (d) a material adverse effect on the ability of Holdings and the Loan Parties, taken as a whole, to perform their respective obligations under this Agreement or any other Transaction Document or (e) a material adverse effect on the existence, perfection, priority or enforceability of the Administrative Agent’s or the other Secured Parties’ Lien on the Collateral Portfolio; provided that, in each case, there shall be no Material Adverse Effect to the extent such Material Adverse Effect arises from the action (or inaction) of the Administrative Agent, the Servicer, any Lender or any other Secured Party.

**“Material Investment Event”** means, any of the following with respect to an Eligible Portfolio Asset that is an Equity Investment (a) a Bankruptcy Event, (b) a Partnership Default Trigger Event, (c) a complete write-down or write-off or any reduction in excess of 50% of the Investment Value of such Eligible Portfolio Asset by a Co-Borrower and (d) the occurrence of any “change of control”, “key man event” (or such similar term or concept) under the Constituent Documents of such Eligible Asset that, in the reasonable determination of the Servicer, results in a reduction in excess of 50% of the Investment Value of such Eligible Portfolio Asset. In the event of a Material Investment Event, the relevant Eligible Portfolio Asset with respect to which such Material Investment Event has occurred shall be excluded from the Borrowing Base and a corresponding reduction to the LTV.

**“Material Modification”** means, any of the following with respect to an Eligible Portfolio Asset that is a Loan Asset, any amendment or waiver of, or modification or supplement to, or termination, cancellation or release of, an Underlying Loan Agreement for such Eligible Portfolio Asset, which is material and adverse to the interests of the Lenders, the Co-Borrowers or the Portfolio Assets taken as a whole. In the event of a Material Modification, the relevant Eligible Portfolio Asset with respect to which such Material Modification has occurred shall be excluded from the Borrowing Base and a corresponding reduction to the LTV.

**“Maturity Date”** means the earlier to occur of (a) the fifteenth (15th) anniversary of the Closing Date, or if such date is not a Business Day, the immediately preceding Business Day, and (b) the date the Advances are accelerated upon the occurrence of an Event of Default.

**“Maximum Availability”** means, at any time, the lesser of (a) the Maximum Facility Amount at such time and (b) the Borrowing Base at such time.

**“Maximum Facility Amount”** means, at any time, an amount equal to the aggregate Commitments of the Lenders at such time. The Maximum Facility Amount on the Closing Date is \$300,000,000.

**“Maximum LTV Percentage”** means, as of any date of determination, the applicable percentage set forth below.

Year after Closing	0 to end of year 3	Beginning of year 4 to end of year 6	Beginning of year 7 to end of year 8	Beginning of year 9 to end of year 10	Thereafter
Max LTV	50%	40%	25%	15%	0%

**“Maximum Rate”** has the meaning assigned to that term in [Section 2.05\(g\)](#).

**“Minimum Usage”** means an amount equal to seventy percent (70%) of the Maximum Facility Amount.

**“Moody’s”** means Moody’s Investors Services, Inc., or any successor thereto.



“Multiemployer Plan” means a “multiemployer plan” as defined in Section 4001(a)(3) of ERISA to which Holdings, a Loan Party or any ERISA Affiliate contributed or had any obligation to contribute on behalf of its employees at any time during the current year.

“Multiple Employer Plan” means an employee benefit plan (as defined in Section 3(3) of ERISA) which has two or more contributing sponsors (including Holdings, each Loan Party or any ERISA Affiliate) at least two of whom are not under common control, as such a plan is described in Section 4064 of ERISA.

“NAIC” has the meaning assigned to that term in Section 3.01(g).

“Net Income” means for any period, the net income (or loss) of the Loan Parties, determined on a consolidated basis, after deduction of all expenses, taxes, and other proper charges, determined in accordance with GAAP.

“Non-Call Period” has the meaning assigned to that term in Section 2.04(d).

“Non-Consenting Lender” means any Lender that does not approve any consent, waiver, amendment, modification or termination that (a) requires the approval of all Lenders or all affected Lenders in accordance with the terms of Section 11.01 and (b) has been approved by the Majority Lenders.

“Non-Dollar Amount” has the meaning assigned to that term in the definition of “Dollar Equivalent.”

“Non-U.S. Lender” has the meaning assigned to that term in Section 2.13(e).

“Non-Usage Fee” shall mean, for any day, from and including the Closing Date to, but excluding, the Facility Termination Date and other than any day on which a Market Trigger Event has occurred and is continuing (with written notice of such Market Trigger Event provided to the Administrative Agent), a fee equal to the greater of (a) zero and (b) 0.50% multiplied by the difference between (i) the Maximum Facility Amount and (ii) the Advances Outstanding on such day. For purposes of this definition, Advances requested by the Administrative Borrower but not funded by a Defaulting Lender shall be deemed funded for purposes of calculating Advances Outstanding.

“Notice of Borrowing” means a written notice of borrowing from the Administrative Borrower to the Administrative Agent substantially in the form of Exhibit B.

“Notice of Exclusive Control” means a “Notice of Exclusive Control” or similar notice as defined in the applicable Account Control Agreement, or the UK Pledge Agreement, as applicable.

“NRSRO” has the meaning assigned to that term in Section 3.01(g).

“Obligations” means, all present and future indebtedness and other liabilities and obligations (howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, or due or to become due) of the Loan Parties to the Lenders, the Administrative Agent, the Account Bank, the Servicer or any other Secured Party arising under this Agreement or any other Transaction Document and shall include all liability for principal of and interest on the Advances, Fees, indemnifications and other amounts due or to become due by the Loan Parties to the Lenders, the Administrative Agent, the

Account Bank, the Servicer and any other Secured Party under this Agreement or any other Transaction Document, including any Fee Letter, and costs and expenses payable by the Loan Parties to the Lenders, the Administrative Agent, the Account Bank, the Servicer or any other Secured Party, including reasonable and documented attorneys' fees, costs and expenses, including interest, fees and other obligations that accrue after the commencement of an insolvency proceeding (in each case whether or not allowed as a claim in such insolvency proceeding).

"Obligor" means, collectively, each Person (i) that has issued Equity Interests of any Equity Investment held or acquired directly by a Co-Borrower or a UK Guarantor, as applicable, or (ii) that is obligated to make payments under a Loan Agreement, including any guarantor thereof.

"OFAC" has the meaning assigned to that term in the definition of "Sanctions and Anti-Terrorism Laws."

"Off-Balance Sheet Liabilities" of any Person shall mean (i) any liability of such Person under any sale and leaseback transactions that do not create a liability on the balance sheet of such Person or (ii) any obligation arising with respect to any other transaction which is the functional equivalent of or takes the place of borrowing but which does not constitute a liability on the balance sheet of such Person.

"Other Taxes" has the meaning assigned to that term in Section 11.07(b).

"Pari Passu Incremental Debt" means Indebtedness of the Co-Borrowers in respect of one or more senior secured credit facilities that (x) may be secured by Liens on the Collateral that are pari passu with or junior to the Liens of the Administrative Agent, and (y) may rank pari passu with or subordinated to, the Obligations, and that are issued or made in lieu of any Facility Increase pursuant to a loan agreement or otherwise; provided, that no Pari Passu Incremental Debt shall be permitted unless the Lenders fail to provide or arrange a Facility Increase pursuant to Section 2.14; provided, further that:

(1) the aggregate principal amount of Pari Passu Incremental Debt shall not exceed the lesser of (i) the amount of the requested Facility Increase not otherwise provided or arranged by the Lenders and (ii) \$50,000,000;

(2) the conditions otherwise applicable to a Facility Increase pursuant to Section 2.14 are satisfied immediately after giving effect thereto;

(3) such Pari Passu Incremental Debt shall (i) have terms substantially identical to, or (taken as a whole) no more favorable (as reasonably determined by the Administrative Borrower and the Initial Lender) to the lenders or holders providing such Pari Passu Incremental Debt than, those applicable to the then existing Advances and Obligations hereunder and the documentation relating thereto shall be in form and substance reasonably satisfactory to the Initial Lender; and

(4) the lenders providing such Pari Passu Incremental Debt shall be acceptable to the Initial Lender, such approval not to be unreasonably withheld, conditioned or delayed.

"Participant" has the meaning assigned to the term in Section 11.04(d).

"Participant Register" has the meaning assigned to that term in Section 2.03(c).

“Partnership Default Trigger Event” means, on any date of determination, a default by any Loan Party, directly or indirectly in its material payment obligations relating to any Equity Investments with an aggregate Investment Value as of such date in excess of 15% of the Borrowing Base (including failure of any Loan Party, directly or indirectly with respect to its Equity Investment Obligations, including failure to fund any duly called Equity Investment Capital Call in respect of such Equity Investment beyond any applicable notice and cure period contained in the Constituent Documents of the issuer of such Equity Investment); provided, that, in the event that the aggregate Investment Value of such Equity Investments as of such date is 15% or less of the Borrowing Base, such default shall not constitute a “Partnership Default Trigger Event” and in lieu thereof such amount shall be deducted from the Borrowing Base.

“Payment Date” means (a) the last Business Day of each calendar quarter (commencing on June 30, 2021) and (b) the Maturity Date.

“Payment Date Report” means a report delivered by the Administrative Borrower and approved by the Servicer pursuant to Section 2.09, substantially in the form of Exhibit F.

“PBG” means the United States Pension Benefit Guaranty Corporation referred to and defined in ERISA.

“Pension Plan” means any employee pension benefit plan (including a Multiple Employer Plan but not a Multiemployer Plan) that is maintained or is contributed to by Holdings, a Loan Party or any ERISA Affiliate and is either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Code.

“Permitted Debt” means any of the following: (a) Indebtedness arising in connection with the endorsement of instruments for deposit, (b) Indebtedness secured by liens of the type described in clause (a) or (c) of the definition of “Permitted Liens”, (c) capital commitments or other funding requirements under any Portfolio Asset, (d) obligations payable to clearing agencies, brokers or dealers in connection with the purchase or sale of securities in the ordinary course of business, (e) Indebtedness in respect of netting services and overdraft protections and otherwise in connection with deposit accounts, (f) obligations to prime brokers and derivative counterparties in connection with transactions entered into in the ordinary course of business, (g) Pari Passu Incremental Debt and (h) accrued and unpaid earn-outs and other similar contingent consideration obligations.

“Permitted Liens” means any of the following: (a) Liens for Taxes if such Taxes shall not at the time be due or if a Person shall currently be contesting the validity thereof in good faith by appropriate proceedings and with respect to which reserves in accordance with Applicable Accounting Principles have provided for on the books of such Person; (b) Liens imposed by law, such as materialmen’s, warehousemen’s, mechanics’, carriers’, workmen’s and repairmen’s Liens and other similar Liens, arising by operation of law in the ordinary course of business for sums that are not overdue or are being contested in good faith by appropriate proceedings and with respect to which reserves in accordance with Applicable Accounting Principles have been provided on the books of the applicable Person; (c) Liens granted pursuant to or by the Transaction Documents; (d) Liens in favor of the Account Bank (i) which arise as a matter of law on items in the course of collection or encumbering deposits or other similar Liens (including the right to set off), (ii) which result from contractual rights of set off relating to the establishment of depository relations with such financial institution or relate to pooled deposit or sweep accounts to permit satisfaction of overdraft or similar obligations incurred in the ordinary course

of business, or (iii) routinely imposed on securities or deposit accounts by the Account Bank, to the extent permitted under the Account Control Agreement, (e) Liens of clearing agencies, broker-dealers and similar Liens incurred in the ordinary course of business attaching to securities (or proceeds) being purchased or sold or reasonable and customary initial deposits; (f) Liens on securities or other property in favor of prime brokers or Persons holding such securities or other property in a custodial capacity to secure fees and other amounts owed to such prime brokers or other Persons and (g) Liens arising out of judgments or awards that do not constitute an Event of Default under Section 6.01(e).

“Person” means an individual, limited partnership, partnership, corporation (including a statutory or business trust), limited liability company, joint stock company, trust, unincorporated association, sole proprietorship, joint venture, government (or any agency or political subdivision thereof) or other entity.

“Plan Assets” means the “plan assets” of an “employee benefit plan” subject to Title I of ERISA or a “plan” subject to Section 4975 of the Code, as determined under 29 C.F.R. Section 2510.3-101, as modified by Section 3(42) of ERISA.

“Pledged Equity” means the US Pledged Equity and the UK Pledged Equity.

“Portfolio Asset” means, collectively, (i) all of the Loan Parties’ Equity Investments, (ii) any Loan Asset held by a Loan Party, which Equity Investments, Loan Assets or ownership interest includes, as applicable, (a) the Portfolio Asset File therefor, and (b) all right, title and interest of such Loan Party in and to (i) such debt interest, and (ii) the related Underlying Agreement and any Underlying Collateral.

“Portfolio Asset Assignment” means each (a) Equity Investment Transfer Agreement, and (b) assignment or other agreement pursuant to which any Portfolio Asset not originated by a Loan Party is Transferred to a Loan Party (i) in a form substantially based upon the form document for loan assignments of the Loan Syndications and Trading Association, (ii) in a form substantially based upon the form document for assignments required by the related Underlying Agreement, or (iii) in a form reasonably agreed to by the Co-Borrowers and reasonably acceptable to the Majority Lenders on or prior to the Closing Date or Cut-Off Date for such Portfolio Asset, as the case may be.

“Portfolio Asset Checklist” means, with respect to each Portfolio Asset, an electronic or hard copy, as applicable, of a checklist delivered, by or on behalf of each Loan Party to the Servicer of all Required Portfolio Documents and all other agreements, instruments, certificates or other documents and items required to be executed or delivered in connection with a Portfolio Asset, including the Required Portfolio Documents therefor.

“Portfolio Asset File” means, with respect to each Portfolio Asset, a file containing each of the agreements, instruments, certificates and other documents and items set forth on the Portfolio Asset Checklist with respect to such Portfolio Asset.

“Portfolio Asset Schedule” means, (a) a schedule of the Portfolio Assets and setting forth for each such Portfolio Asset (i) the legal name of the applicable Obligor, (ii) the current principal balance or nominal value or amount or percentage ownership interest held by a Loan Party, as applicable, (iii) any Portfolio Asset Assignment for each Portfolio Asset, (iv) whether such Portfolio Asset is an Eligible Portfolio Asset and (v) the other information specified for a Portfolio Asset as set forth on Schedule I, as delivered by or on behalf of such Loan Party, as applicable, to the Servicer and as updated from time to

time as provided herein or (b) a Servicing Report containing the information described in clauses (a)(i) through (a)(v) above.

“Post Closing Condition” means, each action that each Loan Party, as applicable, is required to take within the applicable periods set forth in Schedule VII, subject to Section 5.01(dd).

“Potential Default” means, any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

“Prepayment Premium” means, in connection with any termination of any or all of the Commitments pursuant to Sections 2.04(d), a prepayment premium in an amount equal to: (i) after the Closing Date until (but excluding) the third anniversary of the Closing Date, 2% of the terminated portion of the Commitments in effect on the Closing Date with respect to any Change of Control Denial and 3% of the terminated portion of the Commitments in effect on the Closing Date with respect to a Facility Upsize Denial, (ii) on or after the third anniversary of the Closing Date until (but excluding) the sixth anniversary of the Closing Date, 2% of the Advances Outstanding on such date with respect to any Change of Control Denial and 3% of the Advances Outstanding on such date with respect to a Facility Upsize Denial, and (iii) on or after the start of the sixth anniversary of the Closing Date until (but excluding) the tenth anniversary of the Closing Date, 2% of the Advances Outstanding on such date. The Majority Lenders shall provide written notice to the Administrative Agent promptly following the occurrence of a Change of Control Denial or an Facility Upsize Denial.

“Pro Rata Share” means, with respect to any Lender, as of any date of determination, the ratio of such Lender’s Commitment to the aggregate Commitments of all Lenders, which shall be determined based upon its share of the outstanding Advances and unused Commitments at such time (or after the date on which the Advances have been paid in full and the Commitments are terminated in accordance with such Lender’s pro rata share immediately prior to the date on which the Advances are paid in full and the Commitments are terminated).

“Proceeds” means, with respect to the Collateral, all property that is receivable or received when such Collateral is collected, sold, liquidated, foreclosed, exchanged, or otherwise disposed of, whether such disposition is voluntary or involuntary, and includes all rights to payment with respect to any insurance relating to such Collateral.

“Qualified Institution” means (i) a depository institution or trust company organized under the laws of the United States or any one of the States thereof or the District of Columbia (or any domestic branch of a foreign bank), (a) that has either (1) a long-term unsecured debt rating of “Baa2” or better by Moody’s and “BBB” or better by S&P or (2) a short-term unsecured debt rating or certificate of deposit rating of “A-1” or better by S&P or “P-1” or better by Moody’s, (b) the parent corporation of which has either (1) a long-term unsecured debt rating of “Baa2” or better by Moody’s and “BBB” or better by S&P or (2) a short-term unsecured debt rating or certificate of deposit rating of “A-1” or better by S&P and “P-1” or better by Moody’s or (c) is otherwise acceptable to the Administrative Agent (acting at the direction of Majority Lenders) and (ii) the deposits of which are insured by the Federal Deposit Insurance Corporation.

“Ratings Event” has the meaning assigned to that term in Section 2.18.

“Recipient” means (a) the Administrative Agent, and (b) any Lender, as applicable.



“Records” means all documents relating to the Portfolio Assets, including books, records and other information executed in connection with the Transfer of and maintenance of the Portfolio Assets in the Collateral Portfolio or maintained with respect to the Collateral Portfolio and the related Obligors that a Loan Party or the Servicer has generated, or in which such Loan Party has otherwise obtained an interest.

“Register” has the meaning assigned to that term in Section 2.03(b).

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person’s Affiliates.

“Release Date” has the meaning assigned to that term in Section 2.11(b).

“Relevant Governmental Body” means the Board of Governors of the Federal Reserve System 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 or the Federal Reserve Bank of New York, or any successor thereto.

“Removal Effective Date” has the meaning assigned to that term in Section 7.05(b).

“Replacement Servicer” has the meaning assigned to that term in Section 8.01(c).

“Reportable Compliance Event” means any Lender Covered Entity or Borrower Covered Entity becomes a Sanctioned Person, or is charged by indictment, criminal complaint or similar charging instrument, arraigned, or custodially detained in connection with any alleged violation of any Sanctions and Anti-Terrorism Laws, Anti-Corruption Laws or Anti-Money Laundering Laws applicable to such Person.

“Reportable Event” means any of the events set forth in Section 4043(c) of ERISA, other than an event for which the 30 day notice period has been waived.

“Reporting Date” means the last day of each fiscal quarter or, if such date is not a Business Day, the next succeeding Business Day.

“Required Portfolio Documents” means, for each Portfolio Asset, copies of the following executed documents or instruments, all as specified on the related Portfolio Asset Checklist, to the extent applicable for such Portfolio Asset: (i) Underlying Agreements, (ii) Portfolio Asset Assignments, (iii) guaranty or indenture, (iv) security agreement or mortgage, (v) indemnities, (vi) stock purchase agreement, (vii) investor rights agreement, (viii) voting agreement, (ix) tax sharing agreement, (x) any Constituent Document, (xi) subscription agreement, (xii) side letter, (xiii) option agreement, (xiv) capital call agreement, (xv) warrant, and (xvi) any other executed documents or agreements related thereto as reasonably requested by the Initial Lender (but solely to the extent in the possession of a Co-Borrower).

“Resignation Effective Date” has the meaning assigned to that term in Section 7.05(a).

“Responsible Person” means any duly authorized officer or director of such Person or any other individual duly authorized to act for such Person with direct responsibility for the administration of this Agreement and also, with respect to a particular matter, any other duly authorized officer or director of

such Person or other individual duly authorized to act for such Person to whom such matter is referred because of such officer's or other individual's knowledge of and familiarity with the particular subject.

"Restricted Junior Payment" means, (a) any dividend or other distribution, direct or indirect, on account of any class of membership interests of a Loan Party now or hereafter outstanding (including any distribution with respect to the liability of such Loan Party's direct or indirect equity owners for taxes), except a dividend or other distribution paid solely in interests of that class of membership interests or in any pari passu or junior class of membership interests of such Loan Party, (b) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any class of membership interests of a Loan Party now or hereafter outstanding, (c) any payment made to redeem, purchase, repurchase or retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire membership interests of a Loan Party now or hereafter outstanding, or (d) any payment of management fees by a Loan Party.

"Revolving Loan Note" has the meaning assigned to such term in Section 2.03(a).

"S&P" means Standard & Poor's Rating Services, a division of The McGraw-Hill Companies, Inc., or any successor thereto.

"Sale" or "Sold" has the meaning assigned to that term in Section 2.11(a).

"Sanctioned Country" means a country or territory that is the subject of a comprehensive sanctions program maintained under any Sanctions and Anti-Terrorism Laws (as of the Closing Date, Cuba, Iran, North Korea, Syria and the Crimea region of Ukraine).

"Sanctioned Person" means (a) any Person included on a list of designated or restricted Persons maintained by OFAC (including, without limitation, OFAC's Specially Designated Nationals and Blocked Persons List and Sectoral Sanctions Identifications List), the U.S. Department of State, the United Nations Security Council, the European Union, Her Majesty's Treasury or any other relevant Governmental Authority, (b) any Person located, organized, or resident in a Sanctioned Country, or (c) any Person 50% or more owned, directly or indirectly, individually or in the aggregate, or controlled by any such Person or Persons described in clauses (a) or (b).

"Sanctions and Anti-Terrorism Laws" means any and all economic or financial sanctions or trade embargoes or anti-terrorism laws administered or enforced by the U.S. Government (including, without limitation, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC")), the United Nations Security Council, the European Union, Her Majesty's Treasury or, as to any person, any other applicable Governmental Authority, and any regulation, order, or directive promulgated, issued or enforced pursuant to such applicable laws, all as amended, supplemented or replaced from time to time.

"Scheduled Payment" means, each scheduled Distribution required to be made to a Loan Party on a Portfolio Asset.

"Secured Party" means, the Administrative Agent and each Lender party hereto from time to time (together with its permitted successors and assigns) and the Servicer; provided that in any context requiring a Secured Party to give direction to the Administrative Agent, such reference to Secured Party shall not include the Administrative Agent.

“Servicer” means Massachusetts Mutual Life Insurance Company, not in its individual capacity, in its capacity as servicer pursuant to the terms of this Agreement, together with its successors and permitted assigns, including any successor appointed pursuant to Article VIII.

“Servicer Fee Letter” means, if applicable, any fee letter or letters between the Servicer and each Co-Borrower entered on or before the Closing Date.

“Servicer Termination Event” means the occurrence of any one or more of the following events:

- (a) a Bankruptcy Event shall occur with respect to the Servicer;
- (b) the Servicer shall purport to assign its rights or obligations as “Servicer” hereunder (other than as expressly permitted as provided herein);
- (c) any failure by the Servicer to observe or perform any covenant or other agreement of the Servicer set forth in this Agreement or the other Transaction Documents, which continues to be unremedied for a period of thirty (30) days (if such failure can be remedied) after the earlier to occur of (i) the date on which written notice of such failure shall have been given to the Servicer by the Administrative Agent (acting at the direction of the Majority Lenders) or the Administrative Borrower and (ii) the date on which a Responsible Person of the Servicer acquires knowledge thereof (or such extended period of time reasonably approved by the Administrative Borrower not to exceed sixty (60) days in the aggregate; provided that the Servicer is diligently proceeding in good faith to cure such failure or breach); and
- (d) any representation, warranty or certification made by the Servicer in any Transaction Document or in any certificate delivered by the Servicer pursuant to any Transaction Document shall prove to have been incorrect in any material respect when made.

“Servicer Termination Expenses” has the meaning assigned to that term in Section 8.01(b).

“Servicer Termination Notice” has the meaning assigned to that term in Section 8.01(b).

“Servicing Fees” means the fees set forth in the Servicer Fee Letter that are payable to the Servicer.

“Servicing Report” has the meaning assigned to that term in Section 8.08(c)(i).

“Servicing Standard” means, with respect to any Portfolio Assets included in the Collateral, to service and administer such Portfolio Assets by or on behalf of a Loan Party in accordance with Applicable Law, the terms of this Agreement, the Underlying Agreements and all customary and usual servicing practices for assets like the Portfolio Assets.

“Similar Law” has the meaning assigned to that term in Section 4.01(t).

“Solvent” means, with respect to any Person as of any date of determination, that, as of such date, (a) the fair value of the assets of such Person (both at fair value and present fair saleable value) is greater than the total amount of liabilities (including contingent and unliquidated liabilities) of such Person, (b) such Person is able to pay all liabilities of such Person as such liabilities mature and (c) such Person does not have unreasonably small capital. In computing the amount of contingent liabilities or



unliquidated at any time, such liabilities shall be computed at the amount that, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability and are determined as contingent liabilities in accordance with applicable federal, state and foreign laws governing determinations of insolvency.

“SOFR” with respect to any day means the secured overnight financing rate published for such day by the Federal Reserve Bank of New York, as the administrator of the benchmark, (or a successor administrator) on the Federal Reserve Bank of New York’s Website.

“Spot Rate” for a currency means the rate reasonably determined in good faith by the Account Bank (acting upon the instructions of the Administrative Borrower) to be the rate quoted by the Person acting in such capacity as the spot rate for the purchase by such Person of such currency with another currency through its principal foreign exchange trading office at approximately 11:00 a.m. on the date three (3) Business Days prior to the date as of which the foreign exchange computation is made or if such rate cannot be computed as of such date such other date as the applicable Person shall reasonably determine is reasonably appropriate under the circumstances; provided that the Account Bank (acting upon the instructions of the Administrative Borrower) may obtain such spot rate from another financial institution reasonably designated in good faith by such Person if such Person does not have as of the date of determination a spot buying rate for any such currency.

“State” means one of the fifty states of the United States or the District of Columbia.

“Subsidiary” means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of the board of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned and the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. For the avoidance of doubt, no Portfolio Asset shall constitute a Subsidiary for any purpose under the Agreement.

“Tax Compliance Certificate” has the meaning assigned to that term in Section 2.13(e).

“Taxes” means any present or future taxes, levies, imposts, duties, charges, deductions, withholdings (including backup withholding), assessments or fees of any nature (including interest, penalties, and additions thereto) that are imposed by any Governmental Authority.

“Term SOFR” means the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

“Transaction Documents” means this Agreement, any Revolving Loan Note, the Account Control Agreement, the Fee Letters, the Guaranty Agreement, the Foreign Pledge Agreements, each Portfolio Asset Assignment and each agreement, instrument, certificate or other document related to any of the foregoing.

“Transfer” means (a) the acquisition by, or the transfer or assignment to, a Loan Party of a Portfolio Asset pursuant to a Portfolio Asset Assignment, including, in the case of Portfolio Assets that constitute Equity Investments, the transfer or acquisition by a Co-Borrower of an ownership interest in an Equity Investment pursuant to an Equity Investment Transfer Agreement, and (b) the origination of a Portfolio Asset by a Loan Party pursuant to an Underlying Agreement.

“Transferor” means the assignor of a Portfolio Asset under a Portfolio Asset Assignment.

“UCC” means the Uniform Commercial Code as adopted in the State of New York or any other state from time to time that governs creation or perfection (and the effect thereof) of security interests in any Collateral.

“UK Collateral” has the meaning assigned to the term “Charged Property” in the UK Pledge Agreement.

“UK Guarantor” means each of KFO Holdings and KWCP Holdings.

“UK Pledge Agreement” means the English law governed debenture dated on or around the date of this Agreement between Kudu, the UK Guarantors and the Administrative Agent.

“UK Pledged Equity” has the meaning assigned to each of the terms “Partnership Interests” and “Shares” in the UK Pledge Agreement.

“US Collateral” has the meaning assigned to that term in Section 2.10(a).

“US Pledged Equity” has the meaning assigned to that term in Section 2.10(b).

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

“Underlying Agent” means, with respect to a Loan Asset, the servicer, the administrative agent or other similar agent for the lenders party to the Underlying Loan Agreement for such Loan Asset.

“Underlying Agreement” means any Equity Investment Agreement or any Underlying Loan Agreement, as the context may require.

“Underlying Collateral” means, with respect to a Loan Asset, any property or other assets pledged or mortgaged as collateral to secure repayment of such Loan Asset, including, all proceeds from any sale or other disposition of such property or other assets.

“Underlying Loan Agreement” means, any credit agreement, indenture or other agreement or document pursuant to which a Loan Asset with respect to any loan or debt for borrowed money or note, as applicable, has been issued or created and each other agreement that governs the terms of or, if applicable, secures the obligations represented by such Loan Asset, including any co-lender or servicing agreement entered into by an applicable Underlying Agent or Underlying Servicer and, in respect of the Australian Collateral, includes the Australian Equity Notes and the document entitled “Shareholders’ agreement – Channel Capital Pty Ltd” dated November 20, 2020 between Channel Capital Pty Ltd ACN 162 591 568, Kudu, Glen Holding and Joshua Yeo.

“Underlying Obligor Default” means, with respect to any Eligible Portfolio Asset that is a Loan Asset following the Cut-Off Date relating thereto, the occurrence of one or more of the following events (any of which, for the avoidance of doubt, may occur more than once):

(a) an Obligor payment default has occurred and is continuing under such Loan Asset (after giving effect to any grace or cure period or notice requirement set forth in the applicable Underlying Loan Agreement);

(b) any other event of default or similar event or circumstance under the Underlying Loan Agreement for such Portfolio Asset for which the Co-Borrowers (or agent or required lenders pursuant to the applicable Underlying Loan Agreement, as applicable) has elected to exercise any of its rights and remedies with respect to such Loan Asset (including the acceleration of the loan relating thereto), unless otherwise agreed to in writing by the Majority Lenders;

(c) a Bankruptcy Event occurs with respect to any related Obligor under any Underlying Loan Agreement.

"United States" means the United States of America.

"Valuation Policy" means a Loan Party's valuation policy as in effect on the Closing Date, as the same may be amended, supplemented or as otherwise modified from time to time by such Loan Party with the prior consent of the Majority Lenders.

"Write-Down and Conversion Powers" means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

SECTION 1.02 Other Terms. All accounting terms used but not specifically defined herein shall be construed in accordance with Applicable Accounting Principles. All terms used in Article 9 of the UCC in the State of New York, and used but not specifically defined herein, are used herein as defined in such Article 9.

SECTION 1.03 Computation of Time Periods. Unless otherwise stated in this Agreement, in the computation of a period of time from a specified date to a later specified date, the word "from" means "from and including," the words "to" and "until" each mean "to but excluding" and "through" means "to and including."

SECTION 1.04 Interpretation. In each Transaction Document, unless a contrary intention appears:

- (a) the singular number includes the plural number and vice versa;
- (b) reference to any Person includes such Person's successors and assigns but only if such successors and assigns are not prohibited by the Transaction Documents;
- (c) reference to any gender includes each other gender;
- (d) reference to day or days without further qualification means calendar days;
- (e) the term "or" is not exclusive;
- (f) reference to any time means New York, New York time;

(g) reference to the words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”;

(h) reference to any agreement (including any Transaction Document), document or instrument means such agreement, document or instrument as amended, modified, waived, supplemented, restated or replaced and in effect from time to time in accordance with the terms thereof and, if applicable, the terms of the other Transaction Documents, and reference to any promissory note includes any promissory note that is an extension or renewal thereof or a substitute or replacement therefor;

(i) reference to any Applicable Law means such Applicable Law as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder and reference to any section or other provision of any Applicable Law means that provision of such Applicable Law from time to time in effect and constituting the substantive amendment, modification, codification, replacement or reenactment of such section or other provision;

(j) any reference to the “Co-Borrower”, the “Co-Borrowers”, each “Loan Party” or the “Loan Parties” in this Agreement and in any other Transaction Document means, each Co-Borrower or each Loan Party, individually, or the Co-Borrowers or the Loan Parties collectively, as the context may require; provided that unless the context requires otherwise, any reference in this Agreement and in any other Transaction Document to financial statements of the Co-Borrowers shall be deemed to refer to the consolidated financial statements of the Co-Borrowers and their respective Subsidiaries, and references herein to “fiscal year” or “fiscal quarter” shall mean the fiscal year or fiscal quarter, as the case may be, of the Co-Borrowers and their respective Subsidiaries; if payment or performance of any obligation of Holdings or the Loan Parties hereunder is due on a date which is not a Business Day, the required date for payment or performance shall be the next Business Day; and

(k) unless otherwise specified, all references herein to times of day shall be references to New York City time (daylight or standard, as applicable).

SECTION 1.05 Advances to Constitute Loans. Notwithstanding any provision herein to the contrary, the parties hereto intend that the Advances made hereunder constitute a “loan” and not a “security” for purposes of Section 8-102(15) of the UCC.

SECTION 1.06 Accounting Terms and Determination. Unless otherwise defined or specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made, and all financial statements required to be delivered hereunder shall be prepared, in accordance with Applicable Accounting Principles as in effect from time to time, applied on a basis consistent with the most recent audited financial statements of the Co-Borrowers delivered pursuant to Section 5.01(z) (or, if no such financial statements have been delivered, on a basis consistent with the audited financial statements of the Co-Borrowers last delivered to the Administrative Agent in connection with this Agreement); provided that (a) the foregoing requirements shall not apply to any estimated or projected valuations or other financial estimates, forecasts or other similar calculations and (b) if the Administrative Borrower notifies the Administrative Agent that the Co-Borrowers wish to amend any covenant in Section 5.02 to eliminate the effect of any change in Applicable Accounting Principles on the operation of such covenant (or if the Administrative Agent notifies the Administrative Borrower that the Majority Lenders wish to amend Section 5.02 for such purpose), then the Co-

Borrowers' compliance with such covenant shall be determined on the basis of Applicable Accounting Principles in effect immediately before the relevant change in Applicable Accounting Principles became effective, until either such notice is withdrawn or such covenant is amended in a manner satisfactory to the Co-Borrowers and the Majority Lenders. For the avoidance of doubt, nothing in this Section shall prevent the Co-Borrowers from reporting asset values on a fair value basis in accordance with their usual practices.

SECTION 1.07 Spot Rates. The Account Bank (acting upon the instructions of the Administrative Borrower) shall determine the Spot Rate as of each Determination Date to be used for calculating the Dollar Equivalent of any alternate currency, and such Spot Rate shall become effective as of such Determination Date and shall be the Spot Rate employed in converting any amounts between Dollars and such alternate currency until the next Determination Date to occur. Promptly upon request, the Administrative Borrower shall instruct the Account Bank to provide to the Administrative Borrower with a reasonably detailed description of any calculations or determination made pursuant to this Section 1.07.

SECTION 1.08 Electronic Signatures.

(a) Each of the parties hereto consents to do business electronically in connection with this Agreement, any other Transaction Document and the transactions contemplated hereby or thereby. Delivery of an executed counterpart of a signature page of this Agreement or any other Transaction Documents by telecopy, emailed pdf. or any other electronic means that reproduces an image of the actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement or such other Transaction Document.

(b) The words "execution," "signed," "signature," "delivery," and words of like import in or relating to any document, instrument, amendment, restatement, modification, reaffirmation, assignment and acceptance or other agreement to be signed in connection with this Agreement, any other Transaction Document and the transactions contemplated hereby or thereby shall be deemed to include Electronic Signatures, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity and enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any Applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, Uniform Real Property Electronic Recording Act, if applicable, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act, if applicable; provided that nothing herein shall require the Lender to accept Electronic Signatures in any form or format without its prior written consent, which consent can be withheld in its sole discretion. The Lenders hereby consent to Electronic Signatures being provided by DocuSign.

(c) Without limiting the generality of the foregoing, and to the extent permitted by Applicable Law, each of the parties hereto hereby (i) agrees that, for all purposes, including without limitation, in connection with any workout, restructuring, enforcement of remedies, bankruptcy proceedings, other proceedings or litigation arising out of or related to this Agreement, the other Transaction Documents and the transactions contemplated hereby or thereby, electronic images of this Agreement or any other Transaction Documents (in each case, including with respect to any signature pages thereto) shall have the same legal effect, validity and enforceability as any paper original, and (ii) waives any argument, defense or right to contest the validity or enforceability of this Agreement, the



Transaction Documents or the transactions contemplated hereby or thereby based solely on the lack of paper original copies of any Transaction Documents, including with respect to any signatures thereon. For the avoidance of doubt, the parties hereto hereby agree that this provision shall apply in equal force and have the same enforceability and validity to each other Transaction Document and any amendment, restatement, modification, reaffirmation, assignment and acceptance or other document related to this Agreement or such other Transaction Document whether or not expressly stated therein.

(d) As used in this Section, "Electronic Signature" means an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or record.

## ARTICLE II. THE FACILITY

**SECTION 2.01 Advances.** On the terms and conditions hereinafter set forth, each Lender, severally and not jointly, agrees to make Advances to the Co-Borrowers from time to time on any Business Day during the Availability Period, in Dollars as the Administrative Borrower may request in an amount which immediately after giving effect to such Advance, would not cause the aggregate Advances Outstanding to exceed the Maximum Availability on such date. Notwithstanding anything contained in this Section 2.01 or elsewhere in this Agreement to the contrary, (a) if a Market Trigger Event occurs and is continuing (with written notice of such Market Trigger Event provided by the Majority Lenders to the Administrative Agent), then the obligation of the Lenders to make Advances will automatically be suspended and the Lenders will not be required (and the Administrative Borrower is not permitted to request Lenders) to make any Advance to the Co-Borrowers, (b) [reserved] and (c) no Lender is obligated to make any Advance in an amount that would, immediately after giving effect to such Advance, exceed such Lender's Commitment less the aggregate outstanding amount of any Advances funded by such Lender. Each Advance to be made hereunder shall be made by the Lenders in accordance with their respective Pro Rata Shares. If the Availability Period has been suspended as a result of a Market Trigger Event as provided in this Section 2.01, the Availability Period shall be reinstated upon delivery of an LTV Certificate by the Administrative Borrower demonstrating that the Market Trigger Event which gave rise to such suspension no longer exists or, notwithstanding the occurrence of such Market Trigger Event, if the LTV is not in excess of the applicable Maximum LTV Percentage, subject to the approval of the Servicer or the Servicer waives the Market Trigger Event that gave rise to such suspension, it being understood that the Servicer will provide its approval within two (2) Business Days of receipt of the LTV Certificate if the LTV Certificate delivered by the Administrative Borrower is true and correct in all material respects and complies with the requirements of this Agreement. Concurrently with providing its approval to the Administrative Borrower, the Servicer will provide written notice to the Administrative Agent of such approval of the waiver of the Market Trigger Event.

### **SECTION 2.02 Procedure for Advances.**

(a) The Administrative Borrower shall request an Advance by delivery of a Notice of Borrowing to the Administrative Agent, with a copy to the Servicer, for Advances in Dollars, no later than 2:00 p.m. three (3) Business Days prior to the proposed date of such Advance (or such shorter period of time agreed to by the Administrative Agent and the Majority Lenders). Each Notice of Borrowing must be accompanied by a duly completed Borrowing Base Certificate (updated to the date such Advance is requested and giving pro forma effect to the Advance requested and the use of the proceeds thereof) and certify as to the following:

- (i) the amount of such Advance, which must be at least equal to \$1,000,000 or a whole multiple of \$1,000,000 in excess thereof, or if less, the remainder of the Commitments;
- (ii) the proposed date of such Advance (which must be a Business Day);
- (iii) no Event of Default or Market Trigger Event has occurred and is continuing as of the date of the Notice of Borrowing or will occur from such Advance;
- (iv) detailed wire instructions as to where the proceeds of such Advance are to be deposited or transferred; and
- (v) all conditions precedent for such Advance described in Article III have been satisfied or waived, as applicable.

(b) Promptly upon receipt of a Notice of Borrowing, the Administrative Agent shall notify the Lenders of the requested Advance. The Lenders shall make the Advance on the terms and conditions set forth herein. No later than 12:00 p.m., on the Advance Date of each Advance, upon satisfaction of the applicable conditions set forth in Article III, each Lender shall, in accordance with instructions received by the Administrative Agent or the Servicer, as applicable, from the Administrative Borrower in accordance with the Notice of Borrowing, make available to (x) the Co-Borrowers or (y) the Administrative Agent, in each case, as determined by the Majority Lenders, in same day funds, an amount equal to such Lender's Pro Rata Share of such Advance, by payment into the account which the Administrative Borrower (if clause (x) of this clause (b) is applicable) or the Administrative Agent (if clause (y) of this clause (b) is applicable), most recently designated by it for such purpose by notice to the Lenders. If clause (y) of this clause (b) is applicable, then upon receipt of all requested funds, the Administrative Agent will make such Advance available to the account(s) of the Co-Borrower(s) to which the proceeds of such Borrowing should be transferred in same day funds by promptly wiring the amounts so received, in like funds, to an account designated in the applicable Notice of Borrowing. Notwithstanding the foregoing, in the event that Lenders fund the Advance directly to the Co-Borrowers on the Closing Date, then unless Administrative Borrower has notified the Administrative Agent in writing (which notification may be by email) by not later than 5:00 p.m. on the Closing Date that it has not received such funds pursuant to the Notice of Borrowing delivered on the Closing Date (and the funds flow in connection therewith), Administrative Agent shall deem the Advance funded and make the appropriate recordations in the Register.

(c) The obligation of each Lender to remit its Pro Rata Share of any Advance is several from that of each other Lender and the failure of any Lender to so make such amount available to the Co-Borrowers shall not relieve any other Lender of its obligations hereunder.

(d) [Reserved].

(e) Subject to Section 2.04 and the other terms, conditions, provisions and limitations set forth herein, the Co-Borrowers may borrow, repay or prepay and reborrow Advances without any penalty, fee or premium (except as expressly set forth herein) during the Availability Period.

#### SECTION 2.03 Evidence of Debt.

(a) If requested by a Lender, the Co-Borrowers shall deliver to such Lender a duly executed Revolving Loan Note payable to such Lender and its registered assigns (the "Revolving Loan Note") in

substantially the form of Exhibit D. Any Revolving Loan Notes or other evidence of indebtedness issued under this Agreement need not be presented or surrendered for any payment made by the Administrative Agent, and the Administrative Agent shall not have any duty or responsibility with respect thereto.

(b) The Administrative Agent shall maintain, solely for this purpose as the non-fiduciary agent of the Co-Borrowers, at one of its offices, a copy of each Assignment and Assumption Agreement delivered to and accepted by it and a register for the recordation of the names and addresses of the Lenders, the Commitments of, and principal amounts of (and stated interest on) the Advances owing to each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive and binding for all purposes, absent manifest error, and the Co-Borrowers, the Administrative Agent and each Lender and other parties hereto shall treat each person whose name is recorded in the Register as a Lender under this Agreement for all purposes of this Agreement. The Register shall be available for inspection by the Co-Borrowers or any Lender at any reasonable time and from time to time upon reasonable prior written notice.

(c) Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Co-Borrowers, maintain a register on which it enters the name and address of each participant and the principal amounts of (and stated interest on) each participant's interest in the Advances, loans or other obligations under the Transaction Documents (the "Participant Register"); provided that (a) no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any participant or any information relating to a participant's interest in any Advances, commitments, loans or its other obligations under any Transaction Document) to any Person except to the extent that such disclosure is necessary to establish that such Advances, commitment, loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations and (b) the Administrative Agent shall have no liability or obligation to make determinations with respect to the rights of Participants hereunder or otherwise with respect to any Participant Register. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary.

#### SECTION 2.04 Repayment; Allocation, Reduction or Termination of Commitments.

(a) The Co-Borrowers shall, jointly and severally, repay to the Lenders on the Maturity Date the aggregate principal amount of all outstanding Advances, together with all accrued and unpaid interest thereon. The Co-Borrowers shall also repay the applicable outstanding principal amount of the Advances to the extent required under Section 2.09(a)(iv).

(b) Except as expressly permitted or required herein, during the Availability Period Advances may be prepaid in whole or in part (without a corresponding reduction to the Commitments) at the option of the Administrative Borrower, without premium, at any time by delivering a written notice of such prepayment to the Administrative Agent no later than 2:00 p.m., at least two (2) Business Days prior to such prepayment and each such prepayment must be in a minimum aggregate principal amount of \$5,000,000 (or if less, the aggregate principal amount of all outstanding Advances). Such notice of prepayment may be revocable at the option of the Co-Borrowers provided that a written notice of revocation is delivered to the Administrative Agent by the Administrative Borrower at least one (1) Business Day prior to the intended prepayment date.



(c) Upon any prepayment of Advances Outstanding pursuant to Section 2.04(b), the Co-Borrowers shall also pay in full any accrued and unpaid interest on such prepaid amount and all costs and expenses then due and owing hereunder or under any Transaction Document. The Administrative Agent shall apply amounts received from the Co-Borrowers pursuant to Section 2.04(b) to the pro rata payment of all accrued and unpaid interest with respect to such prepaid Advances and all costs and expenses then due and owing hereunder or under any Transaction Document until paid in full and thereafter to prepay the Advances Outstanding.

(d) The Administrative Borrower may at any time after the sixth anniversary of the Closing Date at its option (the "Non-Call Period") and upon ten (10) Business Days' prior written notice to the Administrative Agent, either (i) terminate this Agreement and the other Transaction Documents upon payment in full of all Advances Outstanding, all accrued and unpaid interest on the Obligations and costs and expenses of the Secured Parties and payment of all other Obligations (other than contingent indemnification obligations and other obligations that survive the termination of this Agreement, in each case, not then due and owing) or (ii) permanently reduce in part the Commitments upon payment in full of all accrued and unpaid interest on such reduced amount (to the extent that the Co-Borrowers are prepaying an Advance in connection with such permanent reduction) and all accrued and unpaid costs and expenses of the Secured Parties. The Commitment of each Lender shall be reduced by an amount equal to its Pro Rata Share (prior to giving effect to any reduction of Commitments hereunder) of the aggregate amount of any reduction under this Section 2.04(d)(ii). Notwithstanding the foregoing, prior to the sixth anniversary of the Closing Date (i) if the Initial Lender declines to consent to an increase in the Maximum Facility Amount on the same terms as applicable to the Advances immediately prior to such increase request in an amount equal to \$500,000,000, prior to the end of the Availability Period and no Market Trigger Event exists and the Advances Outstanding exceed 90% of the Maximum Facility Amount as of such date (a "Facility Upsize Denial") or (ii) the Lenders fail to consent to a Change of Control (a "Change of Control Denial"), the Co-Borrowers may terminate this Agreement and the other Transaction Documents upon payment in full of all Advances Outstanding, all accrued and unpaid interest on the Obligations and costs and expenses of the Secured Parties and payment of all other Obligations (other than contingent indemnification obligations and other obligations that survive the termination of this Agreement, in each case, not then due and owing). Each prepayment hereunder shall be accompanied by the Prepayment Premium.

(e) Any repayment or prepayment obligation of the Co-Borrowers under this Agreement shall be joint and several.

#### SECTION 2.05 Interest and Fees.

(a) Interest: The Co-Borrowers shall pay interest on the outstanding principal amount of the Advances at a rate per annum equal to LIBOR for the applicable LIBOR Period plus the Applicable Spread; provided that if, on any date from and including the date that is eighteen (18) months after the Closing Date to the final day of the Availability Period, the Advances Outstanding is less than the Minimum Usage, interest shall instead accrue on an amount equal to the Minimum Usage on such day. For purposes of this definition, Advances requested by the Administrative Borrower but not funded by a Defaulting Lender shall be deemed funded for purposes of calculating Advances Outstanding. Interest is payable in cash on each Payment Date with respect to all interest accrued during the period from the prior Determination Date to the following Determination Date for the current Payment Date as and to the extent provided in Section 2.09; provided that for the period from the Closing Date through the first Payment Date, interest shall accrue from the Closing Date until the Determination Date for the first

Payment Date. Each Advance is automatically continued in whole to the next applicable LIBOR Period upon the expiration of the then current LIBOR Period with respect thereto. Except as otherwise set forth herein or in the Transaction Documents, the Co-Borrowers may apply any amounts held or deposited in the Interest Reserve Account with respect to the applicable Co-Borrower to the payment of any interest hereunder, including without limitation any interest pursuant to Section 2.05(e).

(b) Non-Usage Fees. The Co-Borrowers agrees to pay to the Administrative Agent for the account of each Lender a Non-Usage Fee for each day on which such respective fees shall be applicable. The Non-Usage Fee shall accrue from a Determination Date to the next Determination Date. All such accrued and unpaid fees shall be due and payable on each applicable Payment Date.

(c) Fee Letters. The Co-Borrowers shall pay the fees set forth in the Fee Letters on the term and conditions provided therein.

(d) [Reserved].

(e) Default Interest. From and after the written request of the Majority Lenders, while any Event of Default exists, the Co-Borrowers shall pay interest on the principal amount of all Advances Outstanding hereunder at the Default Rate. The Majority Lenders shall notify the Administrative Agent of the application of the Default Rate to the principal amount of all Advances Outstanding hereunder, provided that the application of the Default Rate hereunder shall not be contingent on delivery of such notice to the Administrative Agent.

(f) Computation of interest and fees. All computations of interest and all computations of interest and fees hereunder shall be made on the basis of a year of 360 days for the actual number of days (including the first but excluding the last day) elapsed.

(g) Maximum Rate. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Advance, together with all fees, charges and other amounts that are treated as interest on such Advance under Applicable Law (collectively, "charges"), exceed the maximum lawful rate (the "Maximum Rate") that may be contracted for, charged, taken, received or reserved by the Lender holding such Advance in accordance with Applicable Law, the rate of interest payable in respect of such Advance hereunder, together with all charges payable in respect thereof, shall be limited to the Maximum Rate. To the extent lawful, the interest and charges that would have been paid in respect of such Advance but were not paid as a result of the operation of this Section 2.05(g) shall be cumulated and the interest and charges payable to such Lender in respect of other Advance or periods shall be increased (but not above the amount collectible at the Maximum Rate therefor) until such cumulated amount shall have been received by such Lender. Any amount collected by such Lender that exceeds the maximum amount collectible at the Maximum Rate shall be applied to the reduction of the principal balance of such Advance or refunded to the Co-Borrowers so that at no time shall the interest and charges paid or payable in respect of such Advance exceed the maximum amount collectible at the Maximum Rate.

#### SECTION 2.06 Benchmark Replacement Setting.

(a) Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Transaction Document, upon the occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, the Administrative Agent, the Initial Lender and the Co-Borrowers may amend this Agreement to replace LIBOR with a Benchmark Replacement. Any such amendment with respect to

a Benchmark Transition Event will become effective at 5:00 p.m. on the fifth (5th) Business Day after the Administrative Agent has posted such proposed amendment to all Lenders and the Administrative Borrower so long as the Administrative Agent has not received, by such time, written notice of objection to such amendment from Lenders comprising the Majority Lenders. Any such amendment with respect to an Early Opt-in Election will become effective on the date that Lenders comprising the Majority Lenders have delivered to the Administrative Agent written notice that such Majority Lenders accept such amendment. No replacement of LIBOR with a Benchmark Replacement pursuant to this Section 2.06 will occur prior to the applicable Benchmark Transition Start Date.

(b) Benchmark Replacement Conforming Changes. In connection with the implementation of a Benchmark Replacement, the Administrative Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Transaction Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement.

(c) Notices; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Administrative Borrower and the Lenders of (i) any occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date and Benchmark Transition Start Date, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes and (iv) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or Lenders pursuant to this Section 2.06, 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, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party hereto, except, in each case, as expressly required pursuant to this Section 2.06.

(d) Benchmark Unavailability Period. Upon the Administrative Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the Co-Borrowers may no longer request Advances and all current outstanding Advances shall continue at the LIBOR rate that was in effect immediately prior to such date.

#### SECTION 2.07 Payments and Computations, Etc.

(a) All amounts to be paid or deposited by any of the Co-Borrowers or the Account Bank from amounts received on the Portfolio Assets on the Co-Borrowers' behalf, hereunder and in accordance with this Agreement shall be paid or deposited in accordance with the terms hereof so that funds are received by the Administrative Agent no later than 1:00 p.m. on the day when due in Dollars in immediately available funds to the account specified in writing by the Administrative Agent to the Account Bank, or such other account as is designated by the Administrative Agent. All payments received by the Administrative Agent after 1:00 p.m. may, in the Administrative Agent's discretion, be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. Any Obligation hereunder shall not be reduced by any distribution of any portion of Available Collections if at any time such distribution is rescinded or required to be returned by any Secured Party to the Co-Borrowers or any other Person for any reason.

(b) On each Determination Date, immediately preceding a Reporting Date, the Administrative Borrower shall include a statement as to the amount of Excluded Amounts on deposit in the Collection Account in the Servicing Report delivered pursuant to Section 8.08(c). Other than as otherwise set forth herein, whenever any payment hereunder shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be reflected in the computation of interest and fees.

(c) To the extent that any payment by or on behalf of the Co-Borrowers is made to the Administrative Agent or any Lender, or the Administrative Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Bankruptcy Law or otherwise, then (i) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred and (ii) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent.

#### SECTION 2.08 Collections; Payment Date Report.

(a) Each Loan Party, as applicable, shall direct each Obligor for any Portfolio Asset to remit all Collections with respect to such Portfolio Asset to such Loan Party's Collection Account. Subject to the rights of the Administrative Agent hereunder with respect to funds held or deposited in such Loan Party's Collection Account, each Loan Party shall have full control over the use of, and the right to withdraw funds from, such Loan Party's Collection Account for any permitted use or purpose under its Constituent Documents.

(b) Each Loan Party shall take commercially reasonable steps to confirm that only funds constituting Collections relating to Portfolio Assets are deposited into such Loan Party's Collection Account.

(c) Each Loan Party shall, and shall cause their respective Affiliates and administrators to, deposit all Collections relating to Portfolio Assets received by such Loan Party, or by their Affiliates on behalf of or for the benefit of such Loan Party, with respect to the Collateral to such Loan Party's Collection Account within two (2) Business Days after receipt by the applicable Loan Party and shall, and shall cause their Affiliates to, hold in trust for the benefit of the Administrative Agent, for the benefit of the Secured Parties, all such Available Collections until so deposited.

(d) During the occurrence and continuance of a Potential Default or an Event of Default, no Loan Party shall have any rights of withdrawal with respect to amounts held in the Collection Account. After the occurrence and continuance of an Event of Default, the Administrative Agent, at the direction of the Majority Lenders, may, but shall not be obligated, to give payment instructions to the Account Bank. Following the occurrence and during the continuance of a Market Trigger Event, no Loan Party shall withdraw any amounts held in the Collection Account without the approval of the Administrative Agent (acting at the direction of the Majority Lenders).

(e) No later than the applicable Determination Date, Administrative Borrower shall provide the applicable Payment Date Report to the Servicer and the Administrative Agent. No later than two (2) Business Days after the Servicer's and the Administrative Agent's receipt of such Payment Date Report, the Servicer shall notify the Administrative Borrower (with a copy to the Administrative Agent) of any errors or omissions set forth therein and the Servicer and the Administrative Borrower shall use commercially reasonable efforts to reconcile any differences in such report; provided if no such reconciliation can be reached, the Payment Date Report approved by the Servicer shall be deemed final, absent manifest error.

SECTION 2.09 Remittance Procedures. On each Payment Date, the Administrative Borrower may instruct the Account Bank to apply funds on deposit in the Collection Account as described in this Section 2.09 and in accordance with the Payment Date Report or may otherwise wire funds to the Administrative Agent from any other account, such funds to be received by the Administrative Agent no later than 1:00 p.m. on each Payment Date; provided that, at any time after delivery of a Notice of Exclusive Control pursuant to the terms of the Account Control Agreement, the Administrative Agent, if directed, in writing, by the Majority Lenders, shall instruct the Account Bank to apply funds on deposit in the Collection Account as described in this Section 2.09.

(a) Collections. All payments so received by the Administrative Agent pursuant to this Section 2.09(a) will be distributed in accordance with the following waterfall:

(i) first, (A) to the Administrative Agent for the payment in full of all accrued fees, expenses, losses and indemnities due and payable to the Administrative Agent hereunder or under any other Transaction Document and under the Agent Fee Letter, and then (B) to the Servicer and the Account Bank for the payment in full of all accrued fees, expenses and indemnities due and payable to the Servicer and Account Bank, respectively, hereunder or under any other Transaction Document and under the Fee Letters;

(ii) second, to the Administrative Agent for distribution to each Lender, to pay such Lender's Pro Rata Share of accrued and unpaid interest owing to such Lender under this Agreement;

(iii) third, to the extent amounts on deposit in the Interest Reserve Account are less than the Interest Reserve Amount, an amount equal to such shortfall;

(iv) fourth, to the extent a Market Trigger Event has occurred, or would result therefrom, then to the Administrative Agent for distribution to each Lender, to repay such Lender's Pro Rata Share of the Advances Outstanding until the delivery of an LTV Certificate by the Administrative Borrower to the Servicer, demonstrating that the Market Trigger Event no longer exists or, notwithstanding the occurrence of such Market Trigger Event, the LTV is not in excess of the applicable Maximum LTV Percentage; and

(v) fifth, only to the extent no Market Trigger Event has occurred, or would result therefrom, then to the Loan Parties.

(b) Application of Proceeds After an Event of Default. Notwithstanding anything herein to the contrary, upon the occurrence and during the continuance of an Event of Default, with respect to any proceeds received by the Administrative Agent in connection with the exercise of remedies hereunder or any other Transaction Document, the Administrative Agent, at the direction of the



Servicer, for the benefit of the Majority Lenders, shall instruct the Account Bank to transfer all proceeds of Collateral in accordance with the following order and priority:

- (i) first (A) to the Administrative Agent for the payment in full of all accrued fees, expenses, losses and indemnities due and payable to the Administrative Agent hereunder or under any other Transaction Document and under the Agent Fee Letter, and then (B) to the Servicer and the Account Bank for the payment in full of all accrued fees, expenses and indemnities due and payable to the Servicer and Account Bank, respectively, hereunder or under any other Transaction Document and under the Fee Letters;
  - (ii) second, to the Administrative Agent for distribution to each Lender, to pay such Lender's Pro Rata Share of accrued and unpaid interest owing to such Lender under this Agreement;
  - (iii) third, to the extent amounts on deposit in the Interest Reserve Account are less than the Interest Reserve Amount, an amount equal to such shortfall;
  - (iv) fourth, to the extent a Market Trigger Event has occurred, or would result therefrom, then to the Administrative Agent for distribution to each Lender, to repay such Lender's Pro Rata Share of the Advances Outstanding until the delivery of an LTV Certificate by the Administrative Borrower to the Servicer, demonstrating that the Market Trigger Event no longer exists or, notwithstanding the occurrence of such Market Trigger Event, the LTV is not in excess of the applicable Maximum LTV Percentage; and
  - (v) fifth, only to the extent no Market Trigger Event has occurred, or would result therefrom, then to the Loan Parties.
- (c) Insufficiency of Funds. If the funds on deposit in the Collection Account are insufficient to pay any amounts otherwise due and payable under this Agreement or any other Transaction Document on a Payment Date or otherwise, the Co-Borrowers shall nevertheless remain responsible for, and shall pay when due, all amounts payable under this Agreement and the other Transaction Documents in accordance with the terms of this Agreement and the other Transaction Documents, together with interest accrued as set forth in Section 2.05(a) from the date when due until paid hereunder; provided that if any such insufficiency of funds occurs during the Availability Period and the conditions to funding as set forth herein are satisfied, the Administrative Borrower may instead request that such amounts be funded by the making of an Advance hereunder.
- (d) Instructions to the Account Bank. All instructions and directions given to the Account Bank by the Administrative Agent, at the direction of the Majority Lenders, pursuant to Section 2.09 shall be in writing (including instructions and directions transmitted to the Account Bank by facsimile or e-mail) or pursuant to an electronic transmission system acceptable to the Account Bank. The Administrative Agent shall transmit to the Servicer and the Administrative Borrower by facsimile or e-mail a copy of all instructions and directions given to the Account Bank by the Administrative Agent pursuant to Section 2.09 concurrently with the delivery thereof.
- (e) No Presentment. Payment by the Administrative Agent to the Lenders in accordance with the terms hereof shall not require presentment of any Revolving Loan Note.

SECTION 2.10 Grant of a Security Interest.

(a) To secure the prompt and complete payment in full when due, whether by lapse of time, acceleration or otherwise, of the Obligations and the performance by the Co-Borrowers of all of the covenants and obligations to be performed pursuant to this Agreement and each other Transaction Document, whether now or hereafter existing, due or to become due, direct or indirect, or absolute or contingent, each Co-Borrower hereby grants a security interest to the Administrative Agent, for the benefit of the Secured Parties, in all of such Co-Borrower's right, title and interest in, to and under (but none of the obligations under) the following, whether now owned or hereinafter acquired (the following collectively, to the extent not constituting Excluded Assets, the "US Collateral"): (i) all accounts, money, cash and currency, chattel paper, tangible chattel paper, electronic chattel paper, intellectual property, goods, equipment, fixtures, contract rights, general intangibles, documents, instruments, certificates of deposit, certificated securities, uncertificated securities, financial assets, securities entitlements, commercial tort claims, securities accounts, deposit accounts, inventory, investment property (including without limitation each General Partnership Investment), letter-of-credit rights, software, supporting obligations, accessions or other property consisting of Portfolio Assets and Collections (but excluding the obligations thereunder); (ii) all Records; (iii) all Proceeds of the foregoing; (iv) the Collection Account and the Interest Reserve Accounts; and (v) all proceeds and products of the foregoing.

(b) To secure the prompt and complete payment in full when due, whether by lapse of time, acceleration or otherwise, of the Obligations and the performance by the Co-Borrowers of all of the covenants and obligations to be performed pursuant to this Agreement and each other Transaction Document, whether now or hereafter existing, due or to become due, direct or indirect, or absolute or contingent, Holdings and Kudu, as applicable, hereby grant a security interest to the Administrative Agent, for the benefit of the Secured Parties, in all of Holdings' and Kudu's, as applicable, right, title and interest in and to, whether now owned or hereinafter acquired (the following collectively, to the extent not constituting Excluded Assets, the "US Pledged Equity"): (A) (i) all investment property and general intangibles consisting of the ownership, equity or other similar interests of Holdings in Kudu, including Kudu's limited liability company membership interests; (ii) all certificates, instruments, writings and securities evidencing the foregoing; (iii) the operating agreement and other organizational documents of Kudu and all options or other rights to acquire any membership or other interests under such operating agreement or other organizational documents; (iv) all dividends, distributions, capital, profits and surplus and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the foregoing; (v) all books, records and other written, electronic or other documentation in whatever form maintained now or hereafter by or for Holdings in connection with, and relating to, the ownership of, or evidencing or containing information relating to, the foregoing; and (vi) all proceeds, supporting obligations and products of any of the foregoing, and (B) (i) all investment property and general intangibles consisting of the ownership, equity or other similar interests of Kudu in Kudu US, including Kudu's limited liability company membership interests; (ii) all certificates, instruments, writings and securities evidencing the foregoing; (iii) the operating agreement and other organizational documents of Kudu US and all options or other rights to acquire any membership or other interests under such operating agreement or other organizational documents; (iv) all dividends, distributions, capital, profits and surplus and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the foregoing; (v) all books, records and other written, electronic or other documentation in whatever form maintained now or hereafter by or for Kudu in connection with, and relating to, the ownership of, or evidencing or containing information relating to, the foregoing; and (vi) all proceeds, supporting obligations and products of any of the foregoing.

(c) Notwithstanding the foregoing, the terms “Collateral”, “Collateral Portfolio” and “Pledged Equity” shall exclude, and in no event shall any Lien attach to any right, title or interest of the Loan Parties or Holdings in, to or under (the following, collectively, the “Excluded Assets”): (i) any lease, license or other agreement and the property subject thereto, in each case acquired or entered into by Holdings or by the Loan Parties after the Closing Date and not part of the Borrowing Base, which requires the consent, approval, license or authorization of any Person (other than the Loan Parties or Holdings or their respective Affiliates) as a condition to a grant of a security interest therein as contemplated herein, unless such consent, approval, license or authorization has been obtained or such required consent, approval, license or authorization is rendered ineffective or otherwise overridden after giving effect to the applicable anti-assignment provisions of the Code or other Applicable Law, other than proceeds and receivables thereof, the assignment of which is expressly deemed effective under Applicable Law notwithstanding such prohibition; (ii) any lease, license or other agreement or any property subject to a purchase money security interest, Capital Lease Obligations or similar arrangement to the extent that a grant of a security interest therein would violate or invalidate such lease, license or agreement, purchase money, capital lease or similar arrangement or create a termination right in favor of any other party thereto (other than the Loan Parties or Holdings) after giving effect to the applicable anti-assignment provisions of the Bankruptcy Code or other Applicable Law, other than proceeds and receivables thereof, the assignment of which is expressly deemed effective under Applicable Law notwithstanding such prohibition; (iii) after the Closing Date, to the extent a pledge of, and security interest in, such asset is prohibited by law or prohibited by agreements containing anti-assignment clauses not overridden by the Bankruptcy Code or other Applicable Law (so long as such anti-assignment clauses existed at the time such asset was acquired by the Loan Parties and was not implemented in contemplation of prohibiting a pledge hereunder); and (iv) any Excluded Amounts.

(d) Anything herein to the contrary notwithstanding, (i) the Loan Parties shall remain liable under the Collateral Portfolio and the Collateral to the extent set forth therein to perform all of their duties and obligations thereunder to the same extent as if this Agreement had not been executed, (ii) the exercise by the Administrative Agent, for the benefit of the Secured Parties, of any of its rights in the Collateral or the Pledged Equity does not release the Loan Parties or Holdings from any of their duties or obligations under the Collateral or with respect to the Pledged Equity and (iii) none of the Administrative Agent, any Lender nor any other Secured Party shall have any obligations or liability under the Collateral Portfolio and the Collateral by reason of this Agreement, nor shall the Administrative Agent, any Lender nor any other Secured Party be obligated to perform any of the obligations or duties of the Loan Parties thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

(e) [Reserved].

(f) Each Co-Borrower hereby collaterally assigns to the Administrative Agent, for the benefit of the Secured Parties, all of such Co-Borrower’s right and title to, and interest in, to and under (but not any obligations under) each Equity Investment Agreement related to each Portfolio Asset, all other agreements, documents and instruments evidencing, securing or guarantying any Portfolio Asset and all other agreements, documents and instruments related to any of the foregoing. Each Co-Borrower confirms that, upon the occurrence and during the continuance of an Event of Default and until the Facility Termination Date, the Administrative Agent (at the direction of the Servicer) on behalf of the Secured Parties shall have the right to enforce and/or assume such Co-Borrower’s rights and remedies under each Equity Investment Agreement.



(g) In addition to the property which the Administrative Agent holds for the benefit of the Secured Parties under Section 2.10(a), Section 2.10(b) and Section 2.10(f), the Administrative Agent will, upon entry into the Australian Pledge Agreement, hold the rights arising under the Australian Pledge Agreement for the benefit of the Secured Parties.

(h) To the extent the law permits:

(i) for the purposes of sections 115(1) and 115(7) of the Australian PPSA:

(A) the Secured Parties need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4) of the Australian PPSA; and

(B) sections 142 and 143 of the Australian PPSA are excluded;

(ii) for the purposes of section 115(7) of the Australian PPSA, the Secured Parties need not comply with sections 132 and 137(3) of the Australian PPSA;

(iii) if the PPSA is amended after the date of this document to permit the Parties to agree to not comply with or to exclude other provisions of the PPSA, the Administrative Agent may notify the Loan Parties that any of these provisions is excluded, or that the Secured Parties need not comply with any of these provisions, as notified to the Loan Parties by the Administrative Agent; and

(iv) each Loan Party agrees not to exercise its rights to make any request of the Secured Parties under section 275 of the Australian PPSA, to authorize the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section.

(i) To the extent the law permits, each Loan Party waives:

(i) its rights to receive any notice that is required by any provision of the Australian PPSA (including a notice of a verification statement); and

(ii) any time period that must otherwise lapse under the Australian PPSA before a Secured Party or receiver exercises a right, power or remedy.

If the law which requires a period of notice or a lapse of time cannot be excluded, but the law provides that the period of notice or lapse of time may be agreed, that period or lapse is one day or the minimum period the law allows to be agreed (whichever is the longer). However, nothing in this clause prohibits a Secured Party or any receiver from giving a notice under the Australian PPSA or any other law.

(j) For the purposes of section 153 of the Australian PPSA, each Secured Party appoints the Administrative Agent and each Loan Party as its nominee, and authorizes each of them to act on its behalf, in connection with a registration under the Australian PPSA of any security interest in favor of the Loan Party which is (a) evidenced or created by chattel paper or arising under contract; (b) perfected by registration under the Australian PPSA; and (c) transferred to a Secured Party under this document. This authority ceases when the registration is transferred to the Secured Party.

SECTION 2.11 Sale of Portfolio Assets.

(a) Sales. The Loan Parties may sell or otherwise Transfer or dispose of their interest in any Portfolio Asset (a "Sale") so long as (i) with respect to the Sale of any Eligible Portfolio Asset (a) as of the date of such Sale and immediately after giving effect to any such Sale, (x) the aggregate Advances Outstanding shall not exceed the Maximum Availability as of such date, (y) no Market Trigger Event shall be continuing or will result from such Sale; and (z) no Event of Default shall be continuing or will result from such Sale, (b) with respect to the sale of Eligible Portfolio Assets, (x) the sale price is equal to or greater than 80% of the most recent third party valuation delivered to the Administrative Agent prior to such Sale; provided that if more than one Eligible Portfolio Asset is sold in the same transaction, the calculation of such 80% test will use the aggregate third party valuation of all such Eligible Portfolio Assets included in such Sale or (y) the Servicer shall have consented to such Sale price, provided, however, that, the foregoing clauses (a) and (b) shall not apply if such Sale results from the occurrence of a "Sale Redemption Event" (or such term of similar meaning as may be used in the Constituent Documents relating to such Eligible Portfolio Asset) and (ii) with respect to the Sale of any Portfolio Asset, (a) the net cash proceeds from such Sale, if any, are deposited into the Collection Account, and (b) the Administrative Borrower shall deliver to the Servicer a list of all Portfolio Assets to be subject to such Sale.

(b) Release of Lien. Upon confirmation by the Administrative Agent of the deposit of any amounts required by Section 2.11(a) in cash into a Collection Account and the fulfillment of the other terms and conditions set forth in this Section 2.11 for a Sale (such date of fulfillment, a "Release Date"), the Portfolio Assets subject to such Sale shall no longer be Collateral and the Administrative Agent, for the benefit of the Secured Parties, shall automatically and without further action be deemed to have released all right, title and interest and any Lien of the Administrative Agent, for the benefit of the Secured Parties in, to and under such Portfolio Asset and related Portfolio Assets and all future monies due or to become due with respect thereto, without recourse, representation or warranty of any kind or nature.

(c) Conditions to Sales. Any Sale of an Eligible Portfolio Asset by a Loan Party shall at all times be subject to the satisfaction of the following conditions unless otherwise waived by the Servicer:

(i) the Administrative Borrower shall deliver a list of all Portfolio Assets to be the subject of such Sale in accordance with Section 5.01(z)(iii)(C);

(ii) as of the date of such Sale and immediately after giving effect to any such Sale, (w) the aggregate Advances Outstanding shall not exceed the Maximum Availability as of such date, (x) no Market Trigger Event has occurred and is continuing or would result therefrom; and (y) neither a Potential Default nor an Event of Default shall be continuing or have resulted from such Sale; and

(iii) the Administrative Borrower shall notify the Servicer of any amount to be deposited into the Collection Account in connection with any Sale in accordance with Section 5.01(aa).

(d) Treatment of Amounts Deposited in the Collection Account. Amounts deposited by the Co-Borrowers in the Collection Account pursuant to this Section 2.11 shall be applied as provided in Section 2.09(a).

SECTION 2.12 Increased Costs.

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender;

(ii) impose material regulatory or agency changes that materially affect the cost or expense (other than taxes) affecting this Agreement;

(iii) subject any Lender to any Taxes (other than (A) Indemnified Taxes and (B) Excluded Taxes) on its Advances, Commitments or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iv) impose on any Lender or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Advances made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender of making, continuing or maintaining any Advance or of maintaining its obligation to make any such Advance or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or any other amount) then, upon request of such Lender, the Co-Borrowers will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

(b) If any Lender determines that any Change in Law affecting such Lender or any lending office of such Lender or such Lender's holding company, if any, regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Advances made by such Lender to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time the Co-Borrowers will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) A certificate of a Lender setting forth in reasonable detail the basis for such demand, the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in Section 2.12(a) or (b) and the computations made by such Lender to determine such amount shall be delivered to the Administrative Borrower and shall be conclusive absent manifest error. The Co-Borrowers shall pay such Lender the amount shown as due on any such certificate on the next Payment Date that is not less than ten (10) days after receipt thereof. Any such amount payable by the Co-Borrowers shall not be duplicative of any amounts (i) previously paid under this Section 2.12 or (ii) included in the calculation of LIBOR.

(d) Failure or delay on the part of any Lender to demand compensation pursuant to this Section 2.12 shall not constitute a waiver of such Lender's right to demand such compensation; provided that the Co-Borrowers shall not be required to compensate a Lender pursuant to this Section 2.12 for any increased costs incurred or reductions suffered more than nine (9) months prior to

the date that such Lender notifies the Administrative Borrower of the Change in Law giving rise to such increased costs or reductions, and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) If any Lender requests additional amounts pursuant to this Section 2.12, the Co-Borrowers shall have the option to terminate this Agreement and the Commitments hereunder by written notice to the Administrative Agent and prepay the Advances, any accrued interest thereon and all costs, accrued and unpaid Non-Usage Fees and all other fees and amounts payable by the Co-Borrowers under the Transaction Documents (which, for the avoidance of doubt, shall not include any penalty, premium, make-whole or similar payment due to the termination of the Agreement and Commitments) no later than the fifth (5<sup>th</sup>) Business Day next following the giving of such notice.

#### SECTION 2.13 Taxes.

(a) All payments made by or on account of any obligation of the Loan Parties or Holdings under this Agreement or any other Transaction Document (including by the Administrative Agent on behalf of the Loan Parties or Holdings) will be made free and clear of and without deduction or withholding for or on account of any Taxes, except as required by Applicable Law. If any Indemnified Taxes are required by Applicable Law (as determined in good faith by the applicable withholding agent) to be withheld from any such payments, then the amount payable by the Loan Parties or Holdings will be increased (the amount of such increase, the "Additional Amount") as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 2.12) the applicable Recipient receives an amount that is not less than the amount that it would have received had no such deduction or withholding been made. Any amounts deducted or withheld pursuant to this Section 2.13(a) will be timely paid by the applicable withholding agent to the applicable Governmental Authority in accordance with Applicable Law. The Loan Parties, Holdings and the Administrative Agent may be a withholding agent.

(b) The Loan Parties and Holdings will indemnify each Recipient for (i) the full amount of Indemnified Taxes payable or paid by such Person in respect of, or required to be deducted or withheld from, payments made by or on behalf of the Loan Parties or Holdings hereunder, including Indemnified Taxes imposed or assessed on or attributable to Additional Amounts and other amounts payable under this Section 2.13 and any costs and expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Administrative Borrower by a Recipient (with a copy to the Administrative Agent), or by the Administrative Agent on behalf of a Recipient, shall be conclusive absent manifest error. All payments in respect of this indemnification shall be made within ten (10) days from the date a written invoice therefor is delivered to the Administrative Borrower, with a copy to the Servicer.

(c) Each Lender will indemnify the Administrative Agent for (i) the full amount of Indemnified Taxes attributable to such Lender (but only to the extent that the Loan Parties or Holdings have not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting or expanding any obligation of the applicable Loan Party or Holdings to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 2.03 relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Transaction Document, and any

costs and expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Lender by the Administrative Agent shall be conclusive absent manifest error.

(d) Following any payment by any Loan Party or Holdings to the applicable Governmental Authority of any Taxes pursuant to this Section 2.13 and Section 11.07(b), Administrative Borrower or the Servicer, as applicable, will furnish to the Administrative Agent at the applicable address set forth on this Agreement, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment (to the extent received by the Servicer or the Administrative Borrower, as applicable), a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent (acting at the direction of the Majority Lenders). For the avoidance of doubt, in no case or circumstance is the Administrative Agent liable to pay any Taxes pursuant to this Agreement, and if it pays any such amounts, it will solely be on behalf of the Co-Borrowers, from the Collection Account to the extent amounts are available therein.

(e) Each Lender (including any assignee thereof) that is not a "United States person" within the meaning of Section 7701(a)(30) of the Code (a "Non-U.S. Lender") shall deliver to Administrative Borrower and the Administrative Agent two properly completed and duly executed copies of whichever (if any) of the following is applicable for claiming complete exemption from, or a reduced rate of, U.S. federal withholding tax on any payment by or on behalf of the Co-Borrowers under this Agreement: (i) U.S. Internal Revenue Service Form W-8BEN or W-8BEN-E (claiming the benefits of an applicable tax treaty), W-8IMY, W-8EXP or W-8ECI or (ii) in the case of a Non-U.S. Lender claiming exemption from U.S. federal withholding tax under Section 871(h) or 881(c) of the Code with respect to payments of "portfolio interest" a statement substantially in the form of Exhibit E to the effect that such Lender is eligible for a complete exemption from withholding of U.S. taxes under Section 871(h) or 881(c) of the Code (a "Tax Compliance Certificate") and a Form W-8BEN or W-8BEN-E, in each case (A) with any required attachments (including, with respect to any Lender that provides a U.S. Internal Revenue Service Form W-8IMY, any of the forms or other documentation described in clauses (i) and (ii) above for any of the direct or indirect owners of such Lender) and (B) any subsequent versions thereof or successors thereto. In addition, each Lender (including any assignee thereof) that is not a Non-U.S. Lender shall deliver to the Administrative Borrower and the Administrative Agent two copies of U.S. Internal Revenue Service Form W-9, properly completed and duly executed and claiming complete exemption, or shall otherwise establish an exemption, from U.S. backup withholding. Such forms shall be delivered by each Lender on or about the date it becomes a party to this Agreement and from time to time thereafter as reasonably requested by Administrative Borrower or the Administrative Agent. In addition, each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Administrative Borrower and the Administrative Agent in writing of its legal inability to do so. Notwithstanding any other provision of this paragraph, a Lender shall not be required to deliver any form pursuant to this paragraph that such Lender is not legally able to deliver. For the purposes of this Section 2.13(e), "Lender" shall include any other recipients of payments on the Collateral as directed by any Lender to the Administrative Agent.

(f) A Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which the Co-Borrowers are located, or any treaty to which such jurisdiction is a party, with respect to payments under this Agreement shall deliver to the Administrative Borrower and the Administrative Agent, at the time or times prescribed by Applicable Law or reasonably requested by



the Administrative Borrower or the Administrative Agent, such properly completed and executed documentation or information prescribed by Applicable Law as will permit such payments to be made without withholding or at a reduced rate (or otherwise permit the Administrative Borrower and the Administrative Agent to determine the applicable rate of withholding); provided that such Lender is legally entitled to complete, execute and deliver such documentation and in such Lender's reasonable judgment such completion, execution or submission would not subject such Lender to any material unreimbursed cost or expense or would not materially prejudice the legal or commercial position of such Lender. If a payment made to a Lender under any Transaction Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Administrative Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Administrative Borrower or Administrative Agent such documentation prescribed by law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Administrative Borrower or Administrative Agent as may be necessary for the Administrative Borrower and Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this Section 2.13(f), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(g) If any Lender determines, in its sole discretion, exercised in good faith, that it has received a refund of any Taxes for which it was indemnified by the Co-Borrowers or the Administrative Agent, pursuant to this Section 2.13 or with respect to which the Co-Borrowers or the Administrative Agent has paid additional amounts pursuant to this Section 2.13, it shall pay to the Co-Borrowers or the Administrative Agent, as applicable, an amount equal to such refund (but only to the extent of indemnity payments made, or Additional Amounts paid, by the Co-Borrowers or the Administrative Agent, as applicable, under this Section 2.13 with respect to the Taxes or Additional Amounts giving rise to such refund), net of all costs and expenses (including additional Taxes, if any) of such Lender, as the case may be, incurred in obtaining such refund, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). The Co-Borrowers, upon the request of such Lender, shall repay to such Lender the amount paid over pursuant to this Section 2.13(g) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such Lender is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this Section 2.13(g), in no event will the Lender be required to pay any amount to the Co-Borrowers pursuant to this Section 2.13(g) the payment of which would place the Lender in a less favorable net after-Tax position than the Lender would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any Lender to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the Co-Borrowers or any other Person.

(h) Without prejudice to the survival of any other agreement of the parties hereunder, the agreements and obligations of the parties contained in this Section 2.13 shall survive the resignation or replacement of the Administrative Agent, any assignment of rights by or replacement of any Lender, the termination of Commitments, the repayment, satisfaction or discharge of all obligations under any Transaction Document or termination of this Agreement.

SECTION 2.14 Increase in Maximum Facility Amount.

(a) Prior to September 22, 2022, and subject to compliance with the terms of this Section 2.14, the Administrative Borrower may no more than two (2) times, upon three (3) Business Days' written notice to the Administrative Agent and the Initial Lender ("Facility Increase Notice"), increase the Maximum Facility Amount to up to \$350,000,000. Any such increase shall be in the amount of up to \$25,000,000 (each such increase, a "Facility Increase"). Any Facility Increase may be provided by any Lender or any Eligible Assignee (each such Lender, an "Incremental Lender"); provided that each Incremental Lender which was not a Lender immediately prior to the consummation of such Facility Increase shall be subject to the consent (in each case, not to be unreasonably withheld, delayed or conditioned) of the Administrative Agent and the Initial Lender. Notwithstanding anything herein to the contrary, no Lender shall have any obligation to agree to increase its Commitment pursuant to this Section 2.14 and any election to do so shall be in the sole discretion of such Lender.

(b) The following are conditions precedent to such increase:

(i) each Co-Borrower shall deliver to Administrative Agent and the Initial Lender, if necessary, resolutions adopted by such Co-Borrower approving or consenting to such increase, certified by a Responsible Person of such Co-Borrower that such resolutions are true and correct copies thereof and are in full force and effect;

(ii) if applicable, each Co-Borrower shall execute replacement notes payable to the Initial Lender reflecting the Facility Increase;

(iii) as of the effective date of such Facility Increase and immediately after giving effect thereto, the representations and warranties set forth herein and in the other Transaction Documents are true and correct in all material respects with the same force and effect as if made on and as of such date (except to the extent that such representations and warranties expressly relate to an earlier date); provided that if a representation or warranty is qualified as to materiality, with respect to such representation or warranty, the foregoing materiality qualifier shall be disregarded for the purposes of this condition;

(iv) all expenses and fees (including reasonable and documented legal fees and any fees required under the Fee Letters) that are required to be paid hereunder or by the Fee Letters that are due and payable have been paid in full;

(v) one or more favorable opinions of counsel to the Co-Borrowers and Holdings, reasonably acceptable to the Majority Lenders and the Administrative Agent and addressed to the Administrative Agent and the Lenders; and

(vi) no Market Trigger Event or Event of Default shall have occurred and be continuing on the date on which the Facility Increase Notice is delivered or immediately after giving effect to the Facility Increase.

For the avoidance of doubt, any Facility Increase will be on the same terms as contained herein with respect to the Commitments as of the Closing Date.

SECTION 2.15 Mitigation Obligations; Replacement of Lenders.

(a) Designation of a Different Applicable Lending Office. If any Lender requests compensation under Section 2.12, or requires the Co-Borrowers to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.13 then such Lender shall, at the request of the Administrative Borrower, use reasonable efforts to designate a different applicable lending office for funding or booking its Advances hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.12 or Section 2.13, as the case may be, in the future, and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Co-Borrowers hereby agree to pay all reasonable and documented out-of-pocket costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 2.12, or if the Co-Borrowers are required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.13, and, in each case, such Lender has declined or is unable to designate a different applicable lending office in accordance with Section 2.15(a), or if any Lender is a Defaulting Lender or Non-Consenting Lender, then the Co-Borrowers may, at their sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 11.04), all of its interests, rights (other than its existing rights to payments pursuant to Section 2.12 or Section 2.13) and obligations under this Agreement and the related Transaction Documents to an Eligible Assignee in accordance with Section 11.04 that shall assume such obligations (which Eligible Assignee may be another Lender, if a Lender accepts such assignment); provided that:

(i) the Co-Borrowers shall have paid to the Administrative Agent the assignment fee (if any) specified in Section 11.04;

(ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Transaction Documents (including any amounts under this Article II) from the Eligible Assignee (to the extent of such outstanding principal) or the Co-Borrowers (in the case of accrued interest, Fees and all other amounts);

(iii) in the case of any such assignment resulting from a claim for compensation under Section 2.12 or payments required to be made pursuant to Section 2.13, such assignment shall result in a reduction in such compensation or payments thereafter;

(iv) such assignment does not conflict with Applicable Law; and

(v) in the case of any assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Co-Borrowers to require such assignment and delegation cease to apply.



SECTION 2.16 Defaulting Lenders.

(a) Defaulting Lender Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by Applicable Law:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in Section 11.01.

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VI or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 11.13 shall be applied at such time or times as may be determined by the Administrative Agent (acting at the direction of the Majority Lenders) as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; *second*, as the Administrative Borrower may request (so long as no Event of Default exists), to the funding of any Advance in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *third* if so determined by the Administrative Agent (acting at the direction of the Majority Lenders) and the Administrative Borrower, to be held in a deposit account and released pro rata in order to satisfy such Defaulting Lender's potential future funding obligations with respect to Advances under this Agreement; *fourth*, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *fifth*, so long as no Event of Default exists, to the payment of any amounts owing to the Co-Borrowers as a result of any judgment of a court of competent jurisdiction obtained by the Co-Borrowers against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *sixth* to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Advances in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Advances were made at a time when the conditions set forth in Section 3.02 were satisfied or waived, such payment shall be applied solely to pay the Advances of all non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Advances of such Defaulting Lender until such time as all Advances are held by the Lenders pro rata in accordance with the Commitments. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender pursuant to this Section shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Defaulting Lender Fees. No Defaulting Lender shall be entitled to receive any Fees (including Non-Usage Fees in respect of any commitments of a Defaulting Lender) for any period during which that Lender is a Defaulting Lender (and the Co-Borrowers shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(iv) Defaulting Lender Cure. If the Administrative Borrower and the Administrative Agent (acting at the direction of the Majority Lenders) agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, that Lender will, to the extent applicable, purchase at par that portion of outstanding Advances of the other Lenders or take such other actions as the Administrative Agent and the Administrative Borrower may determine to be necessary to cause the Advances and funded to be held pro rata by the Lenders in accordance with the Commitments, whereupon, such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Co-Borrowers while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

(b) Termination of Defaulting Lender. The Co-Borrowers may terminate the unused amount of the Commitment of any Lender that is a Defaulting Lender upon not less than five (5) Business Days' prior written notice to the Administrative Agent (which shall promptly notify the Lenders thereof), and in such event the provisions of Section 2.16(a)(ii) will apply to all amounts thereafter paid by the Co-Borrowers for the account of such Defaulting Lender under this Agreement (whether on account of principal, interest, fees, indemnity or other amounts); provided that (i) no Event of Default shall have occurred and be continuing, and (ii) such termination shall not be deemed to be a waiver or release of any claim that the Co-Borrowers, the Administrative Agent or any Lender may have against such Defaulting Lender.

(c) If any Lender becomes a Defaulting Lender, the Co-Borrowers shall have the option to terminate this Agreement and the Commitments hereunder by written notice to the Administrative Agent and prepay the Advances, any accrued interest thereon and all costs, accrued and unpaid Non-Usage Fees and all other fees and amounts payable by the Co-Borrowers under the Transaction Documents (which, for the avoidance of doubt, shall not include any penalty, premium, make-whole or similar payment due to the termination of the Agreement and Commitments) no later than the fifth (5th) Business Day next following the giving of such notice.

#### SECTION 2.17 Extension of Availability Period.

(a) The Administrative Borrower may by written notice to the Administrative Agent (no later than 10 Business Days prior to the expiration of the original Availability Period) extend the Availability Period to March 23, 2025 or such later date as may be agreed upon by the Lenders (such date, the "Availability Period Extension Date", and such election, an "Availability Period Extension").

(b) Notwithstanding the foregoing, the extension of the Availability Period pursuant to this Section 2.17 shall not be effective with respect to any Lender unless:

(i) on or prior to the date the Administrative Borrower requests an Availability Period Extension, the Co-Borrowers shall have paid in full any and all accrued and unpaid interest and all costs and expenses of the Secured Parties that are due and payable under this Agreement;

(ii) no Event of Default or any other Market Trigger Event shall have occurred and be continuing on the date of such extension and immediately after giving effect thereto;

(iii) the Co-Borrowers shall pay to the Administrative Agent for the account of each Lender an extension fee equal 0.25% of such Lender's Pro Rata Share of the Maximum Facility Amount; and

(iv) the representations and warranties contained in this Agreement are true and correct in all material respects (except that any representation qualified as to "materiality" or "Material Adverse Effect" shall be true and correct in all respects as so qualified) on and as of the date of such extension and immediately after giving effect thereto, as though made on and as of such date (as certified by the Co-Borrowers, or, if any such representation or warranty is expressly stated to have been made as of a specific date, as of such specific date).

In connection with any extension of the Availability Period, the Co-Borrowers, the Administrative Agent and each Lender may make such amendments to this Agreement as the Administrative Agent (acting at the written direction of the Initial Lender) and the Co-Borrowers mutually determine to be reasonably necessary to evidence the extension.

SECTION 2.18 Ratings Cure. In the event that the Co-Borrowers shall have failed to maintain an investment grade rating (BBB or higher) with respect to the Advances advanced under this Agreement from a Nationally Recognized Statistical Rating Organization ("NRSRO") or from a rating agency approved by the National Association of Insurance Commissioners ("NAIC") and such failure shall remain uncured for thirty (30) Business Days ("Ratings Event"), Holdings and/or the Co-Borrowers may cure such failure by any or a combination of: (i) contributing additional cash to the Co-Borrowers to be deposited into the Collection Account, (ii) transferring additional Portfolio Assets to the Co-Borrowers, consented to by the Servicer in its sole and absolute discretion, and the Co-Borrowers pledging such additional Portfolio Assets to the Administrative Agent for the benefit of the Secured Parties or (iii) obtaining a replacement investment grade rating from an alternate NRSRO.

### ARTICLE III. CONDITIONS PRECEDENT

SECTION 3.01 Conditions Precedent to Effectiveness. This Agreement becomes effective upon, and no Lender is obligated to make any Advance, nor is any Lender, the Servicer or the Administrative Agent obligated to take, fulfill or perform any other action hereunder until, the satisfaction or waiver of the following conditions precedent:

(a) this Agreement, all other Transaction Documents and all other agreements, instruments, certificates and other documents listed on Schedule II have been duly executed by, and delivered to, the parties hereto and thereto:

(b) immediately after giving effect to the consummation of the funding of the Initial Advances the Co-Borrowers shall have no material Indebtedness for borrowed money other than the Obligations and Permitted Debt and the Lenders shall have received such payoff letters and Lien releases as they may reasonably request with respect to other material Indebtedness for borrowed money;

(c) all up-front expenses and fees (including reasonable and documented legal fees and any fees required under the Fee Letters) that are required to be paid hereunder or by the Fee Letters have been paid in full;

(d) the Collection Account and the Interest Reserve Account have been established and are subject to an Account Control Agreement;

(e) the representations contained in Sections 4.01, 4.02 and 4.05 of this Agreement, and Section 4.1 of the Guaranty are true and correct in all material respects (except that any representation qualified as to “materiality” or “Material Adverse Effect” shall be true and correct in all respects as so qualified) (as certified by the Co-Borrowers);

(f) each Co-Borrower has received all material governmental, shareholder and third party consents and approvals necessary in connection with the transactions contemplated by this Agreement and the other Transaction Documents and all applicable waiting periods have expired without any action being taken by any Person that would reasonably be expected to restrain, prevent or impose any material adverse conditions on the Co-Borrowers or such other transactions or that could seek or threaten any of the foregoing, and no law or regulation is applicable which in the reasonable judgment of the Lenders would reasonably be expected to have such effect;

(g) no action, proceeding or investigation has been instituted or, to the knowledge of any Responsible Person of a Co-Borrower, threatened or proposed against such Co-Borrower before any Governmental Authority to enjoin, restrain, or prohibit, or to obtain substantial damages in respect of, or which is related to or arises out of this Agreement or the other Transaction Documents or the consummation of the transactions contemplated hereby or thereby, or which, in the Majority Lenders’ sole discretion, would make it inadvisable to consummate the transactions contemplated by this Agreement or the other Transaction Documents or the consummation of the transactions contemplated hereby or thereby;

(h) the Co-Borrowers shall have obtained an investment grade rating (BBB or higher) with respect to the Advances advanced under this Agreement from a NRSRO or from a rating agency approved by the NAIC and the Majority Lenders shall have received a copy of any rating letter issued in connection therewith;

(i) the Administrative Agent and the Lenders have received all documentation and other information requested by the Administrative Agent or the Lenders, respectively, no later than ten (10) Business Days prior to the Closing Date, to the extent required by regulatory authorities with respect to the Co-Borrowers and the Servicer under applicable “know your customer”, Anti-Money Laundering Laws, including the USA PATRIOT Act, and Anti-Corruption Laws, including without limitation, a duly executed W-8 or W-9 tax form, as applicable (or such other applicable IRS tax form) of each Co-Borrower (or, if a Co-Borrower is treated as a disregarded entity for U.S. federal income tax purposes, the entity of which such Co-Borrower is considered to be a division under Treasury regulation section 301.7701-2), all in form and substance reasonably satisfactory to the Administrative Agent or the Lenders, respectively; and

(j) payment of all reasonable and invoiced fees, costs and expenses in connection therewith.

SECTION 3.02 Conditions Precedent to All Advances. Each Advance (including the Initial Advance) is subject to the further conditions precedent that:

(a) the Administrative Borrower has delivered to the Administrative Agent a Notice of Borrowing as provided in Section 2.02(a);

(b) on and as of such Advance Date, immediately after giving effect to such Advance and the transactions related thereto, including the use of proceeds thereof, the Advances Outstanding do not exceed the Maximum Availability on such Advance Date;

(c) on and as of such Advance Date, immediately after giving effect to such Advance and the transactions related thereto, including the use of proceeds thereof, no Market Trigger Event has occurred and is continuing;

(d) no Event of Default has occurred and is continuing, or would result from such Advance or application of proceeds therefrom;

(e) the Co-Borrowers shall have obtained an investment grade rating (BBB or higher) with respect to the Advances advanced under this Agreement from NRSRO or from a rating agency approved by the NAIC;

(f) the representations contained in Sections 4.01, 4.02 and 4.05 of this Agreement, and Section 4.1 of the Guaranty are true and correct in all material respects (except that any representation qualified as to "materiality" or "Material Adverse Effect" shall be true and correct in all respects as so qualified) before and immediately after giving effect to such Advance and to the application of proceeds therefrom, on and as of such date as though made on and as of such date (or, in the case of any such representation expressly stated to have been made as of a specific date, as of such specific date); and

(g) all expenses and fees (including reasonable and documented out-of-pocket legal fees and any fees required under the Fee Letters as set forth therein) that are required to be paid hereunder or by the Fee Letters have been paid in full.

SECTION 3.03 Conditions to Transfers of Portfolio Assets. Each Transfer of a Portfolio Asset is subject to the further conditions precedent that:

(a) the Administrative Borrower has delivered to the Administrative Agent (with a copy to the Initial Lender and the Servicer) no later than 2:00 p.m. on the date that is two (2) Business Days prior to the related Cut-Off Date (i) an updated Portfolio Asset Schedule reflecting the Transfer of such Portfolio Asset and (ii) a Borrowing Base Certificate (giving pro forma effect to such Transfer and proposed Advances relating thereto, and if such Advances would cause the aggregate Advances Outstanding to exceed the Maximum Availability as of the proposed Cut-Off Date, such Borrowing Base Certificate must include any scheduled repayments or optional prepayments of Advances in accordance with the terms hereof which would result in such Advances Outstanding not exceeding the Maximum Availability as of such date);

(b) in connection with the acquisition of a Portfolio Asset, all actions required to be taken or performed (including the filing of UCC financing statements) to give the Administrative Agent, for the benefit of the Secured Parties, a first priority perfected security interest (subject only to Permitted Liens)



in such Portfolio Asset and the Collateral related thereto and the proceeds thereof have been taken or performed; and

- (c) no Event of Default exists or would result from such Transfer.

Each Transfer of a Portfolio Asset pursuant to this Section 3.03 is deemed a representation by the Loan Parties that the conditions specified in this Section 3.03 have been met.

SECTION 3.04 Advances Do Not Constitute a Waiver. No Advance made hereunder constitutes a waiver of any condition to any Lender's obligation to make such an Advance unless such waiver is in writing and executed by such Lender.

#### ARTICLE IV. REPRESENTATIONS

SECTION 4.01 Representations of the Loan Parties. The Loan Parties, jointly and severally, hereby represent to the Secured Parties as of the Closing Date and each Advance Date as follows:

(a) Organization, Good Standing and Due Qualification. Each Co-Borrower is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, with all requisite limited liability company power and authority necessary to own the Portfolio Assets and the Collateral and to conduct its business as such business is presently conducted and to enter into and perform its obligations pursuant to this Agreement and the other Transaction Documents to which it is a party. Each Co-Borrower is duly qualified to do business as a limited liability company, and has obtained all licenses and approvals under the laws of the State of Delaware, and in all other jurisdictions necessary to own its assets and to transact the business in which it is engaged, and is duly qualified, and in good standing under the laws of the State of Delaware, and in each other jurisdiction where the transaction of such business or its ownership of the Portfolio Assets and the Collateral and the conduct of its business requires such qualification.

(b) Power and Authority; Due Authorization; Execution and Delivery. Each Co-Borrower (i) has all limited liability company power, authority and legal right to (A) execute and deliver this Agreement and the other Transaction Documents to which it is a party and (B) perform and carry out the terms of this Agreement and the other Transaction Documents to which it is a party and the transactions contemplated thereby and (ii) has taken all necessary action to (A) authorize the execution, delivery and performance of this Agreement and each of the other Transaction Documents to which it is a party, and (B) grant to the Administrative Agent, for the benefit of the Secured Parties, a first priority perfected security interest in the Collateral on the terms and conditions of this Agreement and the other Transaction Documents, subject only to Permitted Liens, and (C) authorizes the Servicer to perform its actions contemplated by this Agreement and the other Transaction Documents. This Agreement and each other Transaction Document to which each Co-Borrower is a party have been duly executed and delivered by Holdings and such Co-Borrower.

(c) Binding Obligation. This Agreement and each of the other Transaction Documents to which each Co-Borrower is a party constitutes the legal, valid and binding obligation of such Co-Borrower, enforceable against such Co-Borrower in accordance with their respective terms, except as the enforceability hereof and thereof may be limited by Bankruptcy Laws and by general principles of equity (whether considered in a proceeding in equity or at law).

(d) All Consents Required. No consent of any other party and no consent, license, approval or authorization of, or registration or declaration with, any Governmental Authority, bureau or agency is required in connection with the execution, delivery or performance by each Co-Borrower of this Agreement or any Transaction Document to which it is a party or the validity or enforceability of this Agreement or any such Transaction Document or grant of a security interest in the Collateral, other than such as have been waived, met or obtained and are in full force and effect.

(e) No Violation or Consent under Investment Fund Agreements. The execution, delivery and performance of this Agreement and the other Transaction Documents will not (i) conflict with or result in any breach of any of the terms or provisions of, or constitute (with or without notice or lapse of time or both) a default under the Investment Fund Agreements, (ii) result in the creation or imposition of any Lien on the Collateral other than Permitted Liens, (iii) violate any Applicable Law in any material respect, (iv) violate any Investment Fund Agreement, (v) require the consent of any other party (including under any Investment Fund Agreement) except for any such consent that has been obtained, or require any consent, license, approval or authorization of, or registration or declaration with, any Governmental Authority, bureau or agency (other than (x) as required by laws or regulations of general applicability adopted after the date on which this representation is given or (y) any such consent, license, approval or authorization of, or registration or declaration with, any Governmental Authority that may be required in each of England, Guernsey, the Commonwealth of Australia and such other jurisdictions as the Administrative Borrower may reasonably request in connection with the acquisition of new Portfolio Assets) with respect to the admission of the Administrative Agent, its designee or transferee as a member (or equivalent) of the General Partner upon the transfer of the General Partner Investment to the Administrative Agent, its designee or transferee as a member (or equivalent) of the General Partner (other than, to the extent applicable, any customary transfer restrictions (including, without limitation, restrictions relating to ERISA, "know your customer" and Anti-Money Laundering Law matters) set forth in the relevant Equity Investment Agreement), in connection with any exercise of remedies in respect of the General Partner Investment under and in accordance with the terms of the Transaction Documents, (vi) violate a Co-Borrower's Constituent Documents, or (vii) violate any contract or other agreement to which a Co-Borrower is a party or by which such Co-Borrower or any property or assets of such Co-Borrower may be bound, in each case (other than with respect to any Investment Fund Agreement), except (A) in the case of clause (vii), as would not reasonably be expected to have a Material Adverse Effect or (B) other than in respect of any Equity Interests in the Co-Borrowers, as would not reasonably be likely to cause a diminution in the value of the Collateral of greater than five percent (5%).

(f) No Proceedings. There is no litigation, proceeding or investigation pending or, to the knowledge of any Responsible Person of a Co-Borrower, threatened against any Co-Borrower, before any Governmental Authority (i) asserting the invalidity of this Agreement or any other Transaction Document, (ii) seeking to prevent the consummation of any of the transactions contemplated by this Agreement or any other Transaction Document or (iii) in which a Co-Borrower, in its good faith determination, has determined that there is a reasonable probability of an adverse determination and which, if so adversely determined, individually or in the aggregate, would result in a Material Adverse Effect.

(g) No Liens. The Collateral is owned by each Loan Party free and clear of any Liens except for Permitted Liens.

(h) Transfer of Collateral. Except as otherwise expressly permitted by the terms of this Agreement, no item of Collateral has been Sold, assigned or pledged by a Loan Party to any Person, other than in accordance with Article II and the grant of a security interest therein to the Administrative Agent, for the benefit of the Secured Parties, pursuant to the terms of this Agreement. Each Loan Party consents to the transfer of any Collateral to the Administrative Agent or its designee, following, and during the occurrence of, an Event of Default and to the substitution of the Administrative Agent or its designee as the general partner in any General Partner Investment with all the rights and powers related thereto, subject to the terms of this Agreement.

(i) Eligible Portfolio Assets. The Eligible Portfolio Assets as of the Closing Date are set forth on Schedule I attached hereto and are owned by the Loan Parties.

(j) Indebtedness. No Co-Borrower has any Indebtedness as of the Closing Date other than Permitted Debt.

(k) Registered Investment Adviser Status. Each Co-Borrower is registered under the Investment Advisers Act to the extent such registration is required under the Investment Advisers Act.

(l) Set-Off etc. No Portfolio Asset has been compromised, adjusted, extended, satisfied, subordinated, rescinded, set-off or modified by any Co-Borrower, the Transferor, if any, or the Obligor thereof, and no item in the Collateral Portfolio is subject to compromise, adjustment, extension, satisfaction, subordination, rescission, set-off, counterclaim, defense, abatement, suspension, deferment, deduction, reduction, termination or modification, whether arising out of transactions concerning the Collateral Portfolio or otherwise, by any Co-Borrower, the Transferor, if any, or the Obligor with respect thereto, except, in each case, for amendments, extensions and modifications, if any, permitted pursuant to Section 5.02.

(m) No Injunctions. No injunction, writ, restraining order or other order of any nature materially adversely affects each Co-Borrower's performance of its obligations under this Agreement or any Transaction Document to which such Co-Borrower is a party.

(n) Taxes. All material tax returns (including all material foreign, federal, State, local and other tax returns whether filed on a standalone or group basis) required to be filed by, on behalf of or with respect to the income and assets of the Co-Borrowers (including the Collateral) have been timely filed and the Co-Borrowers are not liable for Taxes payable by any other Person. Each of the Co-Borrowers has paid all Taxes, assessments and other governmental charges made against it or any of its property (including the Collateral) except for those Taxes being contested in good faith by appropriate proceedings and in respect of which it has established proper reserves in accordance with Applicable Accounting Principles, on its books Each Co-Borrower is disregarded as an entity separate from its owner pursuant to Treasury Regulation Section 301.7701-3(b) or a partnership (other than a publicly traded partnership) for U.S. federal income tax purposes. Each Co-Borrower is resident for Tax purposes only in the jurisdiction under whose laws each Co-Borrower is incorporated as of the Closing Date and does not have a branch, agency or permanent establishment in any other jurisdiction for Tax purposes.

(o) Location. Except as permitted pursuant to Section 5.02(g), the Co-Borrowers' location (within the meaning of Article 9 of the UCC) is Delaware and the UK Guarantors' location (within the meaning of Article 9 of the UCC) is the District of Columbia. Except as permitted pursuant to Section 5.02(g), the principal place of business and chief executive office of the Loan Parties (and the



location of the Loan Parties records regarding the Collateral (other than those delivered to the Servicer pursuant to this Agreement)) is located at its address referred to in Section 11.02.

(p) Tradenames. Except as permitted pursuant to Section 5.02(q), each Loan Party's legal name is as set forth in this Agreement. Except as permitted pursuant to Section 5.02(q), no Loan Party has changed its name since its formation or has tradenames, fictitious names, assumed names or "doing business as" names. The Co-Borrowers' only jurisdiction of formation is Delaware, and the UK Guarantors' only jurisdiction of incorporation is England and Wales and, except as permitted pursuant to Section 5.02(q), the Loan Parties have not changed their jurisdiction of formation.

(q) No Subsidiaries. The Loan Parties do not directly own or hold interests in any other Person other than the Portfolio Assets.

(r) Reports Accurate. All Notices of Borrowing, Borrowing Base Certificates, LTV Certificates and other written or electronic information, exhibits, financial statements, documents, books, records or reports required to be furnished by the Administrative Borrower to the Administrative Agent or the Servicer in connection with this Agreement and the other Transaction Documents were accurate, true and correct in all material respects when so furnished, and no such document (as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state a material fact or any fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading; provided that solely with respect to written or electronic information (other than information presented in a Notice of Borrowing or Borrowing Base Certificate) furnished by the Administrative Borrower which was provided to a Loan Party from an Obligor with respect to a Portfolio Asset or any other third party (or derived thereof), such information need only be accurate, true and correct in all material respects to the knowledge of the applicable Responsible Persons of such Loan Party.

(s) Exchange Act Compliance; Regulations T, U and X. None of the transactions contemplated herein or in the other Transaction Documents (including the use of Proceeds from the sale of any item in the Collateral) will violate or result in a violation of Section 7 of the Exchange Act or Regulations T, U and X of the Board of Governors of the Federal Reserve System, 12 C.F.R., Chapter II. No Co-Borrower owns or intends to carry or purchase, and no proceeds from the Advances will be used to carry or purchase, any "margin stock" within the meaning of Regulation U or to extend "purpose credit" within the meaning of Regulation U, except as may result from any Portfolio Asset becoming publicly traded or as a result of a distribution or payment in kind to a Co-Borrower by any Portfolio Asset of marginable stock.

(t) Event of Default or Potential Default. No event has occurred and is continuing which constitutes an Event of Default or Potential Default, in each case, which has not been previously disclosed to the Administrative Agent and the Lenders in writing.

(u) ERISA. Except as could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, (i) no ERISA Event has occurred and none of the Co-Borrowers, Holdings or any ERISA Affiliate is aware of any fact, event or circumstance that would reasonably be expected to constitute or result in an ERISA Event; (ii) none of the Co-Borrowers, Holdings or any ERISA Affiliate has sponsored, established or maintained, has an obligation to contribute to, has incurred or taken any action that has resulted or would reasonably be expected to result in the imposition of liability on the Co-Borrowers, Holdings or any ERISA Affiliate with respect to any Pension Plan or Multiemployer

Plan; and (iii) none of the Co-Borrowers, Holdings or any ERISA Affiliate has sponsored, established or maintained, has an obligation to contribute to, has incurred or has taken any action that has resulted or would reasonably be expected to result in the imposition of any liability on the Co-Borrowers, Holdings or any ERISA Affiliate with respect to any Employee Benefit Plan. No assets of the Co-Borrowers or Holdings include (x) Plan Assets or (y) "plan assets" of any governmental plan that is subject to laws or regulations similar to Section 406 of ERISA or 4975 of the Code ("Similar Law"). None of the transactions or services contemplated under this Agreement or the other Transaction Documents, including exercise of rights with respect to the Collateral and performance of its duties by the Servicer, constitutes or will result in a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code or any violation of Similar Law.

(v) Broker-Dealer. No Co-Borrower is a broker-dealer or subject to the Securities Investor Protection Act of 1970.

(w) Instructions for Collections. The Collection Account is the only account to which the Obligors have been instructed by the applicable Loan Party to send Collections with respect to the Portfolio Assets. No Loan Party has granted any Person other than the Administrative Agent, for the benefit of the Secured Parties, and Permitted Liens in favor of the Account Bank, an interest in the Collection Account.

(x) Insider. No Co-Borrower is an "executive officer," "director," or "person who directly or indirectly or acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10% of any class of voting securities" (as those terms are defined in 12 U.S.C. §375b or in regulations promulgated pursuant thereto) of any Lender, of a bank holding company of which any Lender is a subsidiary, or of any subsidiary, of a bank holding company of which any Lender is a subsidiary, or, to the knowledge of any Responsible Person of a Co-Borrower, any bank at which any Lender maintains a correspondent account, or of any bank which maintains a correspondent account with any Lender.

(y) Investment Company Act. No Co-Borrower is required to register as an "investment company" under the provisions of the 1940 Act.

(z) Compliance with Applicable Law. Except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, (i) each Co-Borrower has complied with all Applicable Law to which it may be subject, and (ii) no item of the Collateral contravenes any Applicable Law (including all predatory and abusive lending laws, laws, rules and regulations relating to licensing, truth in lending, fair credit billing, fair credit reporting, equal credit opportunity, fair debt collection practices and privacy).

(aa) Collections. All Available Collections received by a Loan Party or its Affiliates with respect to the Collateral will be held in trust for the benefit of the Administrative Agent, for the benefit of the Secured Parties, until deposited into the Collection Account as provided herein.

(bb) Sole Purpose. Each Co-Borrower has been formed solely for the purpose of, and has not engaged in any business activity other than, the acquisition of Portfolio Assets and transactions incidental thereto and activities of the type set forth in Section 5.01(a) and Section 5.02(a). No Co-Borrower is party to any material agreements other than this Agreement and the other Transaction Documents to which it is a party and the Required Portfolio Documents and other agreements listed on

the Portfolio Asset Checklist for each Portfolio Asset in respect of which a Co-Borrower is a lender or loan participant.

(cc) Separate Entity. Each Co-Borrower is operated as an entity with assets and liabilities distinct from those of Holdings, and any Affiliates thereof, and each Co-Borrower hereby acknowledges that the Administrative Agent and the Lenders are entering into the transactions contemplated by this Agreement in reliance upon each Co-Borrower's identity as a separate legal entity from Holdings, and from each such other Affiliate of Holdings.

(dd) Sanctions and Anti-Terrorism Laws and Anti-Money Laundering Laws. No Borrower Covered Entity described in clauses (a) or (b) of the definition thereof, nor any of their respective directors, officers, or employees, are (i) a Sanctioned Person; (ii) located, organized or resident in a Sanctioned Country; or (iii) engaging in any dealings or transactions that would result in a material violation of Sanctions and Anti-Terrorism Laws or Anti-Money Laundering Laws. Each Co-Borrower covenants and agrees that it shall promptly notify the Servicer and the Administrative Agent in writing upon a Responsible Person of a Borrower Covered Entity obtaining knowledge of the occurrence of a Reportable Compliance Event with respect to a Borrower Covered Entity, except to the extent such notice is prohibited by Applicable Law.

(ee) Security Interest.

(i) This Agreement creates a valid and continuing security interest (as defined in the applicable UCC) in the Collateral in favor of the Administrative Agent, on behalf of the Secured Parties, which security interest is prior to all other Liens (except for Permitted Liens), and is enforceable as such against creditors of and purchasers from the Co-Borrowers.

(ii) The Collateral is comprised of "instruments", "financial assets", "security entitlements", "general intangibles", "chattel paper", "accounts", "certificated securities", "uncertificated securities", "securities accounts", "deposit accounts", "supporting obligations" or "insurance" (each as defined in the applicable UCC), and the proceeds of the foregoing, or such other category of collateral under the applicable UCC as to which each Co-Borrower has complied with its obligations under this Section 4.01(dd).

(iii) Each of the Collection Account and the Interest Reserve Account is not in the name of any Person other than any Co-Borrower, subject to Permitted Liens and the lien of the Administrative Agent, for the benefit of the Secured Parties.

(iv) Each of the Collection Account and the Interest Reserve Account constitutes a "securities account" or "deposit account", as applicable, as defined in the applicable UCC.

(v) Kudu, the applicable banking institution and the Administrative Agent, on behalf of the Secured Parties, have entered into the Account Control Agreement with respect to each of the Collection Account and Interest Reserve Account.

(vi) Each Co-Borrower has authorized the filing of all appropriate financing statements in the proper filing office in the appropriate jurisdictions under Applicable Law in order to perfect the security interest in the Collateral and that portion of the Portfolio Assets in which a security interest granted to the Administrative Agent, on behalf of the Secured Parties,

under this Agreement may be perfected by filing; provided that filings in respect of real property shall not be required.

(vii) Other than as expressly permitted by the terms of the Transaction Documents, this Agreement and the security interest granted to the Administrative Agent, on behalf of the Secured Parties, pursuant to this Agreement, no Co-Borrower has pledged, assigned, sold, granted a security interest in or otherwise conveyed any of the Collateral. No Co-Borrower has authorized the filing of and, as of the Closing Date, is not aware of any financing statements against any Co-Borrower that include a description of collateral covering the Collateral other than any financing statement (A) that has been terminated or fully and validly assigned to the Administrative Agent, (B) reflecting the transfer of assets on a Release Date pursuant to (and simultaneously with or subsequent to) the consummation of any transaction contemplated under (and in compliance with the conditions set forth in) Section 2.11, or (C) for any Permitted Lien. As of the Closing Date, no Co-Borrower is aware of the filing of any judgment or Tax lien filings against any Co-Borrower, other than Permitted Liens.

(viii) With respect to any Collateral that constitutes a "certificated security," such certificated security has been delivered to the Administrative Agent, on behalf of the Secured Parties and, if in registered form, has been specially Indorsed to the Administrative Agent, for the benefit of the Secured Parties, or in blank by an effective Indorsement or has been registered in the name of the Administrative Agent, for the benefit of the Secured Parties, upon original issue or registration of transfer by a Co-Borrower of such certificated security.

(ix) With respect to any Collateral that constitutes an "uncertificated security", each Co-Borrower shall either (x) cause the issuer of such uncertificated security to register the Administrative Agent, on behalf of the Secured Parties, as the registered owner of such uncertificated security or (y) cause the issuer of such uncertificated security to agree to comply with instructions of the Administrative Agent without further consent of such Co-Borrower.

SECTION 4.02 Representations of the Co-Borrowers Relating to the Agreement and the Collateral. The Co-Borrowers, jointly and severally, hereby represent to the Secured Parties as of the Closing Date and each Advance Date as follows:

(a) Eligibility of Collateral. (i) Schedule I and each Borrowing Base Certificate is an accurate and complete listing of all the Portfolio Assets contained in the Collateral and included in the Borrowing Base on the date delivered, and the information contained therein with respect to the identity of such item of Collateral and the amounts owing thereunder is true and correct in all material respects as of such date, (ii) each Portfolio Asset designated as included in the Borrowing Base on Schedule I or any Borrowing Base Certificate as an Eligible Portfolio Asset and each Portfolio Asset included as an Eligible Portfolio Asset in any calculation of the Borrowing Base is an Eligible Portfolio Asset, (iii) the Loan Parties have complied in all material respects with the requirements of this Agreement, and (iv) with respect to each such item of Collateral, all consents, licenses, approvals or authorizations of or registrations or declarations of any Governmental Authority or any Person required to be obtained, effected or given by a Loan Party in connection with the grant of a security interest in each item of Collateral to the Administrative Agent, for the benefit of the Secured Parties, have been duly obtained, effected or given and are in full force and effect.

(b) Eligible Portfolio Assets. The Eligible Portfolio Assets as of the Closing Date are set forth on Schedule I and are owned by the Loan Parties.

(c) Portfolio Assets. Each Portfolio Asset included in the Borrowing Base will be evidenced by Required Portfolio Documents evidencing each Loan Party, as applicable, as owner thereof. As of the Closing Date, no Portfolio Asset included in the Borrowing Base and held, directly or indirectly, by a Loan Party is held in a securities account.

(d) Change of Control. As of the Closing Date or, if later, on the date of acquisition thereof, no Required Portfolio Document contains provisions prohibiting the pledge of the Portfolio Assets that are included in the Borrowing Base for which consent to pledge such Collateral has not been received.

(e) No Fraud. To the knowledge of the Responsible Persons of each Loan Party as of the Closing Date, each Portfolio Asset was originated without any fraud or material misrepresentation on the part of the Obligor or Transferor, if any, of such Portfolio Asset.

SECTION 4.03 Representations of the Servicer. The Servicer hereby represents, as of the Closing Date, as of each applicable Cut-Off Date, as of each applicable Advance Date and as of each Reporting Date, as follows:

(a) Organization; Power and Authority. It is a duly organized and validly existing as a national banking association in good standing under the laws of the United States. It has full power, authority and legal right to execute, deliver and perform its obligations as Servicer under this Agreement and the other Transaction Documents to which it is a party.

(b) Due Authorization. The execution and delivery of this Agreement and the other Transaction Documents to which it is a party and the consummation of the transactions provided for herein and therein have been duly authorized by all necessary organizational action on its part.

(c) No Conflict. The execution and delivery of this Agreement and the other Transaction Documents to which it is a party, the performance of the transactions contemplated hereby or thereby and the fulfillment of the terms hereof or thereof will not conflict with, result in any breach of its organizational documents or any of the terms and provisions of, or constitute (with or without notice or lapse of time or both) a default under any indenture, contract, agreement, mortgage, deed of trust, or other instrument to which the Servicer is a party or by which it or any of its property is bound.

(d) No Violation. The execution and delivery of this Agreement and the other Transaction Documents, the performance of the transactions contemplated hereby and thereby and the fulfillment of the terms hereof and thereof will not conflict with or violate, in any respect, any Applicable Law if compliance therewith is necessary (i) to ensure the enforceability of any Portfolio Asset or (ii) for Servicer to perform its obligations under this Agreement in accordance with the terms hereof.

(e) All Consents Required; No Proceedings or Injunction. All approvals, authorizations, consents, orders or other actions of any Person or Governmental Authority applicable to the Servicer, required in connection with the execution and delivery of this Agreement and the other Transaction Documents to which it is a party, the performance by the Servicer of the transactions contemplated hereby and thereby and the fulfillment by the Servicer of the terms hereof and thereof have been obtained to the extent necessary (i) to ensure the enforceability of any Portfolio Asset or (ii) for Servicer to perform its obligations under this Agreement in accordance with the terms hereof. There is no



litigation, proceeding or investigation pending or, to the knowledge of the Servicer, threatened against the Servicer, before any Governmental Authority (A) asserting the invalidity of this Agreement or any other Transaction Document or (B) seeking to prevent the consummation of any of the transactions contemplated by this Agreement or any other Transaction Document. No injunction, writ, restraining order or other order of any nature adversely affects the Servicer's performance of its obligations under this Agreement or any Transaction Document to which the Servicer is a party.

(f) Validity, Etc. The Agreement and the other Transaction Documents to which it is a party constitute the legal, valid and binding obligation of the Servicer, enforceable against the Servicer in accordance with its terms, except as such enforceability may be limited by applicable Bankruptcy Laws and general principles of equity.

(g) Reports Accurate. All Servicing Reports and other written or electronic information, exhibits, financial statements, documents, books, records or reports, in all cases, prepared and furnished by the Servicer in connection with this Agreement are, as of their date, accurate, true and correct in all material respects, and no such document contains any material misstatement of fact or omits to state a material fact or any fact necessary to make the statements contained therein not misleading; provided that for the purposes of the production by the Servicer of any reports, documents or information required under this Agreement, the Servicer may conclusively rely (absent bad faith or manifest error, and without investigation, inquiry, independent verification or any duty or obligation to recompute, verify, or recalculate any of the amounts and other information contained in) on any reports, documents or information provided to it by any Obligor or any other third party without any liability to the Servicer for such reliance.

(h) Servicing Standard. The Servicer has complied in all material respects with the Servicing Standard with regard to the servicing of the Portfolio Assets.

(i) Collections. All Available Collections received by the Servicer or its Affiliates with respect to the Collateral are held for the benefit of the Administrative Agent, for the benefit of the Secured Parties, until deposited into the Collection Account as provided herein.

(j) Servicer Termination Event. No event has occurred which constitutes a Servicer Termination Event (other than any Servicer Termination Event which has previously been disclosed to the Administrative Agent as such).

SECTION 4.04 Representations of each Lender. (a) No Lender Covered Entity is a Sanctioned Person and (b) the funds used to fund Advances, to the extent received from such Lender, are not derived from any unlawful activity. Each Lender covenants and agrees that it shall promptly notify the Servicer in writing upon obtaining actual knowledge of the occurrence of a Reportable Compliance Event with respect to any Lender Covered Entity, except to the extent such notice is prohibited by Applicable Law.

SECTION 4.05 Representations of Holdings. Holdings hereby represents to the Secured Parties solely in respect of itself as of the Closing Date and each Advance Date as follows:

(a) Organization, Good Standing and Due Qualification. Holdings is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, with all requisite limited liability company power and authority necessary to own the US Pledged Equity and to conduct its business as such business is presently conducted. Holdings is (i) has obtained all

licenses and approvals necessary to own its assets and to transact the business in which it is engaged, and (ii) is duly qualified and in good standing in each jurisdiction where the transaction of such business or its ownership of the US Pledged Equity requires such qualification except, in the case of clauses (i) and (ii), as would not reasonably be expected to have a Material Adverse Effect.

(b) Power and Authority; Due Authorization; Execution and Delivery. Holdings (i) has all requisite limited liability company power and authority to (A) execute and deliver this Agreement and the other Transaction Documents to which it is a party and (B) perform and carry out its obligations pursuant to this Agreement and the other Transaction Documents to which it is a party and (ii) has taken all necessary action to (A) authorize the execution, delivery and performance of this Agreement and each of the other Transaction Documents to which it is a party, (B) grant to the Administrative Agent, for the benefit of the Secured Parties, a first priority perfected security interest in the US Pledged Equity on the terms and conditions of this Agreement and the other Transaction Documents, subject only to Permitted Liens, and (C) authorize the Servicer to perform the actions contemplated herein. This Agreement and each other Transaction Document to which Holdings is a party have been duly executed and delivered by Holdings.

(c) Binding Obligation. This Agreement and each of the other Transaction Documents to which Holdings is a party constitutes the legal, valid and binding obligation of Holdings, enforceable against Holdings in accordance with their respective terms, except as the enforceability hereof and thereof may be limited by Bankruptcy Laws and by general principles of equity (whether considered in a proceeding in equity or at law).

(d) All Consents Required. No consent of any other party and no consent, license, approval or authorization of, or registration or declaration with, any Governmental Authority, bureau or agency is required in connection with the execution, delivery or performance by Holdings of this Agreement or any Transaction Document to which it is a party or the validity or enforceability of this Agreement or any such Transaction Document or a grant of a security interest in the US Pledged Equity, other than such as have been waived, met or obtained and are in full force and effect or where the failure to do so would not reasonably be expected to result in a Material Adverse Effect.

(e) No Violation. The execution, delivery and performance of this Agreement and the other Transaction Documents and all other agreements and instruments required to be executed and delivered or required to be executed and delivered in connection with the Transfer of any Portfolio Asset will not (i) conflict with, result in any breach of any of the terms and provisions of, or constitute (with or without notice or lapse of time or both) a default under, the Holdings' Constituent Documents (ii) result in the creation or imposition of any Lien on the Collateral other than Permitted Liens or (iii) violate any Applicable Law in any material respect or (iv) violate any material contract or other material agreement to which the Holdings is a party or by which the or any property or assets of the Holdings may be bound, except in the case of clause (iv) as would not reasonably be expected to have a Material Adverse Effect.

(f) No Proceedings; No Injunctions. There is no litigation, proceeding or investigation pending or, to the knowledge of any Responsible Person of Holdings, threatened against Holdings before any Governmental Authority (i) asserting the invalidity of this Agreement or any other Transaction Document, (ii) seeking to prevent the consummation of any of the transactions contemplated by this Agreement or any other Transaction Document or (iii) in which Holdings, in its good faith determination,

has determined that there is a reasonable probability of an adverse determination and which, if so adversely determined, individually or in the aggregate, would result in a Material Adverse Effect.

(g) Insider. Holdings is not an “executive officer,” “director,” or “person who directly or indirectly or acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10% of any class of voting securities” (as those terms are defined in 12 U.S.C. §375b or in regulations promulgated pursuant thereto) of any Lender, of a bank holding company of which any Lender is a subsidiary, or of any subsidiary, of a bank holding company of which any Lender is a subsidiary, or, to the knowledge of any Responsible Person of Holdings, any bank at which any Lender maintains a correspondent account, or of any bank which maintains a correspondent account with any Lender.

(h) No Liens. The Equity Interests of each Co-Borrower owned, directly or indirectly, by Holdings are free and clear of any Liens except for Permitted Liens.

(i) Investment Company Act. Holdings is not required to register as an “investment company” under the provisions of the 1940 Act.

(j) Compliance with Applicable Law. Except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, Holdings has complied with all Applicable Laws to which it may be subject.

(k) [Reserved].

(l) Sanctions and Anti-Terrorism Laws and Anti-Money Laundering Laws. Neither Holdings, nor any of their directors, officers or employees is (i) a Sanctioned Person; (ii) located, organized or resident in a Sanctioned Country; or (iii) engaging in any dealings or transactions that would result in a material violation of Sanctions and Anti-Terrorism Laws or Anti-Money Laundering Laws. Holdings covenants and agrees that it shall promptly notify the Servicer in writing upon a Responsible Person of a Co-Borrower obtaining knowledge of the occurrence of a Reportable Compliance Event with respect to Holdings or an Obligor, except to the extent such notice is prohibited by Applicable Law.

(m) [Reserved].

(n) No Plan Assets. No assets of Holdings include (x) Plan Assets or (y) “plan assets” of any governmental plan that is subject Similar Law. None of the transactions or services contemplated under this Agreement or the other Transaction Documents, including exercise of rights with respect to the Collateral and performance of its duties by the Servicer, constitutes or will result in a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code or any violation of Similar Law.

(o) Security Interest.

(i) The US Pledged Equity issued by each Co-Borrower has been duly and validly authorized and issued by such Co-Borrower.

(ii) This Agreement creates a valid and continuing security interest (as defined in the applicable UCC) in the US Pledged Equity in favor of the Administrative Agent, on behalf of



the Secured Parties, which security interest is prior to all other Liens (except for Permitted Liens), and is enforceable as such against creditors of and purchasers from Holdings.

(iii) Holdings has authorized the filing of all appropriate financing statements in the proper filing office in the appropriate jurisdictions under Applicable Law in order to perfect the security interest in the US Pledged Equity.

(iv) Other than as expressly permitted by the terms of the Transaction Documents, this Agreement and the security interest granted to the Administrative Agent, on behalf of the Secured Parties, pursuant to this Agreement, Holdings has not pledged, assigned, sold, granted a security interest in or otherwise conveyed any of the US Pledged Equity. Holdings has not authorized the filing of, and as of the Closing Date is not aware of any financing statements against Holdings that include a description of collateral covering the US Pledged Equity As of the Closing Date, Holdings is not aware of the filing of any judgment or Tax lien filings against Holdings, other than Permitted Liens.

(v) Holdings with respect to Kudu and Kudu US, and Kudu with respect to Kudu US, consents to the transfer of any US Pledged Equity to the Administrative Agent or its designee, following, and during the occurrence of, an Event of Default and to the substitution of the Administrative Agent or its designee as a member in each Co-Borrower with all the rights and powers related thereto, subject to the terms of this Agreement.

(vi) The US Pledged Equity shall not be represented by a certificate unless (A) the limited liability company agreement of each Co-Borrower expressly provides that such interest shall be a "security" within the meaning of Article 8 of the UCC of the applicable jurisdiction and (B) such certificate shall be delivered as provided in clause (vii) below.

(vii) If any portion of the US Pledged Equity constitutes a "certificated security," such certificated security has been delivered to the Administrative Agent, on behalf of the Secured Parties and, if in registered form, has been specially Indorsed to the Administrative Agent, for the benefit of the Secured Parties, or in blank by an effective Indorsement or has been registered in the name of the Administrative Agent, for the benefit of the Secured Parties, upon original issue or registration of transfer by Holdings of such certificated security.

(viii) If any portion of the US Pledged Equity constitutes an "uncertificated security", each Co-Borrower hereby agrees to comply with instructions of the Administrative Agent with respect to such US Pledged Equity without further consent of Holdings.

(ix) Except as permitted pursuant to Section 5.06(f), Holdings' location (within the meaning of Article 9 of the UCC) is Delaware. Except as permitted pursuant to Section 5.06(f), the principal place of business and chief executive office of Holdings (and the location of Holdings' records regarding the US Pledged Equity (other than those delivered to the Administrative Agent pursuant to this Agreement)) is located at its address referred to in Section 11.02.

(p) Tax Returns. All material tax returns (including all material foreign, federal, State, local and other tax returns whether filed on a standalone or group basis) required to be filed by, on behalf of or with respect to the income and assets of Holdings has been timely filed and Holdings is not liable for Taxes payable by any other Person. Holdings has paid all Taxes, assessments and other governmental

charges made against it or any of its property except for those Taxes, assessments or charges being contested in good faith by appropriate proceedings and in respect of which it has established proper reserves in accordance with Applicable Accounting Principles, on its books. Holdings is resident for Tax purposes only in the jurisdiction under whose laws it is organized as of the Closing Date and does not have a branch, agency or permanent establishment in any other jurisdiction for Tax purposes.

ARTICLE V.  
GENERAL COVENANTS

SECTION 5.01 Affirmative Covenants of the Loan Parties. From the Closing Date until the Facility Termination Date:

(a) Compliance with Constituent Documents and Scope of Business. Except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, the Co-Borrowers will observe all organizational procedures required by its Constituent Documents. Without limiting the foregoing, each Co-Borrower will limit the scope of its business to: (i) the acquisition of Portfolio Assets and the ownership and management of the Portfolio Assets and the related assets in the Collateral Portfolio, (ii) the sale, transfer or other disposition of Portfolio Assets as and when permitted under the Transaction Documents, (iii) entering into and performing under the Transaction Documents, consenting or withholding consent as to proposed amendments, waivers and other modifications of the Equity Investment Agreements to the extent not in conflict with the terms of this Agreement or any other Transaction Document, (iv) exercising any rights (including but not limited to voting rights and rights arising in connection with a Bankruptcy Event with respect to an Obligor or the consensual or non-judicial restructuring of the debt or equity of an Obligor) or remedies in connection with the Portfolio Assets and participating in the committees (official or otherwise) or other groups formed by creditors of an Obligor to the extent not in conflict with the terms of this Agreement or any other Transaction Document, (v) acquiring Portfolio Assets directly from third-parties (other than Holdings) on an arms-length basis, (vi) contracting with third-parties to provide services as may be required from time to time by a Co-Borrower in connection with the Transaction Documents, including legal, investment, accounting, data processing, administrative and management services, (vii) taking any and all other action necessary to maintain the existence of each Co-Borrower as a limited liability company in good standing under the laws of the State of Delaware and/or to qualify each Co-Borrower to do business as a foreign limited liability company in any other state in which such qualification is required, and (viii) engaging in those lawful activities, including entering into other agreements and any amendments, supplements or restatements to the Transaction Documents to which it is a party or such other agreements and issuing any other instruments, that are necessary, convenient or advisable to accomplish the foregoing or are incidental thereto or in connection therewith.

(b) Preservation of Existence. Subject to Section 5.02(e), each Co-Borrower will preserve and maintain its limited liability company existence, rights, franchises and privileges in the jurisdiction of its formation and will promptly obtain and thereafter maintain qualifications to do business as a limited liability company in any other jurisdiction in which it does business and in which it is required to so qualify under Applicable Law, except where the failure to so qualify would not reasonably be expected to have a Material Adverse Effect.

(c) Deposit of Misdirected Collections. Each Loan Party shall promptly (but in no event later than two (2) Business Days after receipt and identification thereof) deposit or cause to be deposited into the Collection Account any and all Available Collections received by such Loan Party.

(d) Material Investment Event. The Administrative Borrower shall give prompt written notice to the Lenders upon receipt of actual knowledge of any Material Investment Event with respect to any Eligible Portfolio Asset to the extent such Material Investment Event reduces the value of the Borrowing Base and shall make any necessary adjustments to the calculation of as a result thereof.

(e) Rating Agency Information; Maintenance of Credit Rating. The Co-Borrowers shall provide the applicable NRSRO that is then engaged by the Co-Borrowers to rate the Advances, as applicable, with all available information that is reasonably requested by such NRSRO, as applicable, in connection with its rating of the Advances.

(f) Required Portfolio Documents. The Administrative Borrower shall deliver to the Servicer, upon the written request of the Servicer, the Required Portfolio Documents and the Portfolio Asset Checklist pertaining to each Portfolio Asset after the Cut-Off Date pertaining to such Portfolio Asset.

(g) Notice of Event of Default. Each Loan Party shall promptly (and in any event within two (2) Business Days) notify the Administrative Agent in writing of the occurrence of each Potential Default or Event of Default (conspicuously labeled as a "Notice of Potential Default" or "Notice of Event of Default") of which a Responsible Person of such Loan Party has knowledge or has received notice and no later than three (3) Business Days following such written notice, such Loan Party will provide to the Administrative Agent a written statement of a Responsible Person of such Loan Party setting forth the details of such event and the action that such Loan Party proposes to take with respect thereto.

(h) Special Purpose Entity Requirements. Separate Entity. The Co-Borrowers are operated as a combined entity with assets and liabilities distinct and separate from those of Holdings, and any Affiliates thereof (other than the UK Guarantors), and each Co-Borrower hereby acknowledges that the Administrative Agent and the Lenders are entering into the transactions contemplated by this Agreement in reliance upon the Co-Borrowers' identity as separate legal entities from Holdings, and from each such other Affiliate of Holdings (other than the UK Guarantors).

(i) Notice of Litigation. Each Co-Borrower shall promptly notify the Administrative Agent of the filing or commencement of any action, suit, investigation or proceeding by or before any arbitrator or Governmental Authority against any Co-Borrower or Holdings, including pursuant to any applicable Environmental Laws, that would reasonably be expected to be adversely determined, and, if so determined, would reasonably be expected to result in liability of any Co-Borrower in an aggregate amount exceeding \$10,000,000.

(j) Notice of ERISA Events. Each Co-Borrower and Holdings shall promptly notify the Administrative Agent after a Responsible Person of such Co-Borrower and Holdings obtains knowledge of the occurrence of any ERISA Event with respect to any Pension Plan or Multiemployer Plan that would reasonably be expected to result in a Material Adverse Effect and shall furnish a statement of a Responsible Person of such Co-Borrower or Holdings setting forth the details as to such event and the action, if any, the Co-Borrowers, Holdings or, if applicable, an ERISA Affiliate proposes to take with respect thereto and, when known, any action taken or threatened by the IRS, the United States Department of Labor or the PBGC with respect thereto. Each Co-Borrower and Holdings will provide evidence, upon reasonable request by the Administrative Agent, that none of its assets or assets of the Co-Borrowers include (x) Plan Assets or (y) "plan assets" of any governmental plan that is subject to Similar Law.

(k) Notice of Accounting Changes. Promptly and in any event within three (3) Business Days after the effective date thereof, the Administrative Borrower will provide to the Administrative Agent notice of any material change in the accounting policies of the Co-Borrowers.

(l) Notice of Amendment or Modification. Prompt notice of any proposed amendments or modifications made to the Constituent Documents of the Co-Borrowers together with clean and marked copies of each relevant document highlighting the proposed or effected amendments or modifications as made.

(m) Additional Information; Additional Documents. The Administrative Borrower shall provide the Administrative Agent with any financial or other information reasonably requested by the Administrative Agent (acting at the direction of the Majority Lenders) evidencing the truthfulness of the representations set forth in this Agreement. Notwithstanding anything to the contrary in this provision, neither the Co-Borrowers, nor their respective Affiliates will be required to disclose, permit the inspection, examination or making copies or abstracts of, or discuss, any document, information or other matter that (i) constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representatives or agents) is prohibited by law or (iii) in the Co-Borrowers' or their respective Affiliates' reasonable judgment, would compromise any attorney-client privilege, privilege afforded to attorney work product or similar privilege; provided that the Administrative Borrower shall make available redacted versions of requested documents or, if unable to do so consistent with the preservation of such privilege, shall make commercially reasonable efforts to disclose information responsive to the requests of the Administrative Agent, any Lender or any of their respective representatives and agents, in a manner that will protect such privilege.

(n) Protection of Security Interest. The Co-Borrowers will take all action reasonably necessary to perfect, protect and more fully evidence the Co-Borrowers' ownership of the Collateral free and clear of any Lien other than the Lien created hereunder and Permitted Liens, including (i) at the expense of the Co-Borrowers, taking all action necessary to cause a valid, subsisting and enforceable first priority perfected security interest, subject only to Permitted Liens, to exist in favor of the Administrative Agent (for the benefit of the Secured Parties) in the Co-Borrowers' interests in the Collateral, including the filing of a UCC financing statement in the applicable jurisdiction adequately describing the Collateral (which may include an "all asset" filing), and naming each Co-Borrower as debtor and the Administrative Agent as the secured party, and filing continuation statements, amendments or assignments with respect thereto in such filing offices (including any amendments thereto or assignments thereof) and (ii) taking all additional action that the Servicer or the Administrative Agent may reasonably request to perfect, protect and more fully evidence the respective first priority (subject to Permitted Liens) perfected security interests of the parties to this Agreement in the Collateral, or to enable the Servicer or the Administrative Agent to exercise or enforce any of their respective rights hereunder.

(o) Liens. Each Loan Party will promptly notify the Administrative Agent of the existence of any material Lien on the Collateral known to a Responsible Person of such Loan Party (other than Permitted Liens) and each Loan Party shall defend the right, title and interest of the Administrative Agent, for the benefit of the Secured Parties, in, to and under the Collateral against all claims of third parties to the extent commercially reasonable to do so (as determined by the Loan Party in their reasonable discretion), other than with respect to Permitted Liens.

(p) No Changes in Fees. The Co-Borrowers will not make any changes to the Fees or amend, restate, supplement or otherwise modify the Fee Letters in any material respect without the prior written approval of the Majority Lenders and the applicable parties to such Fee Letters.

(q) Compliance with Applicable Law. Except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, the Co-Borrowers shall at all times comply with all Applicable Law (including Environmental Laws, and all federal securities laws).

(r) Proper Records. The Co-Borrowers shall at all times keep proper books of records and accounts in which full, true and correct entries, in all material respects, shall be made of its transactions in accordance with Applicable Accounting Principles and set aside on its books from its earnings for each fiscal year all such proper reserves in accordance with Applicable Accounting Principles. Each Co-Borrower shall account for the Transfer to it from the Transferor of the Portfolio Asset under each Portfolio Asset Assignment as a Transfer of such Portfolio Asset in its books and records.

(s) Satisfaction of Obligations. Each Co-Borrower shall pay, discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all its obligations of whatever nature, except where the amount or validity thereof is currently being contested in good faith by appropriate proceedings and reserves with respect thereto have been provided on the books of such Co-Borrower.

(t) Payment of Taxes. Each Co-Borrower shall pay and discharge (i) all material Taxes, levies, liens and other charges on it or its assets and on the Collateral that, with respect to such Co-Borrower, in any manner would create any Lien or charge upon such Collateral, except for Permitted Liens, and (ii) any such Taxes that are being appropriately contested in good faith by appropriate proceedings diligently conducted and with respect to which adequate reserves have been provided in accordance with Applicable Accounting Principles.

(u) Tax Treatment. Each Co-Borrower and the Lenders intend to treat the Advances advanced hereunder as indebtedness of such Co-Borrower (or, so long as such Co-Borrower is treated as a disregarded entity for U.S. federal income tax purposes, as indebtedness of the entity of which it is considered to be a part) for U.S. federal income tax purposes and shall file any and all tax forms in a manner consistent therewith, unless otherwise required by Applicable Law.

(v) Notification Forms. After the occurrence and during the continuance of an Event of Default, Holdings and each Co-Borrower shall furnish the Administrative Agent or the Servicer, as applicable, with an appropriate power of attorney in the form of Exhibit H to send (at the direction of the Majority Lenders) notification forms to the Obligors or any agent, administrative agent, servicer or other person, as applicable, of the Administrative Agent's interest in the Collateral and the obligation to make payments as directed by the Administrative Agent (acting at the direction of the Majority Lenders).

(w) Passthrough Entity. Each Co-Borrower will be disregarded as an entity separate from its owner pursuant to Treasury Regulation Section 301.7701-3(b) or a partnership (other than a publicly traded partnership) for U.S. federal income tax purposes, and neither such Co-Borrower nor any other Person on its behalf shall make an election to be, or take or permit any other action that is reasonably likely to result in such Co-Borrower being, treated as a corporation for U.S. federal income tax purposes. Each Co-Borrower shall, whenever relevant, make an election under Section 6226 of the Code. Each Co-



Borrower shall not be resident for Tax purposes in any jurisdiction other than the jurisdiction under whose laws it is incorporated as of the Closing Date or have a branch, agency or permanent establishment in any other jurisdiction for Tax purposes.

(x) Access to Records. From time to time and, prior the occurrence and continuance of an Event of Default, upon not less than five (5) Business Days advance notice, permit the Administrative Agent or any Person designated by the Administrative Agent and at the sole cost and expense of the Co-Borrowers, to, subject to Section 5.01(m), during normal hours, visit and inspect at reasonable intervals the books, records and accounts of the Co-Borrowers or any Person to which the Co-Borrowers delegate any of their duties under the Transaction Documents, in each case relating to the Co-Borrowers' business, financial condition, operations, assets and its performance under the Transaction Documents, and to make copies thereof or abstracts therefrom, and to discuss the foregoing with its and such Person's officers, partners, employees and accountants, all as often as the Administrative Agent may reasonably request (acting at the direction of the Majority Lenders); provided that (i) the Administrative Agent shall use all reasonable efforts to coordinate its inspections and (ii) so long as an Event of Default has not occurred and is continuing, no more than one site visit may be conducted in any calendar year.

(y) Sanctions and Anti-Terrorism, Anti-Money Laundering and Anti-Corruption Compliance. Each Co-Borrower shall maintain in effect policies and procedures designed to promote compliance by such Co-Borrower and its officers, employees, and agents with applicable Sanctions and Anti-Terrorism Laws, Anti-Money Laundering Laws and Anti-Corruption Laws.

(z) Financial Reporting. The Administrative Borrower will furnish:

(i) within 120 days after the end of each fiscal year of the Loan Parties, commencing with the fiscal year ended December 31, 2020, to the Administrative Agent and each Lender audited consolidated statements of the Loan Party of assets, liabilities and capital, and audited consolidated statements of operations and cash flow, audited by a firm of nationally recognized independent public accountants, as of the end of such fiscal year;

(ii) within 90 days after the end of fiscal quarter of each fiscal year to the Administrative Agent and each Lender financial reports setting forth an update of the underlying General Partnership Investments and upon the Administrative Agent's or any Lender's reasonable request, the underlying reports from each general partner, schedules and other documentation used to generate such underlying reports;

(iii) within 60 days after the end of each fiscal quarter, (x) to the Administrative Agent and each Lender and (y) to the Servicer and each Lender:

- (A) an LTV Certificate as of the last day of such quarter;
- (B) a Borrowing Base Certificate as of the last day of such quarter;
- (C) an updated Schedule I, identifying any Portfolio Assets acquired or disposed of during such month in accordance with the terms hereof; and
- (D) with respect to each Obligor for each Portfolio Asset that was an Eligible Portfolio Asset at any time during the applicable quarter, to the extent

received by any Loan Party from the Obligor, make available to the Servicer and the Lenders upon reasonable request, financial reporting packages (including applicable financial statements) delivered by such Obligor pursuant to the applicable Equity Investment Agreement to the extent such financial reporting packages have been received during such quarter.

provided, that, if the Loan Parties are required to demonstrate pro forma compliance with the Maximum LTV Percentage in connection with the making of any Advance or any Sale of Eligible Portfolio Asset, the Administrative Borrower will deliver to the Servicer and the Lenders an updated LTV Certificate in connection therewith.

(iv) within 60 days after the end of each fiscal quarter, to the Administrative Agent and each Lender the income statement, the balance sheet, a cash flow statement, and calculation of the Debt Service Coverage Ratio with respect to such fiscal quarter.

(aa) Additional Reports. The Administrative Borrower will furnish to the Administrative Agent any redacted portfolio level data and reporting as may be reasonably requested by the Administrative Agent regarding the Eligible Portfolio Assets.

(bb) Additional Collateral and Guarantors. Upon the formation or acquisition thereof, the Co-Borrowers shall promptly cause any direct or indirect Subsidiary formed or otherwise purchased or acquired after the Closing Date to (i) execute a supplement to the Guaranty Agreement in form and substance satisfactory to the Administrative Agent and each other Transaction Document reasonably requested by the Administrative Agent, acting at the direction of the Majority Lenders, (ii) obtain all consents and approvals required to be obtained by it in connection with the execution and delivery of the aforementioned joinder, such Transaction Documents, as applicable, and the performance of its obligations hereunder and thereunder and the granting by it of the Liens thereunder, and (iii) cause its assets to be subject to a first priority perfected Lien (subject only to Permitted Liens that, pursuant to the terms of this Agreement, are permitted to have priority over the Administrative Agent's Liens thereon) in favor of the Administrative Agent for the benefit of the Secured Parties and take such actions as shall be necessary or reasonably requested by the Administrative Agent to grant and perfect or record such first priority Lien.

(cc) Pledges of Additional Stock and Indebtedness. Promptly pledge to the Administrative Agent for the benefit of the Secured Parties, all the Equity Interest of each Subsidiary of each Co-Borrower formed or otherwise purchased or acquired after the Closing Date.

(dd) Post-Closing Covenant. The Loan Parties, as applicable, shall satisfy the Post Closing Conditions set forth in Schedule VII, unless otherwise waived by the Administrative Agent, acting at the direction of the Majority Lenders.

SECTION 5.02 Negative Covenants of the Loan Parties. From the Closing Date until the Facility Termination Date:

(a) Protection of Title. Except as otherwise permitted under this Agreement, the Co-Borrowers shall not take any action which would directly or indirectly materially impair or adversely affect the Co-Borrowers' title to the Collateral Portfolio.

(b) Transfer Limitations. Except as permitted pursuant to Section 2.09(a), Section 2.11 or Section 5.02(l), the Loan Parties shall not transfer, assign, convey, grant, bargain, sell, set over, deliver or otherwise dispose of, or pledge or hypothecate, directly or indirectly, any interest in the Collateral to any person other than the Administrative Agent for the benefit of the Secured Parties or in connection with Permitted Liens, or engage in financing transactions or similar transactions with respect to the Collateral with any person other than pursuant to this Agreement and the other Transaction Documents.

(c) Indebtedness; Liens. The Co-Borrowers shall not create, incur, assume or suffer to exist any Indebtedness other than the Obligations and Permitted Debt. The Co-Borrowers shall not create, incur or permit to exist any Lien in or on any of the Collateral subject to the Lien granted by the Co-Borrowers pursuant to this Agreement, other than Permitted Liens. The Co-Borrowers shall not permit any affiliated or intercompany Indebtedness, other than Permitted Debt, that is senior to the Co-Borrowers' interest in the Collateral to be incurred or created.

(d) Constituent Documents. No Co-Borrower shall modify, amend, terminate or otherwise alter any Constituent Document of a Co-Borrower in any manner that would materially and adversely affect the interests of the Lenders or would reasonably be expected to have a Material Adverse Effect without the prior written consent of the Majority Lenders.

(e) Fundamental Changes. The Co-Borrowers will not merge into or consolidate with any other Person, or sell, transfer, lease or otherwise dispose of (in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) or liquidate or dissolve in whole or in part if such event would reasonably be expected to have a Material Adverse Effect without the prior written consent of the Lenders.

(f) Business. The Co-Borrowers will not cease to be engaged in business of the type authorized by its Constituent Documents.

(g) Formation of Subsidiaries. The Co-Borrowers will not form any Subsidiary unless such Subsidiary complies with Sections 5.01(aa) and 5.01(bb) of this Agreement or form any Subsidiary whose Equity Interest is not wholly-owned by a Loan Party.

(h) [Reserved].

(i) Special Purpose Entity Requirements. Except as otherwise permitted by this Agreement, the Co-Borrowers shall not become insolvent or fail to pay their respective debts and liabilities from their assets when due.

(j) Investment Company. No Co-Borrower will become an "investment company" required to be registered under the 1940 Act.

(k) Transactions with Affiliates. The Co-Borrowers will not sell, lease, transfer or otherwise dispose of any asset (which shall not include a redemption of such asset in accordance with its terms) to any Affiliate of any Co-Borrower unless such sale, lease, transfer or disposal is made in accordance with the Constituent Documents of a Co-Borrower.

(l) Use of Proceeds. The Co-Borrowers shall not use the proceeds of any Advance other than (a) to re-finance the Co-Borrowers' existing Indebtedness, (b) to finance (i) the origination and/or (ii) the acquisition of and investment by the Co-Borrowers, directly or indirectly, in Eligible Portfolio



Assets, (c) to pay transaction fees and expenses due and payable by the Co-Borrowers under this Agreement and with respect to Eligible Portfolio Assets and (d) for general company purposes.

(m) Anti-Money Laundering; Sanctions and Anti-Terrorism. The proceeds of the Advances shall not be used by any Co-Borrower, and no Co-Borrower will directly or, knowingly, indirectly lend, contribute or otherwise make available such proceeds to any other Person, (i) to fund any activities or business of or with any Person that is a Sanctioned Person, or in any country or territory, that, at the time of such funding, is, or whose government is, a Sanctioned Country, to the extent that such funding would be prohibited by Sanctions or would otherwise cause any Person to be in breach of Sanctions or (ii) in any other manner that would result in a violation of any Anti-Money Laundering Law or Sanctions and Anti-Terrorism Law by any Person or could cause Lender or any Lender Covered Entity to become a Sanctioned Person.

(n) Anti-Corruption Compliance. The proceeds of the Advances shall not be used by any Co-Borrower, and no Co-Borrower will, directly or, knowingly, indirectly lend, contribute, or otherwise make available such proceeds to any other Person, in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation in any material respect of any Anti-Corruption Laws.

(o) ERISA Matters. Except as would not reasonably be expected to result in a Material Adverse Effect, no Co-Borrower nor Holdings will permit to exist any occurrence of any ERISA Event. The Co-Borrowers will not take any action, omit to take any action or permit any other party to take any action that would result in its assets, or the assets of Holdings or the Fund, including (x) Plan Assets or (y) "plan assets" of any governmental plan that is subject to Similar Law. None of the transactions or services contemplated under this Agreement or the other Transaction Documents, including exercise of rights with respect to the Collateral and performance of its duties by the Servicer, constitutes or will result in a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code or any violation of Similar Law.

(p) Change of Jurisdiction, Location, Names or Location of Portfolio Asset Files. No Loan Party shall change the jurisdiction of its formation, change the location of its principal place of business and chief executive office or make any change to its name or use any tradenames, fictitious names, assumed names, "doing business as" names or other names unless, prior to the effective date of any such change in the jurisdiction of its formation, change in location or name change or use, the Administrative Borrower provides at least ten (10) days prior written notice thereof and delivers to the Administrative Agent such financing statements as the Administrative Agent (acting at the direction of the Majority Lenders) may request to reflect such change in the jurisdiction of its formation, change in location or name change or use, together any other documents and instruments as the Administrative Agent (acting at the direction of the Majority Lenders) may reasonably request in connection therewith. No Loan Party shall move, or to the extent in the possession of the Servicer, consent to the Servicer moving, the Portfolio Asset Files from the location thereof on the Closing Date or applicable Advance Date, unless the Administrative Agent (acting at the direction of the Majority Lenders) shall consent to such move in writing, such consent not to be unreasonably withheld, conditioned or delayed.

(q) Portfolio Asset Assignments. No Loan Party will amend, modify, waive or terminate any provision of any Portfolio Asset Assignment in any manner that would materially and adversely affect the interests of the Lenders without the prior written consent of the Majority Lenders.

(r) Restricted Junior Payments. No Loan Party shall make (i) distributions of Portfolio Assets except as expressly contemplated under Section 2.11 so long as no Event of Default or other Market Trigger Event has occurred or (ii) any Restricted Junior Payment, except that a Loan Party may make Restricted Junior Payments so long as no Event of Default or other Market Trigger Event has occurred in accordance with Section 2.09, and both before and after giving effect thereto, the Loan Parties, taken as a whole, are Solvent.

SECTION 5.03 Affirmative Covenants of the Servicer. From the Closing Date until the Facility Termination Date:

(a) Compliance with Applicable Law. The Servicer will comply in all material respects with all Applicable Law.

(b) Preservation of Existence. The Servicer will preserve and maintain its existence, rights, franchises and privileges in the jurisdiction of its formation and qualify and remain qualified in good standing in each jurisdiction where failure to preserve and maintain such existence, rights, franchises, privileges and qualification could reasonably be expected to have a Material Adverse Effect.

SECTION 5.04 Negative Covenants of the Servicer. From the Closing Date until the Facility Termination Date:

(a) Required Portfolio Documents. The Servicer will not dispose of any documents constituting the Required Portfolio Documents in its possession in any manner that is inconsistent with the performance of its obligations as the Servicer pursuant to this Agreement and will not dispose of any Collateral except as contemplated by this Agreement or as is consistent with the Servicing Standard.

(b) No Changes in Servicing Fees. The Servicer will not make any changes to the Servicing Fees or amend, restate, supplement or otherwise modify the Servicer Fee Letter in any material respect without the prior written approval of the Lenders and the Co-Borrowers.

SECTION 5.05 Affirmative Covenants of Holdings. From the Closing Date until the Facility Termination Date:

(a) Compliance with Constituent Documents and Scope of Business. Except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, Holdings will observe all organizational procedures required by its Constituent Documents. Without limiting the foregoing, Holdings will limit the scope of its business to: (i) the acquisition of Portfolio Assets and the ownership and management of the Portfolio Assets and the related assets in the Collateral Portfolio, (ii) the sale, transfer or other disposition of Portfolio Assets as and when permitted under the Transaction Documents, (iii) entering into and performing under the Transaction Documents, consenting or withholding consent as to proposed amendments, waivers and other modifications of the Equity Investment Agreements to the extent not in conflict with the terms of this Agreement or any other Transaction Document, (iv) exercising any rights (including but not limited to voting rights and rights arising in connection with a Bankruptcy Event with respect to an Obligor or the consensual or non-judicial restructuring of the debt or equity of an Obligor) or remedies in connection with the Portfolio Assets and participating in the committees (official or otherwise) or other groups formed by creditors of an Obligor to the extent not in conflict with the terms of this Agreement or any other Transaction Document, (v) acquiring Portfolio Assets directly from third-parties (other than the Co-Borrowers) on an arms-length basis, (vi) contracting with third-parties to provide services as may be required from time

to time by Holdings in connection with the Transaction Documents, including legal, investment, accounting, data processing, administrative and management services, (vii) taking any and all other action necessary to maintain the existence of Holdings as a limited liability company in good standing under the laws of the State of Delaware and/or to qualify Holdings to do business as a foreign limited liability company in any other state in which such qualification is required, and (viii) engaging in those lawful activities, including entering into other agreements and any amendments, supplements or restatements to the Transaction Documents to which it is a party or such other agreements and issuing any other instruments, that are necessary, convenient or advisable to accomplish the foregoing or are incidental thereto or in connection therewith.

(b) Preservation of Company Existence. Holdings will preserve and maintain its limited liability company existence, rights, franchises and privileges in the jurisdiction of its formation and will promptly obtain and thereafter maintain qualifications to do business as a limited liability company in any other jurisdiction in which it does business and in which it is required to so qualify under Applicable Law except where the failure to so qualify would not reasonably be expected to have a Material Adverse Effect.

(c) Protection of Security Interest. Holdings shall take all action that the Servicer or the Administrative Agent may reasonably request to perfect, protect and more fully evidence the first priority (subject to Permitted Liens) perfected security interest of the Administrative Agent, for the benefit of the Secured Parties, in the US Pledged Equity, or to enable the Administrative Agent to exercise or enforce any of its rights hereunder.

(d) Liens. Holdings will promptly notify the Administrative Agent of the existence of any material Lien on the US Pledged Equity known to a Responsible Person of Holdings (other than Permitted Liens) and Holdings shall defend the right, title and interest of the Administrative Agent, for the benefit of the Secured Parties, in and to the US Pledged Equity against all claims of third parties to the extent commercially reasonable to do so (as determined by Holdings in its reasonable discretion), other than with respect to Permitted Liens.

(e) Compliance with Applicable Law. Except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, Holdings shall at all times comply with all Applicable Law (including Environmental Laws, and all federal securities laws).

(f) Taxes. Holdings shall pay and discharge all material Taxes, levies, liens and other charges on it or its assets and on the Collateral that, with respect to Holdings, in any manner would create any Lien or charge upon such Collateral, except for (i) Permitted Liens, and (ii) any such Taxes that are being appropriately contested in good faith by appropriate proceedings diligently conducted and with respect to which adequate reserves have been provided in accordance with Applicable Accounting Principles.

SECTION 5.06 Negative Covenants of Holdings. From the Closing Date until the Facility Termination Date:

(a) Protection of Title. Except as otherwise permitted under this Agreement, Holdings shall not take any action which would directly or indirectly materially impair or adversely affect Holdings' title to the US Pledged Equity.

(b) Transfer Limitations. Holdings shall not transfer, assign, convey, grant, bargain, sell, set over, deliver or otherwise dispose of, or pledge or hypothecate, directly or indirectly, any interest in the

US Pledged Equity to any person other than the Administrative Agent for the benefit of the Secured Parties, other than Permitted Liens, or engage in financing transactions or similar transactions with respect to the US Pledged Equity with any person other than as contemplated by this Agreement and the other Transaction Documents.

(c) Indebtedness; Liens. Holdings shall not create, incur or permit to exist any Lien in or on any of the US Pledged Equity.

(d) Organizational Documents. Holdings shall not modify or terminate any of the organizational or operational documents of Holdings in any manner that would materially and adversely affect the Administrative Agent's security interest in the US Pledged Equity.

(e) [Reserved].

(f) Change of Jurisdiction, Location or Names. Holdings shall not change the jurisdiction of its formation, change the location of its principal place of business and chief executive office or make any change to its name or use any tradenames, fictitious names, assumed names, "doing business as" names or other names unless, prior to the effective date of any such change in the jurisdiction of its formation, change in location or name change or use, Holdings provides at least ten (10) days prior written notice thereof and delivers to the Administrative Agent such financing statements as the Administrative Agent (acting at the direction of the Majority Lenders) may request to reflect such change in the jurisdiction of its formation, change in location or name change or use, together any other documents and instruments as the Administrative Agent (acting at the direction of the Majority Lenders) may reasonably request in connection therewith.

(g) ERISA Matters. Holdings will not take any action, omit to take any action or permit any other party to take any action that would result in its assets, or the assets of any Co-Borrower or Holdings, including (x) Plan Assets or (y) "plan assets" of any governmental plan that is subject to Similar Law. None of the transactions or services contemplated under this Agreement or the other Transaction Documents, including exercise of rights with respect to the Collateral and performance of its duties by the Servicer, constitutes or will result in a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code or any violation of Similar Law.

## ARTICLE VI. EVENTS OF DEFAULT

SECTION 6.01 Events of Default. If any of the following events (each, an "Event of Default") occurs:

(a) a Co-Borrower fails to make any payment of (i) any Obligation (other than the payment of any amount upon the Maturity Date) when due and such failure is not cured within five (5) Business Days of the date on which such Obligation is due and payable or (ii) any Obligation on the Maturity Date;

(b) a Co-Borrower defaults in making any payment required to be made under one or more agreements for borrowed money to which it is a party in an aggregate principal amount in excess of \$10,000,000 and any such failure continues unremedied for five (5) Business Days, or an event of default is declared under any such agreement, and in each case, such default is not cured or remedied within the applicable cure period, if any, provided for under such agreement;

(c) any failure on the part of a Loan Party or Holdings duly to observe or perform any its covenants or agreements set forth in this Agreement or the other Transaction Documents to which it is a party that has a Material Adverse Effect on the Secured Parties (other than covenants or agreements with respect to which another clause of this Section 6.01 expressly relates, which shall not, on its own, constitute an Event of Default under this clause (c)) and the same continues unremedied for a period of thirty (30) days (if such failure can be remedied) after the earlier to occur of (i) the date on which written notice of such failure requiring the same to be remedied shall have been given to the Administrative Borrower by the Administrative Agent (acting at the direction of the Majority Lenders) or any Lender and (ii) the date on which a Responsible Person of a Loan Party or Holdings, as applicable, acquires actual knowledge thereof;

(d) the occurrence of a Bankruptcy Event relating to a Loan Party or Holdings;

(e) the rendering of one or more final judgments, decrees or orders by a court or arbitrator of competent jurisdiction against a Loan Party or Holdings for the payment of money in excess of \$10,000,000 in the aggregate (unless such judgment is covered by third party insurance as to which the insurer has been notified of such judgment, decree or order and has not denied or failed to acknowledge coverage) where a Loan Party or Holdings, as applicable, shall not have either (i) discharged within a period of thirty (30) days or provided for the discharge of any such judgment, decree or order in accordance with its terms or (ii) perfected a timely appeal, decree or order and caused the execution of the same to be stayed during the pendency of the appeal;

(f) (i) the breach by a Loan Party or Holdings (as applicable) of any covenants or agreements set forth in (x) Sections 5.01 (a), (b) (with respect to existence only), (c), (d), (g), (h), (i), (j), (k), (l), (m), (n), (o), (v) and (z), and any such breach (other than in respect of Sections 5.01(b), (c), (g), and (k)) shall not be cured or remedied within five (5) Business Days of the occurrence thereof or (y) Section 5.05(a), (b) (with respect to existence only), and (c) or (ii) any failure on the part of a Co-Borrower or Holdings (as applicable) to observe or perform any covenants or agreements set forth in Sections 5.02 and 5.06, and, in each case, after giving effect to any applicable grace period or notice requirement;

(g) (i) any Transaction Document, or any Lien or security interest in any of the Collateral granted thereunder, shall (except in accordance with its terms or with the consent of the Majority Lenders), in whole or in part, terminate, cease to be effective or cease to be the legally valid, binding and enforceable obligation of a Loan Party or Holdings (as applicable); provided that, there shall be no Event of Default under this clause (g)(i) to the extent such Event of Default arises solely from the action (or inaction) of the Account Bank, the Servicer, the Administrative Agent or a Lender, (ii) the Loan Parties, Holdings or any of their Affiliates shall, directly or indirectly, validly contest in writing in any manner the effectiveness, validity, binding nature or enforceability of any Transaction Document or any Lien or security interest thereunder or (iii) any security interest securing any obligation under any Transaction Document shall, in whole or in part, cease to be a first priority perfected security interest (subject to Permitted Liens) except as otherwise expressly permitted to be released in accordance with the applicable Transaction Document; provided that there shall be no Event of Default under this clause (g)(iii) to the extent such Event of Default arises from the action (or inaction) of the Account Bank, the Servicer, the Administrative Agent or a Lender;

(h) any Change of Control shall occur and such Change of Control has not been consented to by the Lenders (such consent not to be unreasonably withheld, conditioned or delayed);



(i) any representation, warranty or certification made by a Loan Party or Holdings in any Transaction Document or in any agreement, instrument, certificate or other document required to be delivered pursuant to any Transaction Document shall prove to have been incorrect in any material respect when made, and the same continues unremedied for a period of fifteen (15) days (if such failure can be remedied) after the earlier to occur of (i) the date on which written notice of such failure requiring the same to be remedied shall have been given to the Administrative Borrower by the Administrative Agent (acting at the direction of the Majority Lenders) or any Lender and (ii) the date on which a Responsible Person of a Loan Party or Holdings acquires actual knowledge thereof;

(j) any Loan Party ceases to be Solvent;

then the Administrative Agent shall, at the direction of the Majority Lenders, or the Majority Lenders may, in each case, by notice to the Administrative Borrower, declare the Maturity Date to have occurred; provided that, in the case of any event described in Section 6.01(d), the Maturity Date is deemed to have occurred automatically upon the occurrence of such event. Upon the occurrence and during the continuation of any Event of Default, (i) Lenders may decline to make any Advance hereunder or terminate its commitment to make Advances hereunder, (ii) the Administrative Agent shall, at the direction of the Majority Lenders, or the Majority Lenders may declare the Advances to be immediately due and payable in full (without presentment, demand, protest or notice of any kind all of which are hereby waived by the Co-Borrowers) and any other Obligations to be immediately due and payable; provided that, in the case of any event described in Section 6.01(d), the Advances and other Obligations become immediately due and payable in full (without presentment, demand, protest or notice of any kind all of which are hereby waived by the Co-Borrowers) without the need of any notice to the Co-Borrowers upon the occurrence of such event and (iii) the Administrative Agent, at the written direction of the Majority Lenders, shall instruct the Account Bank to distribute all amounts on deposit in the Collection Account and the Interest Reserve Account as described in Section 2.09(a) (provided that the Co-Borrowers shall in any event remain liable to pay such Advances and all such amounts and Obligations immediately in accordance with Section 2.09(a)). In addition, upon the occurrence and during the continuation of any Event of Default, the Lenders and the Administrative Agent, on behalf of the Secured Parties, shall have, in addition to all other rights and remedies under this Agreement, the other Transaction Documents or otherwise, all other rights and remedies provided under the UCC of the applicable jurisdiction and other Applicable Law, which rights shall be cumulative.

#### SECTION 6.02 Pledged Equity.

(a) Except as otherwise set forth in Section 6.02(b) or 6.02(c):

(i) Holdings shall be entitled to exercise any and all voting or other consensual rights and powers inuring to an owner of US Pledged Equity or any part thereof and Holdings agrees that it shall exercise such rights for purposes not in contravention of the terms of this Agreement and the other Transaction Documents.

(ii) Holdings shall be entitled to receive and retain any and all dividends and other distributions paid on or distributed in respect of the US Pledged Equity, to the extent and only to the extent that such dividends and other distributions are not prohibited by the terms and conditions of this Agreement and Applicable Law; provided that any noncash dividends or other distributions that would constitute US Pledged Equity, shall be and become part of the US Pledged Equity, and, if received by Holdings, shall not be commingled by Holdings with any of its

other property but shall be held separate and apart therefrom, shall be held in trust for the benefit of the Administrative Agent and the Secured Parties and Holdings shall promptly take all steps reasonably necessary to ensure the validity, perfection and priority (subject to Permitted Liens), including promptly delivering the same to the Administrative Agent in the same form as so received (with any necessary endorsement reasonably requested by the Administrative Agent). So long as no Event of Default has occurred and is continuing, the Administrative Agent shall cooperate with Holdings with respect to making exchanges of US Pledged Equity in connection with any exchange or redemption of such US Pledged Equity not prohibited by this Agreement, which such cooperation shall include delivery of any such US Pledged Equity in exchange for replacement US Pledged Equity. For the avoidance of doubt, the Co-Borrowers agree to reimburse the Administrative Agent for any costs or expenses incurred due to the provisions of this Section 6.02(a)(ii).

(b) Upon the occurrence and during the continuance of an Event of Default (and after the delivery of written notice by the Majority Lenders or the Administrative Agent (acting at the direction of the Majority Lenders) to Holdings) or upon the occurrence of any event described in Section 6.01(d) (without notice), all rights of Holdings to dividends or other distributions that Holdings is authorized to receive pursuant to Section 6.02(a)(ii) shall cease, and all such rights shall thereupon become vested in the Administrative Agent, which shall have the sole and exclusive right and authority to receive and retain such dividends or other distributions. All dividends or other distributions received by Holdings contrary to the provisions of this Section 6.02(b) shall be held in trust for the benefit of the Administrative Agent, shall be segregated from other property or funds of Holdings and shall be promptly delivered to the Administrative Agent in the same form as so received (with any necessary endorsement reasonably requested by the Administrative Agent). Any and all money and other property paid over to or received by the Administrative Agent pursuant to the provisions of this Section 6.02(b) shall be retained by the Administrative Agent in the Collection Account and the Interest Reserve Account and shall be applied in accordance with the terms of this Agreement. After all Events of Default have been waived or are no longer continuing, the Administrative Agent shall promptly repay to Holdings (without interest) all dividends or other distributions that Holdings would otherwise be permitted to retain pursuant to the terms of Section 6.02(a)(ii) and that remain in such account.

(c) Upon the occurrence and during the continuance of an Event of Default (and after the delivery of written notice by the Majority Lenders or the Administrative Agent (acting at the direction of the Majority Lenders) to Holdings) or upon the occurrence of any event described in Section 6.01(d) (without notice), then (i) all rights of Holdings to exercise the voting and consensual rights and powers it is entitled to exercise pursuant to Section 6.02(a)(i) shall cease, and all such rights shall thereupon become vested in the Administrative Agent, which shall have the sole and exclusive right and authority to exercise such voting and consensual rights and powers; provided, that, unless otherwise directed by the Majority Lenders, the Administrative Agent shall have the right from time to time following and during the continuance of an Event of Default to permit Holdings to exercise such rights and (ii) in order to permit the Administrative Agent to exercise the voting and other consensual rights which it may be entitled to exercise pursuant hereto and to receive all dividends and other distributions which it may be entitled to receive hereunder, Holdings shall promptly execute and deliver (or cause to be executed and delivered) to the Administrative Agent all proxies, dividend payment orders and other instruments as the Administrative Agent may from time to time reasonably request. Immediately after all Events of Default have been waived or are no longer continuing, Holdings shall have the exclusive right to exercise the voting or consensual rights and powers that Holdings would otherwise be entitled to exercise pursuant to the terms of Section 6.02(a)(i).

(d) Any notice given by the Administrative Agent to Holdings under this Section 6.02 shall be given in writing.

SECTION 6.03 Additional Remedies.

(a) Upon the occurrence and during the continuation of an Event of Default in accordance with Section 6.01, and without limiting the remedies provided in this Article VI, the Administrative Agent may, at the direction of the Majority Lenders, (i) sell or otherwise dispose of any of the Collateral or the Pledged Equity at public or private sales and take possession of the Proceeds of any such sale or disposition or (ii) instruct the obligor or obligors on any account, agreement, instrument or other obligation constituting Collateral or Pledged Equity to make any payment required by the terms of such account, agreement, instrument or other obligation to or at the direction of the Administrative Agent (acting at the direction of the Majority Lenders). Notwithstanding the foregoing, upon the occurrence and during the continuation of an Event of Default, the Administrative Agent, acting at the direction of the Servicer, may (a) give a Notice of Exclusive Control or any other instruction in accordance with the Account Control Agreement and take any permitted action with respect to the Collateral subject thereto, (b) in accordance with Section 6.02, transfer and register in its name or in the name of its nominee the whole or any part of the Pledged Equity, exchange certificates or instruments representing or evidencing Pledged Equity for certificates or instruments of smaller or larger denominations, exercise the voting and all other rights as a holder with respect thereto, including exchange, subscription or any other rights, privileges or options pertaining to any Pledged Equity, and otherwise act with respect to the Pledged Equity as though the Administrative Agent was the absolute owner thereof and (c) in accordance with Section 6.02, collect and receive all cash dividends, interest, principal and other distributions made on any Pledged Equity.

(b) Any Collateral or Pledged Equity to be sold or otherwise disposed of pursuant to this Article VI may be sold or disposed of in one or more parcels at public or private sale or sales (which sales may be adjourned or continued from time to time with or without notice upon such terms and conditions, including price, as the Administrative Agent (acting at the direction of the Majority Lenders) may deem commercially reasonable), for cash or on credit or for future delivery without assumption of any credit risk. Any sale or disposition of Collateral or Pledged Equity may be made without the Administrative Agent giving warranties of any kind with respect to such sale or disposition and the Administrative Agent may specifically disclaim any warranties of title or the like. The Administrative Agent may comply with any applicable State or federal law requirements in connection with a sale or disposition of the Collateral and compliance will not be considered to adversely affect the commercial reasonableness of any such sale or disposition. If any notice of a proposed sale or disposition of the Collateral or Pledged Equity is required by law, such notice is deemed commercially reasonable and proper if given at least ten (10) days before such sale or disposition. The Administrative Agent has the right upon any public sale of Collateral or Pledged Equity and, to the extent permitted by law, upon any such private sale of Collateral or Pledged Equity, to purchase the whole or any part of the Collateral or Pledged Equity so sold or disposed of free of any right of equity redemption, which equity redemption the Co-Borrowers hereby waive. Upon any sale or disposition of Collateral or Pledged Equity, the Administrative Agent has the right to deliver and transfer to the purchaser or transferee thereof the Collateral or Pledged Equity so sold or disposed of.

(c) For the avoidance of doubt, this Agreement (including this Article VI) shall be subject to the special servicing activities provisions in Section 8.05.



(d) Following an acceleration of the Obligations upon the occurrence and during the continuation of an Event of Default in accordance with Section 6.01, the Co-Borrowers will use best efforts to execute all documentation and obtain all consents reasonably necessary to assign to the Servicer all of the Co-Borrowers' right, title and interest to each Eligible Portfolio Asset.

ARTICLE VII.  
THE ADMINISTRATIVE AGENT

SECTION 7.01 Appointment and Authority; Rights as Lender.

(a) Each of the Lenders hereby irrevocably appoints Alter Domus (US) LLC to act on its behalf as the Administrative Agent hereunder and under the other Transaction Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article VII are solely for the benefit of the Administrative Agent, the Lenders and the other Secured Parties, and neither the Co-Borrowers nor Holdings shall have rights as a third-party beneficiary of any of such provisions. It is understood and agreed that the use of the term "agent" herein or in any other Transaction Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any Applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

(b) The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender (to the extent it is also a Lender) as any other Lender and may exercise the same as though it were not the Administrative Agent, and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its capacity as Lender, if applicable. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for, and generally engage in any kind of business with, the Co-Borrowers, Holdings or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

SECTION 7.02 Exculpatory Provisions.

(a) The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Transaction Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent:

(i) shall not be subject to any fiduciary or other implied duties, regardless of whether an Event of Default, Market Trigger Event or Potential Default has occurred and is continuing;

(ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Transaction Documents that the Administrative Agent is required to exercise as directed in writing by the Servicer or the Majority Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in such other Transaction Documents); provided that the Administrative Agent shall not be required to take any action

that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Transaction Document or Applicable Law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Bankruptcy Law or that may affect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Bankruptcy Law; and

(iii) shall not, except as expressly set forth herein and in the other Transaction Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Loan Parties, Holdings or any of their respective Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

(b) The Administrative Agent shall not be liable for any action taken or not taken by it (i) (including errors in judgement made) with the consent or at the request or direction of the Servicer or the Majority Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary), or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment; provided that, no action taken or not taken with the consent or at the request or direction of the Servicer or the Majority Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary) shall be deemed to constitute gross negligence or willful misconduct of the Administrative Agent. The Administrative Agent shall not be deemed to have knowledge of any default, Event of Default, Market Trigger Event, Potential Default or event or information, or be required to act upon any default, Event of Default, Market Trigger Event, Potential Default, or event or information (including the sending of any notice) unless a Responsible Officer of the Administrative Agent shall have received written notice of such default (which written notice shall be conspicuously labelled as a "Event of Default", "Market Trigger Event", or "Potential Default"), Event of Default, Market Trigger Event, Potential Default, or event or information, and shall have no duty to take any action to determine whether any such event, default, Market Trigger Event, Potential Default, or Event of Default has occurred. The Administrative Agent's receipt of reports (including monthly distribution reports) and any publicly available information, shall not constitute actual or constructive knowledge or notice of any information contained therein or determinable from information contained therein. All reports, notices and documents delivered to the Administrative Agent hereunder shall be delivered promptly or otherwise made available by the Administrative Agent to each Lender.

(c) The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Transaction Document, (ii) the contents or accuracy of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith and shall not be required to recalculate, certify or verify any information therein, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Event of Default, Market Trigger Event or Potential Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Transaction Document or any other agreement, instrument or document, or (v) the satisfaction of any condition set forth in Article III or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

(d) In no event shall the Administrative Agent be liable, directly or indirectly, for any special, indirect, punitive or consequential damages (as opposed to direct or actual damages), including lost profits, arising out of or in connection with this Agreement, even if the Administrative Agent has been advised of the possibility of such damages and regardless of the form of action.

(e) Before the Administrative Agent acts or refrains from taking any action under this Agreement or any other Transaction Document, it may require an officer's certificate or an opinion of counsel (which may come from internal counsel) from the party requesting that the Administrative Agent act or refrain from acting in form and substance reasonably acceptable to the Administrative Agent. The Administrative Agent shall not be liable for any action it takes or omits to take in good faith in reliance on such officer's certificates or opinions of counsel.

(f) The Administrative Agent shall not be required to expend or risk its own funds or otherwise incur any liability, financial or otherwise, in the performance of any of its duties, or the exercise of any of its rights or powers.

(g) The Administrative Agent shall incur no liability if, by reason of any provision of any future law or regulation thereunder, or by any force majeure event, including but not limited to natural disaster, act of war or terrorism, or other circumstances beyond its reasonable control, the Administrative Agent shall be prevented or forbidden from doing or performing any act or thing which the terms of this Agreement provide shall or may be done or performed, or by reason of any exercise of, or failure to exercise, any discretion provided for in this Indenture or any other Transaction Document.

(h) The right of the Administrative Agent to perform any permissive or discretionary act enumerated in this Agreement or any related document shall not be construed as a duty.

(i) The Administrative Agent shall not be responsible for, and makes no representation or warranty as to, the validity, legality, enforceability, sufficiency or adequacy of this Agreement, the other Transaction Documents or any related document, or as to the correctness of any statement contained in any thereof. The recitals contained herein and in the other Transaction Documents shall be construed as the statements of the Co-Borrowers. The Administrative Agent shall not be accountable for the Co-Borrower's use of the Advances or any money paid to the Co-Borrower pursuant to the provisions hereof, and it shall not be responsible for any statement of the Co-Borrowers in this Agreement or in any other Transaction Document.

(j) The Administrative Agent shall not be liable for any action or inaction of the Co-Borrowers, Holdings, the Servicer, the Lenders or any other party (or agent thereof) to this Agreement or any related document and may assume compliance by such parties with their obligations under this Agreement or any related agreements, unless a Responsible Officer of the Administrative Agent shall have received written notice to the contrary at the office of the Administrative Agent set forth in Section 11.02.

(k) Each Lender authorizes and directs the Administrative Agent to enter into the Transaction Documents to which it is a party on the date hereof on behalf of and for the benefit of the Lenders. Whether or not so expressly stated therein, in entering into, or taking (or forbearing from) any action under pursuant to, the Transaction Documents, the Administrative Agent shall have all of the rights, immunities, indemnities and other protections granted to it under this Agreement (in addition to those that may be granted to it under the terms of such other agreement or agreements).

(l) Notwithstanding any provision of this Agreement or the other Transaction Documents to the contrary, before taking or omitting any action to be taken or omitted by the Administrative Agent under the terms of this Agreement and the other Transaction Documents, the Administrative Agent may seek the written direction of the Servicer or the Majority Lenders (which written direction may be in the form of an email), and the Administrative Agent is entitled to rely (and is fully protected in so relying) upon such direction. In the absence of an express statement in the Transaction Documents regarding which Lenders shall direct in any circumstance, the direction of the Majority Lenders shall apply and be sufficient for all purposes.

SECTION 7.03 Reliance by Administrative Agent. The Administrative Agent shall be entitled to rely conclusively upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, opinion, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of an Advance that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Advance. The Administrative Agent may consult with legal counsel (who may be counsel for the Loan Parties or Holdings), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice or opinion of any such counsel, accountants or experts.

SECTION 7.04 Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Transaction Document by or through any one or more agents, sub-agents or attorneys appointed by the Administrative Agent. The Administrative Agent and any such agents, sub-agent or attorneys may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such party and to the Related Parties of the Administrative Agent and any such party. The Administrative Agent shall not be responsible for the negligence or misconduct of any agent, sub-agents or attorney appointed by it with reasonable care, except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgement that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such appointees.

SECTION 7.05 Resignation of Administrative Agent.

(a) The Administrative Agent may at any time give notice of its resignation to the Lenders and the Administrative Borrower. Upon receipt of any such notice of resignation, the Majority Lenders shall have the right to appoint a successor (with the consent of the Administrative Borrower, such consent not to be unreasonably withheld or delayed) to the extent no Event of Default is continuing. If no such successor shall have been so appointed by the Majority Lenders and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Majority Lenders) (the "Resignation Effective Date"), then the retiring Administrative Agent may (but shall not be obligated to), on behalf of the Lenders, petition a court of competent jurisdiction for the appointment of a successor Administrative Agent. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such



notice on the Resignation Effective Date. Notwithstanding anything to the contrary contained herein, no Defaulting Lender shall be appointed as a successor to the Administrative Agent.

(b) The Majority Lenders may, to the extent permitted by Applicable Law, by thirty (30) days prior notice in writing to the Administrative Borrower and the Administrative Agent, remove such Administrative Agent and, with the consent of the Administrative Borrower (which consent shall not be unreasonably withheld or delayed), appoint a successor. If no such successor shall have been so appointed by the Majority Lenders and shall have accepted such appointment within thirty (30) days (or such earlier day as shall be agreed by the Majority Lenders) (the "Removal Effective Date"), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (i) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Transaction Documents and (ii) except for any fees, expenses and indemnity payments owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time, if any, as the Majority Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or removed) Administrative Agent (other than as provided in Section 2.13(h) and other than any rights to fees, expenses and indemnity payments owed to the retiring or removed Administrative Agent as of the Resignation Effective Date or the Removal Effective Date, as applicable), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Transaction Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Co-Borrowers to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Co-Borrowers and such successor. After the retiring or removed Administrative Agent's resignation or removal hereunder and under the other Transaction Documents, the provisions of this Article VII and Sections 2.05(d), 10.01 and 11.07 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Administrative Agent was acting as Administrative Agent and the Administrative Agent shall be entitled to any fees accrued and payable up to the Resignation Effective Date or Removal Effective Date to the extent not previously paid.

(d) If the Person serving as Administrative Agent is a Defaulting Lender, the Majority Lenders may, to the extent permitted by Applicable Law, by notice in writing to the Administrative Borrower and such Person remove such Person as Administrative Agent and, in consultation with the Administrative Borrower, appoint a successor in accordance with this Section 7.05.

**SECTION 7.06 Non-Reliance on Agents and Other Lenders.** Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based

upon this Agreement, any other Transaction Document or any related agreement or any document furnished hereunder or thereunder.

**SECTION 7.07 Indemnification by Lenders.** Each Lender, severally, agrees to indemnify and hold harmless the Administrative Agent (or any sub-agent thereof) or any Related Party of any of the foregoing (to the extent not indefeasibly indemnified by or on behalf of the Co-Borrowers and without limiting the obligation of the Co-Borrowers to do so) with respect to any unpaid amount required under Article X or Section 11.07 to be paid by it, based on and to the extent of such Lender's Pro Rata Share of such unpaid amount (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender's Pro Rata Share at such time), including any such unpaid amount in respect of a claim asserted by such Lender; provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any sub-agent thereof) or any Related Party of any of the foregoing acting for the Administrative Agent (or any sub-agent) in connection with such capacity. The obligations of the Lenders to make payments pursuant to this Section 7.07 are several and not joint. The failure of any Lender to make any such payment on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its payment under this Section 7.07. The obligations of the Lenders under this Section 7.07 shall survive the resignation or removal of the Administrative Agent or the termination of this Agreement.

**SECTION 7.08 Administrative Agent May File Proofs of Claim.** In case of the pendency of any proceeding under any Bankruptcy Law or any other judicial proceeding relative to the Co-Borrowers or Holdings, the Administrative Agent (irrespective of whether the principal of any Advance shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Co-Borrowers) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise, at the direction of the Majority Lenders:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Advances and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Secured Parties (including any claim for the reasonable compensation, expenses, disbursements and advances of the Secured Parties and their respective agents and counsel and all other amounts due the Secured Parties under the Transaction Documents allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Section 11.07.

**SECTION 7.09 Collateral Matters.**

(a) Each Lender authorizes the Administrative Agent to release any Lien on any Collateral granted to or held by the Administrative Agent, for the benefit of the Secured Parties, under this Agreement or any other Transaction Document including, without limitation, the Collateral and Pledged Equity or if approved, authorized or ratified in writing in accordance with Section 11.01. Upon request by the Administrative Agent at any time, the Majority Lenders will confirm in writing the Administrative Agent's authority to release its interest in particular types or items of property. In each case as specified in this Section 7.09, the Administrative Agent will, at the Co-Borrowers' expense, execute and deliver to the Servicer such documents as the Servicer may reasonably request to evidence the release of such item of Collateral and Pledged Equity from the assignment and security interest granted under this Agreement or the other Transaction Documents in accordance with the terms of the Transaction Documents and this Section 7.09, without any recourse, representation or warranty by the Administrative Agent.

(b) The Administrative Agent shall not be responsible for or have a duty to ascertain the validity of or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, for the legality, enforceability, effectiveness or sufficiency of the Transaction Documents, the existence, priority, creation, validity, enforceability or perfection of the Administrative Agent's Lien thereon, or any certificate prepared by the Loan Parties, Holdings or the Servicer in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral or the Lien thereon. The Administrative Agent's sole duty with respect to the custody, safekeeping and physical preservation of any Collateral in its possession, under the UCC or otherwise, shall be to deal with it in the same manner as the Administrative Agent deals with similar property for the account of other customers in similar transactions.

(c) It is understood and agreed that the Administrative Agent (i) shall have no responsibility with respect to the determination of whether any Pledged Equity is certificated or uncertificated and (ii) the Administrative Agent shall only be responsible for holding Pledged Equity to the extent actually received. The Administrative Agent's sole duty with respect to the custody, safekeeping and physical preservation of any Collateral in its possession, under the UCC or otherwise, shall be to deal with it in the same manner as the Administrative Agent deals with similar property for the account of other customers in similar transactions.

#### SECTION 7.10 Erroneous Payments.

(a) Each Lender hereby agrees that (i) if the Administrative Agent notifies such Lender that the Administrative Agent has determined in its sole discretion that any funds received by such Lender from the Administrative Agent or any of its Affiliates were erroneously or mistakenly transmitted to, or otherwise erroneously or mistakenly received by, such Lender (whether or not known to such Lender) (whether as a payment, prepayment or repayment of principal, interest, fees or otherwise; individually and collectively, an "Erroneous Payment") and demands the return of such Erroneous Payment (or a portion thereof) (provided, that, without limiting any other rights or remedies (whether at law or inequity), the Administrative Agent may not make any such demand under this clause (a)(i) with respect to an Erroneous Payment unless such demand is made within 18 months of the date of receipt of such Erroneous Payment by the applicable Lender), such Erroneous Payment shall at all times remain the property of the Administrative Agent, and such Lender shall promptly, but in no event later than two Business Days thereafter, return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency

so received), together with interest thereon in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Lender to the date such amount is repaid to the Administrative Agent in same day funds at a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect and (ii) to the extent permitted by applicable law, such Lender shall not assert any right or claim to the Erroneous Payment, and hereby waives any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payments received, including, without limitation, waiver of any defense based on "discharge for value" or any similar theory or doctrine. A notice of the Administrative Agent to any Lender or any under this clause (a) shall be conclusive, absent manifest error.

(b) Without limiting immediately preceding clause (a), each Lender hereby further agrees that if it receives a payment from the Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in a notice of payment sent by the Administrative Agent, (y) that was not preceded or accompanied by notice of payment, or (z) that such Lender otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part), then in each case, if an error has been made each such Lender is deemed to have knowledge of such error at the time of receipt of such Erroneous Payment, and to the extent permitted by applicable law, such Lender shall not assert any right or claim to the Erroneous Payment, and hereby waives, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payments received, including without limitation waiver of any defense based on "discharge for value" or any similar theory or doctrine. Each Lender agrees that, in each such case, it shall promptly (and, in all events, within one Business Day of its knowledge (or deemed knowledge) of such error) notify the Administrative Agent of such occurrence and, upon demand from the Administrative Agent, it shall promptly, but in all events no later than two Business Days thereafter, return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made in same day funds (in the currency so received), together with interest thereon in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Lender to the date such amount is repaid to the Administrative Agent in same day funds at a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect.

(c) The Co-Borrowers and each other Loan Party hereby agree that (x) in the event an Erroneous Payment (or portion thereof) is not recovered from any Lender that has received such Erroneous Payment (or portion thereof) for any reason (and without limiting the Administrative Agent's rights and remedies under this Section 7.10), the Administrative Agent shall be subrogated to all the rights of such Lender with respect to such amount and (y) an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Co-Borrowers or any other Loan Party.

(d) In addition to any rights and remedies of the Administrative Agent provided by law, Administrative Agent shall have the right, without prior notice to any Lender, any such notice being expressly waived by such Lender to the extent permitted by applicable law, with respect to any Erroneous Payment for which a demand has been made in accordance with this Section 7.10 and which has not been returned to the Administrative Agent, to set off and appropriate and apply against such amount any and all deposits (general or special, time or demand, provisional or final but excluding trust accounts), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by Administrative Agent or any of its Affiliate, branch or agency thereof to or for the credit or the account



of such Lender. Administrative Agent agrees promptly to notify the Lender after any such setoff and application made by Administrative Agent; provided, that the failure to give such notice shall not affect the validity of such setoff and application.

(e) Each party's obligations under this Section 7.10 shall survive the resignation or replacement of the Administrative Agent, the termination of the Commitments or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Transaction Document.

ARTICLE VIII.  
ADMINISTRATION AND SERVICING OF COLLATERAL

SECTION 8.01 Appointment and Designation of the Servicer.

(a) Initial Servicer. The Co-Borrowers and the Lenders hereby appoint Massachusetts Mutual Life Insurance Company, pursuant to the terms and conditions of this Agreement, as Servicer, with the authority to service, administer and exercise rights and remedies, on behalf of the Co-Borrowers, in respect of the Collateral and to take the actions required of it hereunder and under the other Transaction Documents. Massachusetts Mutual Life Insurance Company hereby accepts such appointment and agrees to perform the duties and responsibilities of the Servicer pursuant to the terms hereof until such time as it resigns or is removed as Servicer pursuant to the terms hereof. The Servicer and the Co-Borrowers hereby acknowledge that the Administrative Agent and the Secured Parties are third party beneficiaries of the obligations undertaken by the Servicer hereunder.

(b) Servicer Termination Notice. The Co-Borrowers, the Servicer and the Administrative Agent hereby agree that, upon the occurrence of a Servicer Termination Event, the Administrative Agent, by written notice to the Servicer (a "Servicer Termination Notice"), may (upon the direction of the Majority Lenders) terminate all of the rights, obligations, power and authority of the Servicer under this Agreement. On and after the receipt by the Servicer of a Servicer Termination Notice pursuant to this Section 8.01(b), the Servicer shall continue to perform all servicing functions under this Agreement until the date that is thirty (30) days after the date of such notice or until a date mutually agreed upon by the Servicer and the Majority Lenders. The Servicer shall be entitled to receive, to the extent of funds available therefor pursuant to Section 2.08, the Servicing Fees accrued until such termination date as well as any other fees, amounts, expenses or indemnities it is entitled to pursuant to the provisions of this Agreement and any Fee Letter (collectively, the "Servicer Termination Expenses"). To the extent amounts held in the Collection Account and the Interest Reserve Account and paid in accordance with Section 2.09 are insufficient to pay the Servicer Termination Expenses, the Co-Borrowers (and to the extent the Co-Borrowers fail to so pay, the Lenders based on their Pro Rata Share) agrees to pay the Servicer Termination Expenses within ten (10) Business Days of receipt of an invoice therefor. After the earlier of (i) the termination date specified in the applicable Servicer Termination Notice and (ii) thirty (30) days thereafter as provided above, the Servicer agrees that it will terminate its activities as Servicer hereunder in a manner that the Majority Lenders believe will facilitate the transition of the performance of such activities to a Replacement Servicer, and the Replacement Servicer shall assume each and all of the Servicer's obligations under this Agreement and the other Transaction Documents, on the terms and subject to the conditions herein set forth, and the Servicer shall use its commercially reasonable efforts to assist the Replacement Servicer in assuming such obligations.

(c) Appointment of Replacement Servicer. At any time following the delivery of a Servicer Termination Notice or receipt of any notice of resignation under Section 8.09, the Administrative Agent

(acting at the direction of the Majority Lenders) may, with the consent of the Administrative Borrower (such consent not being required if an Event of Default has occurred and is continuing), appoint a new Servicer (the "Replacement Servicer"), which appointment shall take effect upon the Replacement Servicer accepting such appointment by a written assumption in a form satisfactory to the Administrative Agent acting at the direction of the Majority Lenders. Any Replacement Servicer shall be an established financial institution, having a net worth of not less than \$50,000,000 and whose regular business includes the servicing of assets similar to the Collateral.

(d) Liabilities and Obligations of Replacement Servicer. Upon its appointment, any Replacement Servicer shall be the successor in all respects to the Servicer with respect to servicing functions under this Agreement and shall be subject to all the responsibilities, duties and liabilities relating thereto placed on the Servicer by the terms and provisions hereof, and all references in this Agreement to the Servicer shall be deemed to refer to the Replacement Servicer; provided that any Replacement Servicer shall have (i) no liability with respect to any action performed by the prior Servicer prior to the date that the Replacement Servicer becomes the successor to the Servicer or any claim of a third party based on any alleged action or inaction of the prior Servicer, (ii) no obligation with respect to any Taxes on behalf of the Loan Parties, except for any payment made out of the Collection Account as provided in Section 2.13, (iii) no obligation to pay any of the fees and expenses of any other party to the transactions contemplated hereby and (iv) no liability or obligation with respect to any Servicer indemnification obligations of any prior Servicer. The indemnification obligations of the Replacement Servicer, upon becoming a Servicer, are expressly limited to those arising on account of its gross negligence or willful misconduct, or the failure to perform materially in accordance with its duties and obligations set forth in this Agreement. In addition, the Replacement Servicer shall have no liability relating to the representations of the prior Servicer contained in Section 4.03.

(e) Authority and Power. All authority and power granted to the Servicer under this Agreement shall automatically cease and terminate on the Facility Termination Date and shall pass to and be vested in the Loan Parties or their designee thereafter and, without limitation, the Loan Parties are hereby authorized and empowered to execute and deliver, on behalf of the Servicer, as attorney-in-fact or otherwise, all documents and other instruments, and to do and accomplish all other acts or things necessary or appropriate to effect the purposes of such transfer of servicing rights. The Servicer agrees to cooperate with the Loan Parties in effecting the termination of the responsibilities and rights of the Servicer to conduct servicing of the Collateral.

(f) Subcontracts. The Servicer may, with the prior written consent (except that no such consent shall be required (i) with respect to ministerial duties or (ii) to the extent necessary for Servicer to comply with any Applicable Laws, regulations, codes or ordinances relating to Servicer's servicing obligations) of the Administrative Agent (acting at the direction of the Majority Lenders) and the Administrative Borrower (not to be unreasonably withheld or delayed), subcontract with any other Person for servicing, administering or collecting the Collateral; provided that (A) the Servicer shall select any such Person with reasonable care and shall be solely responsible for the fees and expenses payable to any such Person, (B) the Servicer shall not be relieved of, and shall remain liable for, the performance of the duties and obligations of the Servicer pursuant to the terms hereof without regard to any subcontracting arrangement and (C) any such subcontract shall be terminable upon the occurrence of a Servicer Termination Event.

(g) Waiver. The Loan Parties acknowledge that the Administrative Agent or any of its Affiliates may, but shall not be obligated to, act as the Servicer, and the Co-Borrowers waive any and all

claims against the Administrative Agent, each Lender or any of their respective Affiliates and the Servicer (other than claims relating to such party's gross negligence or willful misconduct as determined in a final and non-appealable judgement by a court of competent jurisdiction) relating in any way to the custodial or collateral administration functions having been performed by the Administrative Agent or any of its Affiliates in accordance with the terms and provisions (including the standard of care) set forth in the Transaction Documents.

SECTION 8.02 Duties of the Servicer.

(a) Duties. The Servicer shall take or cause to be taken all such actions as may be necessary or advisable to, following the occurrence and during the continuance of an Event of Default, monitor and administer the Collections and to perform its duties and responsibilities under this Agreement and the other Transaction Documents, all in accordance with this Agreement and the other Transaction Documents, Applicable Law and the Servicing Standard. Without limiting the foregoing, the duties of the Servicer shall include the following:

(i) maintaining all necessary servicing records with respect to the Collateral received from the Loan Parties, or following the occurrence and continuance of an Event of Default, and providing such records to each Lender together with such other information with respect to the Collateral (including information relating to the Servicer's performance under this Agreement) as may be required hereunder or as the Majority Lenders may reasonably request;

(ii) maintaining and implementing administrative and operating procedures (including an ability to create servicing records received evidencing the Collateral) and keeping and maintaining all documents, books, records and other information or pursuant to this Agreement reasonably necessary or advisable for the collection of the Collateral;

(iii) promptly delivering to the Lenders, from time to time, such information and servicing records (to the extent received by the Servicer, including information relating to the Servicer's performance under this Agreement), as any Lender may from time to time reasonably request;

(iv) identifying each Portfolio Asset clearly and unambiguously in its records to reflect that such Portfolio Asset has been Transferred and is owned by a Loan Party;

(v) notifying the Lenders of any material action, suit, proceeding, dispute, offset, deduction, defense or counterclaim that is or is threatened to be asserted by an Obligor with respect to any Portfolio Asset (or portion thereof) of which it has knowledge or has received notice;

(vi) maintaining the perfected first priority security interest (subject to Permitted Liens) of the Administrative Agent, for the benefit of the Secured Parties, in the Collateral to the extent required by the Transaction Documents;

(vii) pursuant to the terms hereof, directing the Administrative Agent to direct the Account Bank to make payments in accordance with Section 2.09;

(viii) following the occurrence and during the continuance of an Event of Default, if directed by the Majority Lenders, instructing the Obligors, on the Portfolio Assets to make

payments with respect to the related Portfolio Asset directly into the Collection Account and otherwise directing or depositing Collections into the Collection Account;

(ix) recording in the records for the Collateral any Tax and insurance escrows and payments and Distributions with respect to the Portfolio Asset to the extent such information is received by the Servicer;

(x) all payments made with respect to the Portfolio Assets; and

(xi) following the occurrence and during the continuance of any Event of Default, identifying Collections as Excluded Amounts and preparing statements with respect to Collections and segregating Collections, all as required by this Agreement.

(b) It is acknowledged and agreed that the Loan Parties possess only such rights with respect to the enforcement of rights and remedies with respect to the Portfolio Assets and under the Equity Investment Agreements as have been transferred to the applicable Loan Party with respect to the related Portfolio Asset, and therefore in all circumstances, the Loan Parties shall perform their duties hereunder only to the extent that they have the right to do so.

(c) Notwithstanding anything to the contrary contained herein, the exercise by the Administrative Agent and the Secured Parties of their rights hereunder shall not release the Servicer or the Loan Parties from any of their duties or responsibilities with respect to the Collateral. The Secured Parties and the Administrative Agent shall not have any obligation or liability with respect to any Collateral, nor shall any of them be obligated to perform any of the obligations of the Servicer or the Loan Parties hereunder.

(d) [Reserved.]

(e) The Servicer is not required to take any action under this Agreement or any other Transaction Document that, in its opinion or the opinion of its counsel, may expose the Servicer to liability or that is contrary to any Transaction Document or Applicable Law. The Servicer shall not be liable for any action taken or not taken by it under this Agreement or any other Transaction Document with the consent or at the request of the Co-Borrowers or the Majority Lenders (or all Lenders, as applicable and as set forth in Sections 6.01 and 11.01). In the event the Servicer requests the consent of a Lender pursuant to the foregoing provisions and the Servicer does not receive a consent (either positive or negative) from such Person within ten (10) Business Days of such Person's receipt of such request, then such Lender shall be deemed to have declined to consent to the relevant action. For all purposes of this Agreement and the other Transaction Documents, the Loan Parties and the Lenders, as the case may be, shall direct the Servicer and the Account Bank, as applicable, what lender consent is required for a particular amendment, waiver or consent.

(f) The Servicer shall not be liable for any action taken or omitted to be taken by it under or in connection with this Agreement or any of the other Transaction Documents in the absence of its own gross negligence or willful misconduct as determined in a final decision by a court of competent jurisdiction. Without limiting the foregoing, the Servicer (i) may consult with legal counsel (including counsel for the Co-Borrowers or the Servicer), independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts, (ii) shall not be responsible for or have any duty to ascertain or inquire into (A) any statement, warranty or representation made in or in

connection with this Agreement or any other Transaction Document, (B) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (C) except as otherwise expressly provided herein, the performance or observance by any party (other than the Servicer) of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Event of Default or Potential Default, (D) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Transaction Document or any other agreement, instrument or document or (E) the satisfaction of any condition set forth in Article III or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Servicer (if any) and (iii) shall incur no liability under or in respect of this Agreement or any of the other Transaction Documents for relying on any notice (including notice by telephone), consent, certificate or other instrument or writing (which may be by facsimile) believed by it to be genuine and signed or sent by the proper party or parties.

SECTION 8.03 Authorization of the Servicer.

(a) The Loan Parties hereby authorize the Servicer (including any successor thereto) to take any and all reasonable steps in its name and on its behalf necessary or desirable in the determination of the Loan Parties and not inconsistent with the security interest of the Administrative Agent, for the benefit of the Secured Parties, in the Collateral, upon the occurrence and during the continuance of an Event of Default to collect all amounts due under the Collateral, in accordance with and subject to the terms hereof, including, to the extent the Servicer is permitted to do so, endorsing its name on checks and other instruments representing Collections, executing and delivering any and all instruments of satisfaction or cancellation, or of partial or full release or discharge, and all other comparable instruments, with respect to the Collateral and, after the delinquency of any Portfolio Asset, and to the extent permitted under and in compliance with Applicable Law, to commence proceedings with respect to enforcing payment thereof. The Loan Parties shall furnish the Servicer (and any successors thereto) with any powers of attorney and other documents, in each case effective only after the occurrence and during the continuance of an Event of Default, necessary or appropriate to enable the Servicer to carry out its servicing and administrative duties hereunder, and after the occurrence and during the continuance of an Event of Default shall cooperate with the Servicer to the fullest extent in order to facilitate the collectability of the Collateral. In no event shall the Servicer be entitled to make the Secured Parties, the Administrative Agent or any Lender a party to any litigation without such party's express prior written consent, or to make the Servicer a party to any litigation (other than any routine foreclosure or similar collection procedure) without the Administrative Agent's (at the direction of the Majority Lenders) consent. In the performance of its obligations hereunder, the Servicer shall not be obligated to take, or to refrain from taking, any action which any Lender requests that the Servicer take or refrain from taking to the extent that the Servicer determines in its reasonable and good faith judgment that such action or inaction (i) may cause a violation of Applicable Laws, regulations, codes, ordinances, court orders or restrictive covenants with respect to any Portfolio Asset, the Loan Parties or any Obligor, (ii) may cause a violation of any provision of this Agreement, a Fee Letter or a Required Portfolio Document or any other Transaction Document or (iii) may be a violation of the Servicing Standard.

(b) After the declaration of the Maturity Date and to the extent any Obligations remain unpaid, at the direction of the Majority Lenders, the Servicer shall take such action as the Majority Lenders may deem necessary or advisable to enforce collection of the Portfolio Assets; provided that the Servicer may, at any time that an Event of Default has occurred and is continuing, notify the Obligor, with respect to any Portfolio Asset of the assignment of such Portfolio Asset to the Servicer and direct



that payments of all amounts due or to become due thereunder be made directly to the Administrative Agent or any servicer, collection agent or account designated by the Administrative Agent (acting at the direction of the Majority Lenders) and, upon such notification, after the occurrence and during the continuance of an Event of Default and at the expense of the Co-Borrowers, the Servicer (acting at the direction of the Majority Lenders) may enforce collection of any such Portfolio Asset, and adjust, settle or compromise the amount or payment thereof.

SECTION 8.04 Collection of Payments; Accounts.

(a) Without limiting Section 8.02, following the occurrence and during the continuance of an Event of Default, the Servicer will monitor all Collections deposited to the Collection Account and will monitor the administration of the Collection Account in accordance with this Agreement and the Account Control Agreement.

(b) Collection Account and Interest Reserve Account. Each of the parties hereto hereby agrees that (i) each of the Collection Account and the Interest Reserve Account is intended to be a "deposit account" or "securities account" within the meaning of the UCC and (ii) following the occurrence and during the continuance of an Event of Default, only the Administrative Agent, acting at the direction of the Servicer, shall be entitled to exercise the rights with respect to the Collection Account and the Interest Reserve Account and have the right to direct the disposition of funds in the Collection Account and the Interest Reserve Account in accordance with Section 2.09. Each Co-Borrower hereby agrees to use commercially reasonable efforts to cause the Account Bank to agree with the parties hereto that regardless of any provision in any other agreement, for purposes of the UCC, with respect to the Collection Account and the Interest Reserve Account, New York shall be deemed to be the Account Bank's jurisdiction (within the meaning of Section 9-304 of the UCC). If at any time a Responsible Person of a Loan Party obtains knowledge that the Collection Account and the Interest Reserve Account ceases to be maintained by a Qualified Institution (with written notice from the Administrative Borrower to the Administrative Agent and the Lenders), then each Loan Party shall transfer such account to another Qualified Institution; provided that notice of such transfer to another Qualified Institution shall be given by the Administrative Borrower to the Administrative Agent and the Lenders at least ninety (90) days prior to the transfer to such Qualified Institution.

(c) Adjustments. If a Loan Party makes a deposit into the Collection Account in respect of a Collection and such Collection was received in the form of a check that is not honored for any reason then the amount subsequently deposited into the Collection Account to reflect such dishonored check shall be adjusted. Any Scheduled Payment in respect of which a dishonored check is received shall be deemed not to have been paid.

SECTION 8.05 Realization Upon Portfolio Assets. For the avoidance of doubt and notwithstanding anything to the contrary in this Agreement, the Servicer shall only exercise rights to realize upon Portfolio Assets upon the occurrence and during the continuance of an Event of Default. Following the occurrence and during the continuance of an Event of Default, the Servicer will use reasonable efforts consistent with the Servicing Standard and the Equity Investment Agreement to exercise available remedies (which may include foreclosing upon or repossessing, as applicable, or otherwise comparably converting the ownership of any Portfolio Asset) relating to a defaulted Portfolio Asset as to which no satisfactory arrangements can be made for the collection of delinquent payments, and may, consistent with the Servicing Standard and exercising its reasonably good faith judgment to maximize value, hold for value, sell or transfer any equity or other securities shall have received in

connection with a default, workout, restructuring or plan of reorganization with respect to such Portfolio Asset. The Servicer will comply with the Servicing Standard and Applicable Law in realizing upon such Portfolio Asset, and employ practices and procedures including commercially reasonable efforts consistent with the Servicing Standard to enforce all obligations of Obligor by foreclosing upon, repossessing and causing the sale of such Portfolio Asset at public or private sale in circumstances other than those described in the preceding sentence. Without limiting the generality of the foregoing, unless the Majority Lenders have specifically given instruction to the contrary, the Servicer may cause the sale of any such Portfolio Asset to the Servicer or its Affiliates for a purchase price equal to the then fair value thereof, any such sale to be evidenced by a certificate of a Responsible Person of the Servicer delivered to the Lenders setting forth the Portfolio Asset, the sale price of the Portfolio Asset and certifying that such sale price is the fair value of such Portfolio Asset. In any case in which any such Portfolio Asset has suffered damage, the Servicer will have no obligation to expend funds in connection with any repair or toward the foreclosure or repossession of such Portfolio Asset. The Servicer will remit to the Collection Account the recoveries received in connection with the sale or disposition of Portfolio Asset relating to a defaulted Portfolio Asset. Notwithstanding anything to the contrary herein, the Servicer shall not take any action with respect to the Portfolio Assets, nor shall it be required to take any actions, relating to any special servicing activities (it being understood and agreed that the Servicer shall determine whether any obligations or actions of the Servicer expressly set forth in this Agreement or the other Transaction Documents shall constitute special servicing activities), except to the extent (i) agreed to among the Co-Borrowers, the Lenders and the Servicer, pursuant to a separate fee letter agreement and (ii) the parties to such fee agreement agree to address any conflicts presented by such performance of special servicing activities reasonably requested by the Servicer with respect to any Portfolio Asset that is in default, if a Co-Borrower believes the exercise of remedies would maximize recoveries thereunder. Subject to the terms of the Equity Investment Agreement and the Servicing Standard, the Servicer will comply in all material respects with Applicable Law in exercising such remedies. Notwithstanding any of the foregoing, the Loan Parties shall not be obligated to breach any of their duties or responsibilities under any Equity Investment Agreement to comply with this Section 8.05.

SECTION 8.06 Servicing Compensation. As compensation for its Servicer activities hereunder, the Servicer shall be entitled to the Servicing Fees from the Co-Borrowers as set forth in the Servicer Fee Letter, payable pursuant to the extent of funds available therefor pursuant to the provisions of Section 2.09; provided that if such amounts are insufficient then Sections 8.10 and 11.07 shall be applicable. The Servicer's entitlement to receive the Servicing Fees shall cease on the earlier to occur of (i) its removal as Servicer as provided in Section 8.01(b), (ii) its resignation as Servicer as provided in Section 8.09 or (iii) the termination of this Agreement; provided that the Servicer shall be entitled to any fees accrued and payable up to such date to the extent not previously paid.

SECTION 8.07 Payment of Certain Expenses. The Loan Parties will be required to pay all reasonable and invoiced out-of-pocket fees and expenses owing to any bank or trust company in connection with the maintenance of the Collection Account. The Servicer shall be reimbursed for any such reasonable and invoiced out-of-pocket expenses incurred hereunder (including reasonable and invoiced out-of-pocket expenses paid by the Servicer on behalf of the Loan Parties), subject to the availability of funds pursuant to Section 2.09; provided that, to the extent funds are not available for such reimbursement, the Servicer shall be entitled to repayment of such expenses from the Loan Parties and if the Loan Parties fail to so reimburse the Servicer, the Servicer shall be entitled to be reimbursed by the Lenders (and each Lender hereby agrees to so reimburse the Servicer as provided herein) within ten (10) Business Days of receipt of an invoice therefor. In no event shall the Administrative Agent have

any duty, obligation or liability for payment of any fees, expenses, indemnities or other amounts payable to the Servicer.

SECTION 8.08 Reports to the Administrative Agent Account Statements; Servicing Information.

(a) [Reserved].

(b) [Reserved].

(c) Servicing Report. No later than three (3) Business Days prior to each Payment Date, the Servicer will provide to the Administrative Borrower and the Lenders a quarterly statement including (i) a summary prepared with respect to each Obligor and with respect to each Portfolio Asset for such Obligor prepared as of the most recent Determination Date and in a form determined by the initial Servicer hereunder (upon consultation with the Administrative Borrower) or in the form subsequently agreed to by any Replacement Servicer, the Administrative Borrower and the Majority Lenders (such quarterly statement, together with the items set forth in clauses (ii) and (iii) below, collectively, a "Servicing Report"), (ii) the aggregate Investment Value of all Eligible Portfolio Assets as of the Determination Date for such Reporting Date and (iii) the identification of any Excluded Amounts.

(d) Following the occurrence and during the continuance of a Potential Default or an Event of Default, Servicer may direct Administrative Agent to send instructions to the Account Bank to withdraw amounts and distribute such amounts pursuant to Section 2.09 hereof.

(e) [Reserved].

(f) Amendments to Portfolio Assets. To the extent delivered to the Servicer hereunder, the Servicer will deliver to the Lenders a copy of any amendment, restatement, supplement, waiver or other modification to the Equity Investment Agreement of any Eligible Portfolio Asset (along with any internal documents that are not privileged prepared by its investment committee in connection with such amendment, restatement, supplement, waiver or other modification) (i) with respect to any Material Investment Event, promptly and in any event within five (5) Business Days of request of the Majority Lenders thereof and (ii) with respect to any amendment, restatement, supplement, waiver or other modification which is not a Material Investment Event, within forty-five (45) days after the end of each quarter (in each case, to the extent received by the Servicer). The Servicer shall also deliver to the Lenders any notice or other correspondence that it receives hereunder or with respect to any Portfolio Asset, in each case, to the extent it deems such material in accordance with the Servicing Standard, promptly upon receipt thereof.

(g) Delivery Methods. Notwithstanding anything to the contrary contained herein, information required to be delivered or submitted to any Secured Party pursuant to this Agreement shall be deemed to have been delivered on the date upon which such information is received through e-mail.

SECTION 8.09 The Servicer Not to Resign. The Servicer shall not resign from the obligations and duties hereby imposed on it except (a) upon the Servicer's determination that (i) the performance of its duties hereunder is or becomes impermissible under Applicable Law and (ii) there is no reasonable action that the Servicer could take to make the performance of its duties hereunder permissible under Applicable Law, (b) Massachusetts Mutual Life Insurance Company, as initial Servicer hereunder, may resign as Servicer upon prior notice to the other parties hereto upon the selection of a Replacement



Servicer or (c) upon at least sixty (60) days' prior notice to the other parties hereto. If no successor Servicer shall have been appointed and an instrument of acceptance by a successor Servicer shall not have been delivered to the Servicer within thirty (30) days after the giving of such notice of resignation, the resigning Servicer may petition any court of competent jurisdiction for the appointment of a successor Servicer. No such resignation shall become effective until a Replacement Servicer shall have assumed the responsibilities and obligations of the Servicer in accordance with Section 8.02. Any Fees then due and owing to the Servicer and accrued through such date, including any expenses or indemnities it is entitled to pursuant to the provisions of this Agreement and any Fee Letter, shall be due and payable on such discharge date and shall be paid in accordance with Section 2.09 and if such amounts are insufficient to pay such amounts then due and owing, shall be paid by the Co-Borrowers (or the Lenders if the Co-Borrowers fail to so pay such amounts) within ten (10) Business Days of receipt of an invoice therefor.

SECTION 8.10 Indemnification of the Servicer. Each Lender agrees to indemnify the Servicer from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against the Servicer in any way relating to or arising out of this Agreement or any of the other Transaction Documents, or any action taken or omitted by the Servicer hereunder or thereunder; provided that (a) the Lenders shall not be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from the Servicer's gross negligence or willful misconduct as determined in a final decision by a court of competent jurisdiction and (b) no action taken in accordance with the directions of the Majority Lenders, Lenders or the Co-Borrowers shall be deemed to constitute gross negligence or willful misconduct for purposes of this Article VIII. Without limitation of the foregoing, each Lender agrees to reimburse the Servicer, promptly upon demand, for any Fees due to it hereunder, out-of-pocket expenses (including counsel fees) incurred by the Servicer in connection with the administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement and the other Transaction Documents, to the extent that such expenses are incurred in the interests of or otherwise in respect of the Servicer or Lenders hereunder or thereunder and to the extent that the Servicer is not reimbursed for such expenses by the Co-Borrowers under Section 2.09.

SECTION 8.11 Rights as a Lender. The Person serving as the Servicer hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Servicer, and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Servicer hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for, and generally engage in any kind of business with, the Co-Borrowers, Holdings or any Subsidiary or other Affiliate thereof as if such Person were not the Servicer hereunder and without any duty to account therefor to the Lenders.

ARTICLE IX.  
[RESERVED].

ARTICLE X.  
INDEMNIFICATION

SECTION 10.01 Indemnities by the Co-Borrowers and Holdings.

(a) Without limiting any other rights which the Secured Parties or any of their respective Affiliates may have hereunder or under Applicable Law, each of Holdings and, jointly and severally, the Co-Borrowers, shall indemnify the Secured Parties and each of their respective Affiliates, assigns, officers, directors, employees and agents (each, an “Indemnified Party” for purposes of this Article X) and hold each Indemnified Party harmless from and against any and all damages, losses, claims, liabilities and related costs and expenses, including reasonable and documented out-of-pocket attorneys’ fees and disbursements and court costs (all of the foregoing being collectively referred to as “Indemnified Amounts”), incurred by or asserted against such Indemnified Party arising out of or as a result of (i) this Agreement or the other Transaction Documents or in respect of any of the Collateral, (ii) any Advance or the use or proposed use of the proceeds therefrom, (iii) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party, by Holdings or the Co-Borrowers or by any other Person, and regardless of whether any Indemnified Party is a party thereto, or (iv) any action, claim or suit brought by an Indemnified Party to enforce its right to indemnification hereunder, provided, however, with respect to any Indemnified Party, such indemnification shall not be available (A) to the extent that such Indemnified Amounts arise out of or result from (x) disputes among Indemnified Parties (other than disputes involving claims against the Administrative Agent in its capacity as such) or (y) the gross negligence, bad faith or willful misconduct on the part of such Indemnified Party as determined in a final and non-appealable judgement of a court of competent jurisdiction or (z) a claim brought by Holdings or the Co-Borrowers against such Indemnified Party (other than the Administrative Agent and its respective Affiliates, assigns, officers, directors, employees and agents) for material breach of such Indemnified Party’s (other than the Administrative Agent’s and its respective Affiliates, assigns, officers, directors, employees and agents) express obligations hereunder (including, for the avoidance of doubt, any failure by such Indemnified Party (other than the Administrative Agent and its respective Affiliates, assigns, officers, directors, employees and agents) to comply with its obligation to fund any portion of its Advances as required hereby) or under any other Transaction Document, if Holdings or the Co-Borrowers, as applicable, have obtained a final, non-appealable judgment of a court of competent jurisdiction in its favor on such claim or (B) with respect to any settlement relating to any Indemnified Amounts that is entered into by such Indemnified Party (other than the Administrative Agent and its respective Affiliates, assigns, officers, directors, employees and agents) without the prior written consent of Holdings or the Co-Borrowers, as applicable, which consent shall not be unreasonably withheld, conditioned or delayed. This Section 10.01(a) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim. The obligations of Holdings, on the one hand, and the Co-Borrowers, on the other, to make payments pursuant to this Section 10.01 are several and not joint.

(b) Other than as expressly set forth in Section 10.01(a), any amounts subject to the indemnification provisions of this Section 10.01 shall be paid by Holdings or the Co-Borrowers to the applicable Indemnified Party within thirty (30) days following receipt by the Co-Borrowers of such Indemnified Party’s written demand therefor. Any Indemnified Party making a request for indemnification under this Section 10.01 shall submit to the Administrative Borrower a notice setting forth in reasonable detail the basis for and the computations of the Indemnified Amounts with respect to which such indemnification is requested, which notice shall be conclusive absent demonstrable error.

(c) [Reserved].

(d) If Holdings or a Co-Borrower has made any payments in respect of Indemnified Amounts to an Indemnified Party pursuant to this Section 10.01 and such Indemnified Party thereafter collects

any of such amounts from others, such Indemnified Party will promptly repay such amounts collected to Holdings or such Co-Borrower in an amount equal to the amount it has collected from others in respect of such Indemnified Amounts, without interest.

(e) The obligations of Holdings and the Co-Borrowers under this Section 10.01 shall survive the resignation or removal of the Administrative Agent or the Servicer or the termination or assignment of this Agreement.

(f) The procedures for making claims for indemnification set forth in this Section 10.01 shall not apply to any claim for indemnification of any attorneys' fees, costs and expenses incurred by an Indemnified Party in connection with any enforcement (including by means of any action, claim or suit) by an Indemnified Party of any indemnification or other obligation of Holdings and the Co-Borrowers, and the Indemnified Party shall only be required to make a request for payment.

#### ARTICLE XI. MISCELLANEOUS

##### SECTION 11.01 Amendments and Waivers.

(a) Except as set forth herein, (i) no amendment or modification of any provision of this Agreement or any other Transaction Document shall be effective without the written agreement of Holdings, the Co-Borrowers and the Majority Lenders and, solely if such amendment or modification would affect the rights or obligations of the Administrative Agent or the Servicer, the written agreement of the Administrative Agent or the Servicer, as applicable, and (ii) no termination or waiver of any provision of this Agreement or any other Transaction Document or consent to any departure therefrom by Holdings, the Co-Borrowers or the Servicer shall be effective without the written consent of the Majority Lenders. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

Notwithstanding the foregoing, with respect to any amendment, waiver or modification to which the Administrative Agent's consent is not required, the parties agree to deliver to the Administrative Agent a copy of each such amendment, waiver or modification; provided that, (i) no party shall be liable for its failure to comply with this sentence and (ii) the Administrative Agent shall not be bound by any such amendment unless and until it has received a copy thereof.

(b) Notwithstanding the provisions of Section 11.01(a), the written consent of all of the Lenders affected thereby shall be required for any amendment, modification or waiver (i) reducing (without payment thereon) the principal amount due and owing under any outstanding Advance or the interest thereon, (ii) postponing any date for any payment of any Advance or the interest thereon, (iii) modifying the provisions of this Section 11.01 or the definition of Majority Lenders or changing any other provision specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights or make any determination or grant any consent, (iv) extending the Maturity Date, (v) of any provision of Section 2.09, (vi) extending or increasing any Commitment of any Lender, (vii) changing Section 11.15 in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender directly and adversely affected thereby, (viii) waive any condition set forth in Section 3.01 or (ix) to consent to a Co-Borrower's assignment or transfer of its rights and obligations under this Agreement or any other Transaction Document or release all or substantially all of the Collateral except as expressly authorized in this Agreement.

(c) Notwithstanding anything herein to the contrary, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, and any amendment, waiver or consent that by its terms requires the consent of all the Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders, except that (x) the Commitment of any Defaulting Lender may not be increased or extended, or the maturity of any of its Advances may not be extended, the rate of interest on any of its Advances may not be reduced and the principal amount of any of its Advances may not be forgiven, in each case without the consent of such Defaulting Lender and (y) any amendment, waiver or consent requiring the consent of all the Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely than the other affected Lenders shall require the consent of such Defaulting Lender.

SECTION 11.02 Notices, Etc. All notices and other communications hereunder shall, unless otherwise stated herein, be in writing (which shall include facsimile communication and communication by e-mail) and faxed, e-mailed or delivered, to each party hereto, at its address set forth on Schedule IV or at such other address as shall be designated by such party in a written notice to the other parties hereto. Notices and communications by facsimile and e-mail shall be effective when sent during business hours on a Business Day, and notices and communications sent by other means shall be effective when received.

SECTION 11.03 No Waiver Remedies. No failure on the part of the Administrative Agent or any Lender to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

SECTION 11.04 Binding Effect; Assignability; Multiple Lenders.

(a) This Agreement shall be binding upon and inure to the benefit of Holdings, the Co-Borrowers, the Administrative Agent, each Lender, the Servicer and their respective successors and permitted assigns. Each Lender and their respective successors and assigns may assign, or grant a security interest in, (i) this Agreement and such Lender's rights and obligations hereunder and interest herein in whole or in part or (ii) any Advance (or portion thereof) or any Revolving Loan Note (or any portion thereof), in each case, to any Eligible Assignee; provided that unless and until an Event of Default pursuant to Section 6.01(a) or Section 6.01(d) has occurred and is continuing, the consent of the Administrative Borrower (such consent not to be unreasonably withheld) shall be required for a Lender to assign to any Person that is not an Eligible Assignee. Notwithstanding the foregoing, in no event shall a Lender (or its successors or assigns) transfer or assign, or grant a security interest in, its rights under clauses (i) or (ii) above to any Person that is a Disqualified Lender, including, for the avoidance of doubt, upon the occurrence or continuation of an Event of Default in respect of a Co-Borrower. Any such assignee shall execute and deliver to the Servicer, the Administrative Borrower and the Administrative Agent a fully-executed Assignment and Assumption Agreement (which shall include a certification that such assignee is an Eligible Assignee (or has otherwise received the consent of the Administrative Borrower)) and the Administrative Agent shall have received payment of an assignment fee in the amount of \$3,500, unless waived or reduced by the Administrative Agent. In addition to the delivery of the Assignment and Assumption Agreement and the processing and recordation fee, to the extent the assignee is not then currently a Lender hereunder, the assignee shall deliver to the Administrative Agent all documentation and other information reasonably determined by the Administrative Agent to be required by applicable regulatory authorities under applicable "know your customer" and Anti-Money



Laundrying Law. Upon delivery of the duly-executed Assignment and Assumption Agreement, processing fee and any “know your customer” information requested by the Administrative Agent, the Administrative Agent shall accept such Assignment and Assumption Agreement and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless and until it has been recorded in the Register as provided in this Section. Upon the recordation in the Register, (i) the assignee shall become and thereafter be deemed to be a “Lender” for the purposes of this Agreement, (ii) the assignor shall be released from its obligations hereunder to the extent that its interest has been assigned, (iii) in the event that the assignor’s entire interest has been assigned, the assignor shall cease to be and thereafter shall no longer be deemed to be a “Lender”. Neither the Co-Borrowers nor the Servicer may assign, or permit any Lien to exist upon, any of its rights or obligations hereunder or under any Transaction Document or any interest herein or in any Transaction Document without the prior written consent of the Lenders unless otherwise contemplated hereby. Each Lender may sell a participation in its interests hereunder as provided in Section 11.04(d). No assignment or sale of a participation under this Section 11.04 shall be effective unless and until properly recorded in the Register or Participant Register, as applicable, pursuant to Section 2.03. Any attempted assignment, transfer or grant of security interest by any Lender in violation of this Section 11.04 shall be null and void *ab initio*.

(b) Notwithstanding any other provision of this Section 11.04, any Lender may at any time pledge or grant a security interest in all or any portion of its rights (including rights to payment of principal and interest) under this Agreement to secure obligations of such Lender to a Federal Reserve Bank, without notice to or consent of the Co-Borrowers or the Administrative Agent; provided that no such pledge or grant of a security interest shall release such Lender from any of its obligations hereunder or under any Transaction Document, or substitute any such pledgee or grantee for such Lender as a party hereto or to any Transaction Document, as the case may be.

(c) Each Indemnified Party shall be an express third party beneficiary of this Agreement.

(d) Any Lender may at any time, without the consent of, or notice to, the Co-Borrowers or without the consent of, but with notice to, the Administrative Agent, sell participations to any Person (other than a natural Person, or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person, or the Co-Borrowers or any of the Co-Borrowers’ respective Affiliates (each, a “Participant”)) in all or a portion of such Lender’s rights or obligations under this Agreement (including all or a portion of its Commitment or the Advances owing to it); provided that (i) such Lender’s obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (iii) the Co-Borrowers, the Administrative Agent and Lenders shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement and (iv) such Lender shall register such participation in its Participant Register pursuant to Section 2.03(c). Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in Section 11.01(b) that affects such Participant. The Co-Borrowers agree that each Participant shall be entitled to the benefits of Section 2.13 (subject to the requirements and limitations therein, including the requirements under Section 2.13(e) and (f) (it being understood that the documentation required under Section 2.13(e) and (f) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment; provided

that such Participant (A) agrees to be subject to the provisions of Section 2.15(a) as if it were an assignee under paragraph (b) of this Section; and (B) shall not be entitled to receive any greater payment under Sections 2.12 or 2.13, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation.

SECTION 11.05 Term of This Agreement. This Agreement, including the Co-Borrowers' representations and covenants set forth in Articles IV and V, Holdings' representations and covenants set forth in Articles IV and V, and the Servicer's representations, covenants and duties set forth in Articles IV, V and VIII shall remain in full force and effect until this Agreement has been terminated by the Co-Borrowers and the Facility Termination Date has occurred; provided that any representation made or deemed made hereunder survives the execution and delivery hereof and the provisions of Section 2.07(c), 2.13, Section 7.07, Section 8.10, Section 11.06, Section 11.07, Section 11.08, Section 11.11 and Article X shall be continuing and shall survive any termination of this Agreement and the resignation or removal of the Administrative Agent.

SECTION 11.06 GOVERNING LAW; JURY WAIVER. THIS AGREEMENT IS GOVERNED BY THE LAWS OF THE STATE OF NEW YORK. EACH OF THE PARTIES HERETO WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING DIRECTLY OR INDIRECTLY OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, THE TRANSACTION DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREUNDER OR THEREUNDER.

SECTION 11.07 Costs, Expenses and Taxes.

(a) In addition to the rights of indemnification hereunder, the Co-Borrowers shall, jointly and severally, pay on demand (i) all costs and expenses of the Administrative Agent, the Servicer and the Lenders incurred in connection with the pre-closing due diligence, preparation, execution, delivery, administration, syndication, renewal, amendment or modification of, any waiver or consent issued in connection with, this Agreement, the Transaction Documents and the other documents required to be delivered hereunder or thereunder or in connection herewith or therewith, including the reasonable fees, disbursements and other charges of rating agency, reasonable and invoiced accounting costs and fees and the reasonable and invoiced out-of-pocket fees and expenses of (A) counsel for the Administrative Agent with respect thereto, (B) counsel for the Servicer with respect thereto (C) a single counsel to the Lenders with respect thereto and (D) local counsel for the Administrative Agent, Servicer and the Lenders, as reasonably necessary in any relevant jurisdiction (and solely in the case of actual or bona fide perceived conflict of interest, one additional counsel in each relevant jurisdiction), in each case, with respect to advising the Administrative Agent, the Lenders and the Servicer as to their respective rights and remedies under this Agreement, the Transaction Documents and the other documents required to be delivered hereunder or thereunder or in connection herewith or therewith and (ii) all costs and expenses, if any (including reasonable and invoiced out-of-pocket counsel fees and expenses of each counsel), incurred by the Administrative Agent, the Lenders or the Servicer in connection with the enforcement or potential enforcement of its respective rights under this Agreement or any other Transaction Document and the other documents required to be delivered hereunder or thereunder or in connection herewith or therewith or in connection with the Advances made hereunder, including all such expenses incurred during any workout, restructuring or negotiations in respect thereof (including reasonable and invoiced out-of-pocket counsel fees and expenses of each counsel); provided that absent an Event of Default, after the Closing Date the aggregate costs and

expenses of Massachusetts Mutual Life Insurance Company (in its capacity as Lender, Servicer or otherwise) and the Lenders that are payable by the Co-Borrowers under the Transaction Documents shall not exceed \$50,000 per year.

(b) The Co-Borrowers shall pay promptly in accordance with Applicable Law any and all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes payable or determined to be payable to any Governmental Authority that arise from any payment made under, the execution, delivery, performance, enforcement or registration of, from receipt or perfection of a security interest under, filing and recording of this Agreement, or any other Transaction Documents, or otherwise in connection with this Agreement or any other Transaction Document, except any such Taxes or fees that are imposed as the result of any other present or former connection between any Indemnified Party and the jurisdiction imposing such Tax (other than connections arising from such Person having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Transaction Document, or sold or assigned an interest in any loan made pursuant to this Agreement) with respect to an assignment other than an assignment made pursuant to Section 2.15(b) ("Other Taxes").

**SECTION 11.08 Recourse Against Certain Parties; Non-Petition.**

(a) No recourse under or with respect to any obligation, covenant or agreement (including the payment of any fees or any other obligations) of the Servicer, Co-Borrowers, Holdings, the Administrative Agent, the Lenders or any Secured Party as contained in this Agreement or any other agreement, instrument or document entered into by the Servicer, Co-Borrowers, Holdings, the Administrative Agent, the Lenders or any Secured Party pursuant hereto or in connection herewith shall be had against the Servicer, Co-Borrowers (other than with respect to fraud), Holdings, the Administrative Agent, the Lenders or any Secured Party or any incorporator, affiliate, stockholder, officer, employee or director of the Servicer, Borrower, Holdings, the Administrative Agent, the Lenders or any Secured Party, as such, by the enforcement of any assessment or by any legal or equitable proceeding, by virtue of any statute or otherwise; it being expressly agreed and understood that the agreements of each party hereto contained in this Agreement and all of the other agreements, instruments and documents entered into by the Servicer, Borrower, Holdings, the Administrative Agent, the Lenders or any Secured Party pursuant hereto or in connection herewith are, in each case, solely the corporate obligations of such party (and nothing in this Section 11.08 shall be construed to diminish in any way such corporate obligations of such party), and that no personal liability whatsoever shall attach to or be incurred by the Servicer, Borrower, Holdings, the Administrative Agent, the Lenders or any Secured Party or any incorporator, stockholder, affiliate, officer, employee or director of the Lenders, the Servicer, Borrower, Holdings or the Administrative Agent, as such, or any of them, under or by reason of any of the obligations, covenants or agreements of the Servicer, Borrower, Holdings, the Administrative Agent, the Lenders or any Secured Party contained in this Agreement or in any other such instruments, documents or agreements, or are implied therefrom, and that any and all personal liability of each of the Servicer, Borrower, Holdings, the Administrative Agent, the Lenders or any Secured Party and each incorporator, stockholder, affiliate, officer, employee or director of the Servicer, Borrower, Holdings, the Administrative Agent, the Lenders or any Secured Party, or any of them, for breaches by the Servicer, Borrower, Holdings, the Administrative Agent, the Lenders or any Secured Party of any such obligations, covenants or agreements, which liability may arise either at common law or in equity, by statute or constitution, or otherwise, is hereby expressly waived as a condition of and in consideration for the execution of this Agreement.

(b) Notwithstanding any contrary provision set forth herein, no claim may be made by any party hereto against any party hereto or their respective Affiliates, directors, officers, employees, attorneys or agents for any special, indirect, consequential or punitive damages in respect to any claim for breach of contract or any other theory of liability arising out of or related to the transactions contemplated by this Agreement, or any act, omission or event occurring in connection therewith; and each party hereto hereby waives, releases, and agrees not to sue upon any claim for any such damages, whether or not accrued and whether or not known or suspected.

(c) No obligation or liability to any Obligor under any of the Portfolio Assets is intended to be assumed by the Servicer, the Administrative Agent, the Lenders or any Secured Party under or as a result of this Agreement and the transactions contemplated hereby.

(d) Each of the parties hereto hereby agrees that it will not institute against, or join any other Person in instituting against, the Co-Borrowers any bankruptcy or insolvency proceeding so long as there shall not have elapsed one (1) year and one (1) day (or such longer preference period as shall then be in effect) since the Facility Termination Date unless the Majority Lenders otherwise consent to any such action.

(e) The provisions of this Section 11.08 survive the termination of this Agreement.

SECTION 11.09 Execution in Counterparts; Severability; Integration. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by e-mail in portable document format (.pdf) or facsimile shall be effective as delivery of a manually executed counterpart of this Agreement. In the event that any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby. This Agreement and any agreements or letters (including Fee Letters) executed in connection herewith contains the final and complete integration of all prior expressions by the parties hereto with respect to the subject matter hereof and shall constitute the entire agreement among the parties hereto with respect to the subject matter hereof, superseding all prior oral or written understandings.

SECTION 11.10 Consent to Jurisdiction; Service of Process.

(a) Each party hereto hereby irrevocably submits to the exclusive jurisdiction of any New York State or Federal court sitting in New York City in any action or proceeding arising out of or relating to the Transaction Documents, and each party hereto hereby irrevocably agrees that all claims in respect of such action or proceeding may be heard and determined in such New York State court or, to the extent permitted by law, in such Federal court. The parties hereto hereby irrevocably waive, to the fullest extent they may effectively do so, the defense of an inconvenient forum to the maintenance of such action or proceeding. The parties hereto agree that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(b) Each Co-Borrower and the Servicer agree that service of process may be effected by mailing a copy thereof by registered or certified mail, postage prepaid, to the Administrative Borrower



or the Servicer, as applicable, at its address specified in Section 11.02 or at such other address as the Administrative Agent shall have been notified in accordance herewith. Nothing in this Section 11.10 shall affect the right of the Lenders or the Administrative Agent to serve legal process in any other manner permitted by law.

SECTION 11.11 Confidentiality.

(a) Each of the Administrative Agent, the Lenders and the Servicer shall maintain and shall cause each of its employees and officers to maintain the confidentiality of all Information (as defined below), including all Information regarding the business of the Co-Borrowers and the Servicer and their respective businesses obtained by it or them in connection with the structuring, negotiating and execution of the transactions contemplated herein, except that Information may be disclosed (i) to its Affiliates, accountants, investigators, auditors, attorneys or other agents, including any rating agency or valuation firm engaged by such party in connection with any due diligence or comparable activities with respect to the transactions and Portfolio Assets contemplated herein, and the agents of such Persons, taxing authorities and governmental agencies, in each case, to the extent reasonably necessary in connection with their work with respect to this Agreement ("Excepted Persons"); provided that each Excepted Person is informed of the confidential nature of such Information and instructed to keep such Information confidential, (ii) as is required by Applicable Law, (iii) in accordance with the Servicing Standard, (iv) when required by any law, regulation, ordinance, court order or subpoena, (v) to the extent the Servicer is disseminating general statistical information relating to the assets being serviced by the Servicer (including the Portfolio Assets) hereunder so long as the Servicer does not identify the Co-Borrowers, any Lender or the Obligors or (vi) in connection with the exercise of any remedies hereunder or under any other Transaction Document or any action or proceeding relating to this Agreement or any other Transaction Document or the enforcement of rights hereunder or thereunder.

(b) Anything herein to the contrary notwithstanding, the Co-Borrowers hereby consent to the disclosure of any Information with respect to it (i) to the Administrative Agent, the Lenders or the Servicer by each other, (ii) by the Administrative Agent, the Lenders and the Servicer to any prospective or actual assignee or participant of any of them that would be permitted under the terms hereof provided such Person agrees to hold such information confidential or (iii) by the Administrative Agent, the Lenders and the Servicer to any rating agency, commercial paper dealer or provider of a surety, guaranty or credit or liquidity enhancement to any Lender or any Person providing financing to, or holding Equity Interests in, any Lender, as applicable, and to any officers, directors, employees, outside accountants and attorneys of any of the foregoing, provided each such Person is informed of and agrees to maintain the confidential nature of such information. In addition, the Lenders and the Administrative Agent may disclose any such Information as required pursuant to any law, rule, regulation, direction, request or order of any judicial, administrative or regulatory authority or proceedings (whether or not having the force or effect of law).

(c) Notwithstanding anything herein to the contrary, the foregoing shall not be construed to prohibit (i) disclosure of any and all Information that is or becomes publicly known other than as a result of a breach of this Section, (ii) disclosure of any and all Information (A) if required to do so by any applicable statute, law, rule or regulation, (B) to any government agency or regulatory body having or claiming authority to regulate or oversee any aspects of the Lenders', the Administrative Agent's or the Servicer's business or that of their Affiliates, (C) pursuant to any subpoena, civil investigative demand or similar demand or request of any court, regulatory authority, arbitrator or arbitration to which the Administrative Agent, any Lender or the Servicer or an officer, director, employer, shareholder or

affiliate of any of the foregoing is a party or (D) in any preliminary or final offering circular, registration statement or contract or other document approved in advance by the Administrative Borrower, (iii) any other disclosure authorized by the Administrative Borrower, or (iv) disclosure of any and all Information that becomes available to the Administrative Agent, any Lender or the Servicer on a nonconfidential basis from a source other than the Co-Borrowers who did not acquire such information as a result of a breach of this Section 11.11.

(d) The parties hereto may disclose the existence of the Agreement, but not the financial terms hereof, including all fees and other pricing terms, all Events of Default, and priority of payment provisions, in each case except in compliance with this Section 11.11. Notwithstanding anything to the contrary in this Section 11.11, the Co-Borrowers, Holdings and any of their respective Affiliates may make any public disclosures of or about this Agreement or the other Transaction Documents, including without limitation any publicly filed copies or descriptions of this Agreement or the other Transaction Documents, which may disclose, among other things, fees and pricing terms and other financial terms hereof or thereof, in each case, to the extent required by Applicable Law. "Information" means any and all non-public information received or obtained from the Co-Borrowers or any of their Affiliates, relating to the Co-Borrowers, Holdings, their Affiliates or businesses, including without limitation, data, evaluations, reports, analyses, methodologies, proprietary "know-how", financial information or any other information. The term "Information" shall not include information that (i) is or becomes available in the public domain other than through a material breach of this Agreement by the Administrative Agent, Servicer, Lenders or any of their Affiliates, (ii) is already known to the Administrative Agent, the Servicer, Lenders or any of their Affiliates or in any of their possession before such party receives the information from the Co-Borrowers or any of their Affiliates on a non-confidential basis, (iii) is independently developed or acquired by the Administrative Agent, Servicer, Lenders or any of their Affiliates without using the Information, and (iv) is unrelated to this Agreement and rightfully obtained by the Administrative Agent, Servicer, Lenders or any of their Affiliates from a third party not to each such party's actual knowledge under any obligation of confidentiality to the Co-Borrowers or any of their Affiliates. Any Person required to maintain the confidentiality of Information as provided in this Section 11.11 shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information. Each of the Servicer and the Lenders acknowledges that (a) the Information may include material non-public information concerning the Co-Borrowers, Holdings or their Subsidiaries, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with Applicable Law, including United States Federal and state securities Laws.

SECTION 11.12 Non-Confidentiality of Tax Treatment. All parties hereto agree that each of them and each of their employees, representatives, and other agents may disclose to any and all Persons, without limitation of any kind, the tax treatment and tax structure of the transaction and all materials of any kind (including opinions or other tax analyses) that are provided to any of them relating to such tax treatment and tax structure. "Tax treatment" and "tax structure" shall have the same meaning as such terms have for purposes of Treasury Regulation Section 1.6011-4; provided that with respect to any document or similar item that in either case contains information concerning the tax treatment or tax structure of the transaction as well as other information, the provisions of this Section 11.12 shall only apply to such portions of the document or similar item that relate to the tax treatment or tax structure of the transactions contemplated hereby.

SECTION 11.13 Waiver of Set Off. If an Event of Default has occurred and is continuing, the Administrative Agent, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by Applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held, and other obligations (in whatever currency) at any time owing, by the Administrative Agent, such Lender or any such Affiliate, to or for the credit or the account of the Co-Borrowers against any and all of the Obligations, irrespective of whether or not such the Administrative Agent or Lender or Affiliate shall have made any demand under this Agreement or any other Transaction Document and although such Obligations may be contingent or unmatured or are owed to a branch office or Affiliate of the Administrative Agent or such Lender different from the branch office or Affiliate holding such deposit or obligated on such Indebtedness. Each Lender shall notify the Administrative Borrower and the Administrative Agent promptly after any such setoff and application; provided that the failure to give such notice shall not affect the validity of such setoff and application and provided, further, that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.16 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff.

SECTION 11.14 Headings, Schedules and Exhibits. The headings herein are for purposes of references only and shall not otherwise affect the meaning or interpretation of any provision hereof. The schedules and exhibits attached hereto and referred to herein shall constitute a part of this Agreement and are incorporated into this Agreement for all purposes.

SECTION 11.15 Ratable Payments. If any Lender, whether by setoff or otherwise, shall obtain any payment (whether voluntary, involuntary, through the exercise of any right of setoff, or otherwise) on account of Advances owing to it (other than pursuant to Section 2.12 or Section 2.13) in excess of its ratable share of payments on account of the Advances obtained by all the Lenders, such Lender shall forthwith purchase from the other Lenders such participations in the Advances owing to them as shall be necessary to cause such purchasing Lender to share the excess payment ratably with each of them; provided that, if all or any portion of such excess payment is thereafter recovered from such purchasing Lender, such purchase from each Lender shall be rescinded and such Lender shall repay to the purchasing Lender the purchase price to the extent of such recovery together with an amount equal to such Lender's ratable share (according to the proportion of (a) the amount of such Lender's required repayment to (b) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered.

SECTION 11.16 Failure of Co-Borrowers to Perform Certain Obligations. If a Co-Borrower fails to perform any of its agreements or obligations required under Section 5.01(s), the Administrative Agent may (but shall not be required to, and in any case, acting at the direction of the Majority Lenders) itself perform, or cause performance of, such agreement or obligation, and the expenses of the Administrative Agent incurred in connection therewith shall be payable by the Co-Borrowers promptly upon the Administrative Agent's demand therefore.

SECTION 11.17 Power of Attorney. Each of the Co-Borrowers and Holdings irrevocably authorizes the Administrative Agent and appoints the Administrative Agent as its attorney-in-fact to act

on its behalf as set forth in Exhibit H to file financing statements reasonably necessary or desirable (as determined by Servicer acting at the direction of the Majority Lenders) to perfect and to maintain the perfection and priority of the interest of the Administrative Agent, for the benefit of the Secured Parties, in the Collateral. This appointment is coupled with an interest and is irrevocable.

SECTION 11.18 Delivery of Termination Statements, Releases, etc. Upon the occurrence of the Facility Termination Date, the Administrative Agent shall, at the direction of the Majority Lenders, execute and deliver to the Servicer termination statements, reconveyances, releases and other documents and instruments of release reasonably requested by the Co-Borrowers or the Servicer to evidence the termination of the Liens securing the Obligations on the Collateral, all at the expense of the Co-Borrowers and without any recourse, representation or warranty by the Administrative Agent.

SECTION 11.19 Exclusive Remedies. Except as otherwise expressly provided in this Agreement, no remedy provided for by this Agreement shall be exclusive of any other remedy, and each and every remedy shall be cumulative and in addition to any other remedy, and no delay or omission to exercise any right or remedy shall impair any such right or remedy.

SECTION 11.20 Post-Closing Performance Conditions. The parties hereto agree to cooperate with reasonable requests made by any other party hereto after signing this Agreement to the extent reasonable necessary for such party to comply with laws and regulations applicable to financial institutions in connection with this transaction (e.g., the USA PATRIOT Act, OFAC and related regulations).

SECTION 11.21 Performance Conditions. The obligations of the Servicer to effect the transactions contemplated hereby shall be subject to the following conditions:

(a) The Servicer shall have (i) completed its due diligence with respect to the Co-Borrowers and each Lender in order to satisfy compliance with laws and regulations applicable to financial institutions in connection with this transaction (e.g., the USA PATRIOT Act, OFAC and related regulations) and (ii) been satisfied with the results of such due diligence in its sole discretion.

(b) [Reserved].

(c) In each and every case of a Holdings AML and International Trade Default, Borrower AML and International Trade Default or a Lender event of default, the Servicer may, by notice in writing to Co-Borrowers and the Lenders, in addition to whatever rights the Servicer may have at law or in equity, including injunctive relief and specific performance, immediately resign as Servicer (notwithstanding any provision in Section 8.09 or otherwise in this Agreement, but subject to the provisions set forth in this Section 11.21(c)), without the Servicer incurring any penalty or fee of any kind whatsoever in connection therewith. Except as otherwise expressly provided in this Agreement, no remedy provided for by this Agreement shall be exclusive of any other remedy, and each and every remedy shall be cumulative and in addition to any other remedy, and no delay or omission to exercise any right or remedy shall impair any such right or remedy or shall be deemed to be a waiver of any Holdings AML and International Trade Default, Borrower AML and International Trade Default or Lender event of default. On or after the receipt by Holdings or the Co-Borrowers and any Lender of a written notice of resignation from the Servicer pursuant to this Section 11.21(c), (i) all payments communications, determinations and other obligations provided to be made by, to or through the Servicer shall instead be made by, to or through each Lender until such time as a successor to the



Servicer has been appointed as provided by this Agreement and (ii) the Servicer's obligations under this Agreement shall terminate. After the receipt by Holdings or the Administrative Borrower and any Lender of a written notice of resignation from the Servicer pursuant to this Section 11.21(c), the Servicer shall deliver all Portfolio Asset Files to the Administrative Agent or such other Person as the Administrative Agent designates in writing, in all cases at the sole cost and expense of the Co-Borrowers. Notwithstanding the foregoing, upon any such termination, the Servicer will be entitled to receive all accrued Fees, indemnities and expenses through the date of termination.

(d) AML and International Trade Covenants. The obligations of the Servicer to effect any transaction contemplated hereby shall be subject to (i) no Holdings' AML and International Trade Default, (ii) no Borrower AML and International Trade Default and (iii) Co-Borrowers' compliance with Section 5.02(n).

(e) AML and International Trade Defaults. Upon discovery by Holdings of any Holdings AML and International Trade Default, or by a Co-Borrower or a UK Guarantor of any Borrower AML and International Trade Default (but, in each case, regardless of whether any notice has been given as provided in this Agreement or any cure period provided herein has expired), each such Loan Party, as applicable, shall give prompt written notice thereof to the Servicer.

SECTION 11.22 Bail In. Notwithstanding anything to the contrary in any Transaction Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Transaction Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder that may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Transaction Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any EEA Resolution Authority.

SECTION 11.23 Joint and Several; Administrative Borrower.

(a) The obligations of the Co-Borrowers hereunder and under the other Transaction Documents are joint and several. Without limiting the generality of the foregoing, reference is hereby made to the Guaranty and Collateral Agreement, to which the obligations of the Loan Parties are subject.

(b) Each of the Co-Borrowers accepts joint and several liability hereunder in consideration of the financial accommodation provided or to be provided by the Administrative Agent and the Lenders under this Agreement and the other Transaction Documents, for the mutual benefit, directly and indirectly, of each Co-Borrower and in consideration of the undertakings of the Co-Borrowers to accept joint and several liability for the obligations of each other.

(c) Each of the Co-Borrowers shall be jointly and severally liable for the Obligations. Each of the Co-Borrower's obligations arising as a result of the joint and several liability of such Co-Borrower hereunder, with respect to Loans made to such Co-Borrower hereunder, shall be separate and distinct obligations, but all such obligations shall be primary obligations of each Co-Borrower.

(d) Upon the occurrence and during the continuation of any Event of Default, the Administrative Agent and the Lenders may proceed directly and at once, without notice, against any Co-Borrower to collect and recover the full amount, or any portion of, the Obligations, without first proceeding against any other Co-Borrower or any other Person, or against any security or collateral for the Obligations. Each Co-Borrower waives, to the maximum extent permitted by law, all suretyship defenses and consents and agrees that the Administrative Agent and the Lenders shall be under no obligation to marshal any assets in favor of any Co-Borrower or against or in payment of any or all of the Obligations.

(e) Each representation and warranty made on behalf of a Loan Party shall be deemed for all purposes to have been made by all of the Loan Parties and shall be binding upon and enforceable against each Loan Party to the same extent as if the same had been made directly by each such Loan Party.

(f) Each Co-Borrower hereby designates the Administrative Borrower as its representative and agent on its behalf for the purposes of taking all actions required (including in respect of compliance with covenants) on behalf of any Co-Borrower under the Transaction Documents. The Administrative Borrower hereby accepts such appointment. The Administrative Agent (and each Lender) may regard any notice or other communication pursuant to any Transaction Document from the Administrative Borrower as a notice or communication from all Co-Borrowers, and may give any notice or communication required or permitted to be given to any Co-Borrower hereunder to the Administrative Borrower on behalf of such Co-Borrower or Co-Borrowers. Each Co-Borrower agrees that each notice, election, representation and warranty, covenant, agreement, and undertaking made on its behalf by the Administrative Borrower shall be deemed for all purposes to have been made by such Co-Borrower and shall be binding upon and enforceable against such Co-Borrower to the same extent as if the same had been made directly by such Co-Borrower.

[Signature Pages Follow]

Executed as of the date first above written.

Holdings:

KUDU INVESTMENT MANAGEMENT, LLC, a Delaware limited liability company

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

Name:

Title:

The Co-Borrowers:

KUDU INVESTMENT HOLDINGS, LLC, a Delaware limited liability company

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

Name:

Title:

KUDU INVESTMENT US, LLC, a Delaware limited liability company

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

Name:

Title:

The UK Guarantors:

KFO Holdings, Ltd., a limited liability company incorporated in England and Wales

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

Name:

Title: Director

KWCP Holdings (UK), Ltd. a limited liability company incorporated in England and Wales

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

Name:

Title: Director

*[Signature Page to Loan and Servicing Agreement]*

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Lender:

MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY

By: 

Name: Andrew C. Dickey

Title: Head of Alternative and Private Equity

*[Signature Page to Loan and Servicing Agreement]*

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The Administrative Agent:


ALTER DOMUS (US) LLC

By:   
Name: Jon Kirschmeier  
Title: Associate Counsel

*[Signature Page to Loan and Servicing Agreement]*

The Servicer:

MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY, in its capacity as Servicer

By:   
Name: Andrew C. Dickey  
Title: Head of Alternative and Private Equity

*[Signature Page to Loan and Servicing Agreement]*

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**TABLE OF CONTENTS**

**Page**

Schedule I  
Eligible Portfolio Assets and Post-Closing Portfolio Assets

Kadu Investment Holdings, LLC

# of Eligible Assets:	11
Total Cost:	\$ 328,820, 85.59
Total Fair Value:	\$ 346,347,117.33
TTM Revenue:	\$
Eligible Receivable:	\$

#	Eligible Portfolio Asset	Closing Date	Firm Vintage	Geography	Revenue Share Basis	Revenue/Revenue Share %	Cost	% of Total Cost	Fair Value <sup>(1)</sup> 12/31/2020	% of Total Fair Value	TTM Revenue 12/31/2020	Eligible Receivable 12/31/2020	RISE (1) <sup>(2)</sup> 12/31/2020
1	Savanna		2006	New York NY			\$				\$	\$	\$ 1,474,940,964
2	TIG		1980	New York NY			\$				\$	\$	\$ 6,067,140,767
3	BOJIS		1983	San Francisco CA			\$				\$	\$	\$ 1,482,680,629
4	Venno		2010	Denver CO			\$				\$	\$	\$ 4,272,000,000
5	First Long Island Investors		1983	Jericho NY			\$				\$	\$	\$ 1,737,243,606
6	EF		2005	Arlington VA			\$				\$	\$	\$ 9,296,000,000
7	Pennsbacher		2006	Austin TX			\$				\$	\$	\$ 1,311,240,682
8	Creation		2007	Chicago IL			\$				\$	\$	\$ 507,099,227
9	Sequoia		1991	Akron OH			\$				\$	\$	\$ 5,564,833,413
10	Ranger		2003	Dallas TX			\$				\$	\$	\$ 2,142,043,253
11	Warwick		2010	London UK			\$				\$	\$	\$

<sup>(1)</sup> Fair Market Value as of 12/31/2020. TIG Fair Market Value also includes cost of add-on investments of [REDACTED] which were closed on January 5, 2021 and February 16, 2021, respectively.

<sup>(2)</sup> Most recently available AIM (Chancellor 7/31/20) converted using 12/31/2020 USD/AUD FX rate of 0.7725; Savanna, Creation and Ranger are 8/30/2020; Warwick is 12/1/2020; TIG, BOJIS, Fair Oak, EF, Venno, FLI, Pennsbacher, Sequoia are 12/31/2019.

Schedule II  
Condition Precedent Documents

As required by Section 3.01 of the Agreement, each of the following items must be delivered prior to the effectiveness of this Agreement:

(a) to the Administrative Agent and the Lenders, a copy of this Agreement and the Account Control Agreement duly executed by each of the parties hereto and thereto;

(b) a certificate of a Responsible Person of each Loan Party and Holdings, dated the date of the Agreement, certifying (i) the names and true signatures of the Responsible Persons of each Loan Party authorized to sign on behalf of each Loan Party and Holdings each of the Transaction Documents to which it is a party (on which certificate the Administrative Agent and the Lenders may conclusively rely until such time as the Administrative Agent has receives from each Loan Party and Holdings a revised certificate meeting the requirements of this paragraph (b)(i)), (ii) that the copy of the Constituent Documents of each Loan Party and Holdings, as applicable, is a complete and correct copy and that such Constituent Documents have not been amended, modified or supplemented and are in full force and effect and (iii) the authorization document or resolution of the managing member, board of directors, the shareholders or board of trustees, as applicable, approving and authorizing the execution, delivery and performance by such Person of the Transaction Documents to which it is a party;

(c) to the Lenders and Administrative Agent, certified copies of such documents and certificates relating to the organization, valid existence and good standing of each Loan Party, the authorization of each Loan Party and Holdings of the transactions contemplated by this Agreement and any of the other Transaction Documents, the execution of the Transaction Documents and all other documents in connection therewith (which may be in the form of a general resolution, resolution of the Board of Directors, resolutions of the shareholders consent or other authorization) and any other legal matters relating to each Loan Party and Holdings or the transactions contemplated by this Agreement and any of the other Transaction Documents as the Administrative Agent may reasonably request, all in form and substance reasonably satisfactory to the Administrative Agent and the Lenders;

(d) to the Administrative Agent and the Lenders, financing statements describing the Collateral and the Pledged Equity and (i) naming each Loan Party and Holdings, as applicable, as debtor and the Administrative Agent, on behalf of the Secured Parties, as secured party and (ii) other, similar instruments or documents, as may be necessary or, in the opinion of the Administrative Agent, desirable under the UCC of all appropriate jurisdictions or any comparable law to perfect the Administrative Agent's, on behalf of the Secured Parties, interests in the Collateral and the Pledged Equity;

(e) to the Lenders, financing statements, if any, necessary to release all security interests and other rights of any Person in the Collateral previously granted by any Transferor;

(f) to the Administrative Agent, with respect to any certificated Pledged Equity, delivery of stock powers duly executed in blank or other instruments of transfer reasonably satisfactory to the Administrative Agent;

(g) duly executed Powers of Attorney from the Co-Borrowers and Holdings in the form of Exhibit H;

(h) to the Lenders, copies of tax and judgment lien searches in all jurisdictions reasonably requested by the Lenders and requests for information (or a similar UCC search report certified by a party acceptable to the Lenders), dated a date reasonably near to the Closing Date, and with respect to such requests for information or UCC searches, listing all effective financing statements which name each Loan Party and Holdings (under its present name and any previous name) as debtor(s) and which are filed in such jurisdictions with copies of such financing statements (none of which shall cover the Collateral);

(i) (a) one or more favorable opinions of counsel to the each Co-Borrower and Holdings, reasonably acceptable to the Majority Lenders and the Administrative Agent and addressed to the Administrative Agent and the Lenders, (b) one or more favorable opinions of counsel to the Initial Lender in respect of the UK Guarantors, reasonably acceptable to the Administrative Agent and the Majority Lenders and addressed to the Administrative Agent and the Lenders, (c) one or more favorable opinions of counsel to the Initial Lender in respect of the Australian Pledge Agreement, reasonably acceptable to the Administrative Agent and the Majority Lenders and addressed to the Administrative Agent and the Lenders, and (d) one or more favorable opinions of counsel to the Initial Lender in respect of the Guernsey Pledge Agreement, reasonably acceptable to the Administrative Agent and the Majority Lenders and addressed to the Administrative Agent and the Lenders;

(j) to the Lenders, a copy of each of the other Transaction Documents duly executed by the parties thereto; and

(k) such other documents as the Administrative Agent or Lender may reasonably request.

Schedule III  
Notice Information

If to the Co-Borrowers, the Administrative Borrower or Holdings:

Kudu Investment Management, LLC / Kudu Investment Holdings, LLC / Kudu Investment US, LLC  
286 Madison Ave., Suite 2002  
New York, NY 10017  
Telephone: [REDACTED]  
Email: [REDACTED]  
Attention: Gavin McLeod

If to Massachusetts Mutual Life Insurance Company, as a Lender and the Servicer:

Massachusetts Mutual Life Insurance Company  
One Marina Park Drive, 8th Floor,  
Boston, MA 02210  
Telephone: [REDACTED]  
Email: [REDACTED]  
Attention: Sarah Doyle; Investment Management

and

Massachusetts Mutual Life Insurance Company  
Attention: Philip Titolo, Jaime Genua  
One Marina Park Drive, 8th Floor,  
Boston, MA 02210  
Telephone: [REDACTED]  
Email: [REDACTED]

If to the Administrative Agent:

Alter Domus (US) LLC  
225 W. Washington St., 9th Floor  
Chicago, Illinois 60606  
Telephone: [REDACTED]  
Email: [REDACTED]  
Attention: Legal Department and Lisa Schutz

With a copy to (which shall not constitute notice):

Holland & Knight LLP  
150 N. Riverside Plaza, Suite 2700  
Chicago, Illinois 60606  
Telephone: [REDACTED]  
Email: [REDACTED]  
Attention: Joshua M. Spencer

If to any Lender other than Massachusetts Mutual Life Insurance Company:

As set forth in the Assignment and Assumption Agreement for such Lender.

-v-



Schedule IV  
Lender Commitments

Lender	Commitments
Massachusetts Mutual Life Insurance Company	\$300,000,000
Total:	\$300,000,000

Schedule V  
Investment Guidelines

[To be appended to the agreed upon term sheet]

Eligible Collateral Portfolio Requirements/Limits:

\*As measured at cost at the time of each new asset's inclusion into the borrowing base. These limits will only be tested when a new asset is added, and not each quarter year otherwise.

At a Portfolio Level (all to be measured as a % of the greater of total invested capital plus total undrawn equity and debt commitments or the Collateral Portfolio):

1. Size per position: 25% max for the largest position; no more than 35% in the top three; no more than 45% for top 5.
2. Strategy Limits:
  - a. Wealth Management – no more than 35% in aggregate
  - b. Monoline Strategy / Product Asset Management firms – no more than 25% in aggregate, per Strategy (excludes firms with multiple strategies; for the avoidance of doubt, Wealth Management will be considered a multiple strategy firm type). *See Exhibit A for approved Strategy list*
3. Leverage at underlying firm: for monoline strategy managers up to 1x EBITDA, for non-monoline strategy managers up to 1.5x, for 'platforms' (defined as portfolio companies with multi-affiliate managers with three or more sub-strategies or advisors and the opportunity to make follow-on investments) up to 2x. Strategies defined in Exhibit A
4. If position is "bottom line" interest, there must be protections in the form of effective budgetary approval or compensation controls for key employees/shareholders.
5. Minimum run-rate pro forma cash yield of [REDACTED] (for hedge funds, [REDACTED])
6. Each position in the Portfolio must contain appropriate downside protections such as service agreements and non-competes for key employees, key-person insurance, or other protections reasonably satisfactory to the Lender. Per se appropriateness to be defined in definitive documents. Parties to agree set of standards that will be automatically appropriate.

For each Wealth Management position (all to be measured as a % of the greater of the Maximum Facility Size or the Collateral Portfolio):

1. AUM: No less than \$500 million or \$10 million of revenues
2. AUM Growth trailing 3 YR YoY %: 2.5% minimum annualized
3. Track Record: minimum of five (5) years
4. Client Servicing: Client Retention min of 90% (average of past three years)

For each Asset Management position (all to be measured as a % of the greater of the Maximum Facility Size or the Collateral Portfolio):

1. AUM: No less than \$500 million or \$10 million of revenues
  2. For managers managing liquid strategies, AUM Growth trailing 3 YR YoY %: 5% minimum annualized
  3. Track Record: minimum of five (5) years
  4. Management fees as percentage of trailing twelve months total revenues excluding carry: 51% minimum
-

Schedule VI  
Disqualified Lenders

- Affiliated Managers Group
- Alderwood Capital
- Allworth Financial
- Azimut
- Bonaccord Capital affiliate of Aberdeen Standard
- Blackstone
- Capital Constellation
- CI Financial/GSFM JV
- Dyal Capital Partners division of Neuberger Berman
- Emigrant
- Estancia
- Focus Financial
- Genstar
- Goodhart Partners
- Hunter Point
- IM Global Partners
- Investcorp
- Lincoln Peak Capital
- Merchant Investment Management
- Mercer Advisors
- Mubadala Investment Co
- Natixis Investment Managers
- Navigator Global Investments
- North Square Investments
- Northhill Capital
- Pacific Current Group
- Petershill division of Goldman Sachs
- Redbird Capital partners
- Reverence Capital Partners
- RidgeLake Partners
- Rosemont Investment Group affiliate of Markel Corp
- Stonyrock Partners affiliate of Jefferies/Leucadia Corp
- Tria Capital

Schedule VII  
Post Closing Conditions

1. With respect to the Equity Investment held with Kudu in Fair Oaks Capital Limited (incorporated in England and Wales with company number 08260598), the Co-Borrowers shall promptly, and no later than 20 days after the date of this Agreement (as such date may be extended by the Administrative Agent, acting at the direction of the Majority Lenders), procure the amendment to the satisfaction of the Administrative Agent of the constitutional documents of Fair Oaks Capital Limited (incorporated in England and Wales with company number 08260598) to remove any restriction on the transfer or the registration of the transfer of its shares on enforcement of the Liens granted over them.
2. With respect to the Equity Investment held by Kudu in the Australian Equity Notes, the Co-Borrowers shall promptly, and no later than 30 days after the date of this Agreement (as such date may be extended by the Administrative Agent, acting at the direction of the Majority Lenders) procure that the Australian Equity Notes shall have each been amended, in form and substance acceptable to the Administrative Agent, to allow a provider of financial accommodation, lender or other creditor to transfer the Australian Equity Notes to any other person pursuant to rights arising under a Lien.
3. With respect to the Equity Investment held by Kudu in Fair Oaks Income Fund (GP) Limited, a company incorporated in Guernsey with registered number 58125 and whose registered office is at Sarnia House, Le Truchot, St Peter Port, Guernsey, GY1 1GR ("Fair Oaks Income Fund (GP) Limited"), the Co-Borrowers shall promptly, and no later than 10 Business Days after the date of this Agreement (as such date may be extended by the Administrative Agent, acting at the direction of the Majority Lenders) execute the Guernsey Pledge Agreement and procure that the Co-Borrowers shall promptly, and no later than 10 Business Days after the date of this Agreement (as such date may be extended by the Administrative Agent, acting at the direction of the Majority Lenders), immediately upon execution of the Guernsey Pledge Agreement, execute (where applicable) and deliver each of the following documents to the Administrative Agent, in each case, in form and substance acceptable to the Administrative Agent:
  - a. That certain Notice of Assignment (from Kudu and the Administrative Agent to Fair Oaks Income Fund (GP) Limited, as issuer, together with an acknowledgement of the applicable notice, by Fair Oaks Income Fund (GP) Limited, with respect to the Guernsey Pledge Agreement, in each case, with respect to the Guernsey Pledge Agreement;
  - b. Original share certificates and original executed undated share transfer forms with respect to the Securities (as defined in the Guernsey Pledge Agreement);
  - c. A copy of the register of shareholders of Fair Oaks Income Fund (GP) Limited annotated to reflect the fact that the pledged Securities (as defined in and pursuant to the Guernsey Pledge Agreement) are held subject to the terms of the Guernsey Pledge Agreement; and
  - d. Resolutions of the shareholders of Fair Oaks Income Fund (GP) Limited, amending the articles of incorporation of Fair Oaks Income Fund (GP) Limited to remove any

restriction on, and to permit the transfer, or the registration of transfer of, its shares on enforcement of the security interests granted over them.

4. In connection with the matters described in clauses (a) through (c), inclusive, of this paragraph 3, one or more favorable opinions of Guernsey counsel to the Initial Lender, on matters of Guernsey law concerning the enforceability of the Guernsey security interests pursuant to the Guernsey Pledge Agreement, in the agreed form as reasonably acceptable to the Administrative Agent and the Majority Lenders and addressed to the Administrative Agent and the Lenders.

EXHIBITS  
TO  
LOAN AND SERVICING AGREEMENT

Dated as of March 23, 2021

EXHIBITS

EXHIBIT A	Form of LTV Certificate
EXHIBIT B	Form of Notice of Borrowing
EXHIBIT C	Form of Borrowing Base Certificate
EXHIBIT D	Form of Revolving Loan Note
EXHIBIT E	Form of U.S. Tax Compliance Certificate
EXHIBIT F	Form of Payment Date Report
EXHIBIT G	Form of Assignment and Assumption Agreement
EXHIBIT H	Form of Power of Attorney

FORM OF LTV CERTIFICATE

[DATE]

To:

Alter Domus (US) LLC  
225 W. Washington St., 9th Floor  
Chicago, Illinois 60606  
Email: [REDACTED]  
Attention: Legal Department; Lisa Schutz

and

Massachusetts Mutual Life Insurance Company, as Servicer  
One Marina Park  
8th Floor  
Boston, MA 02210  
Attention: Sarah Doyle, Investment Operations  
Email: [REDACTED]

Re: Loan and Servicing Agreement

Ladies and Gentlemen:

This LTV Certificate (this "Certificate") is given by [ ] (the "Administrative Borrower") pursuant to [Section 2.01][Section 2.09(a)][Section 5.01(z)(iii)(A)] of the Loan and Servicing Agreement, dated as of March 23, 2021 (as the same may be amended, restated, or otherwise modified from time to time, the "Loan and Servicing Agreement"), among Kudu Investment Holdings, LLC, a Delaware limited liability company ("Kudu"), Kudu Investment US, LLC, a Delaware limited liability company ("Kudu US"), and collectively with Kudu, the "Co-Borrowers", Kudu Investment Management, LLC ("Holdings"), KFO Holdings, Ltd., a limited liability company incorporated in England and Wales under number 11786202 ("KFO Holdings"), KWCP Holdings UK, Ltd., a limited liability company incorporated in England and Wales under number 11860833 ("KWCP Holdings"), and collectively with KFO Holdings, the "UK Guarantors", and collectively with the Co-Borrowers, the "Loan Parties"), the Lenders from time to time party thereto, Alter Domus (US) LLC, as Administrative Agent, and Massachusetts Mutual Life Insurance Company, as the Servicer. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Loan and Servicing Agreement.

The person executing this Certificate is a Responsible Person of the Administrative Borrower and as such is duly authorized to execute and deliver this Certificate on behalf of the Loan Parties. By executing this Certificate, such officer hereby certifies as of the date hereof to the Lenders, the Servicer and the Administrative Agent, on behalf of the Loan Parties, solely in [his/her] capacity as an officer and not individually, that all of the information set forth on Schedule I is true, correct and complete in all material respects.

Ex. A-1



[Remainder of Page Intentionally Left Blank; Signature Page Follows]

The undersigned has executed this Certificate as of the date first written above.

KUDU INVESTMENT HOLDINGS, LLC, as the  
Administrative Borrower

By: \_\_\_\_\_  
Name:  
Title:

**SCHEDULE I**

**LTV CERTIFICATE**

[SEE ATTACHED]

Exhibit A & C - LTV Certificate / Borrowing Base Certificate

Close Date:	3/23/2021
Availability Period:	3/23/2024
Maturity Date:	3/23/2036
Determination Date:	6/23/2021
Reporting and Payment Date:	6/30/2021

Maximum Facility Amount	\$	300,000,000.00
Advances Outstanding	\$	102,000,000.00
Remaining Commitment	\$	198,000,000.00
Advance Rate		35.0%
<b>Borrowing Base (Advance Rate * Aggregate Investment Value of all Eligible Portfolio Assets)</b>	\$	<b>120,871,491.14</b>
# of Eligible Portfolio Assets		11
Aggregate Investment Value of all Eligible Portfolio Assets	\$	345,347,117.53
Ending Balance of Collection Account (as of Determination Date)	\$	-
Ending Balance of Interest Reserve Account (as of Determination Date)	\$	-
<b>Debt Service Coverage Ratio</b>		<b>█</b>
EBITDA (four quarter period)	\$	█
Debt Service (four quarter period)	\$	3,917,552.65
<b>Debt Service Coverage Ratio Threshold</b>		<b>3.00</b>
Quarterly LTV		29.5%
Maximum Quarterly LTV % Threshold		50.0%

LTV Compliance Check:	<b>PASS</b>
Market Trigger Event:	<b>NO</b>
Partnership Default Trigger Event:	<b>NO</b>

FORM OF NOTICE OF BORROWING

[DATE]

To:

Alter Domus (US) LLC  
225 W. Washington St., 9th Floor  
Chicago, Illinois 60606  
Telephone: [REDACTED]  
Email: [REDACTED]  
Attention: Legal Department and Lisa Schutz

and

Massachusetts Mutual Life Insurance Company, as Servicer  
One Marina Park  
8th Floor  
Boston, MA 02210  
Attention: Sarah Doyle, Investment Operations  
Email: [REDACTED]

Re: Loan and Servicing Agreement

Ladies and Gentlemen:

This Notice of Borrowing is delivered to you pursuant to [Section 2.02][Section 3.02] of the Loan and Servicing Agreement, dated as of March 23, 2021 (as the same may be amended, restated, or otherwise modified from time to time, the "Loan and Servicing Agreement"), among Kudu Investment Holdings, LLC, a Delaware limited liability company ("Kudu"), Kudu Investment US, LLC, a Delaware limited liability company ("Kudu US"), and collectively with Kudu, the "Co-Borrowers"), Kudu Investment Management, LLC ("Holdings"), KFO Holdings, Ltd., a limited liability company incorporated in England and Wales under number 11786202 ("KFO Holdings"), KWCP Holdings UK, Ltd., a limited liability company incorporated in England and Wales under number 11860833 ("KWCP Holdings"), and collectively with KFO Holdings, the "UK Guarantors", and collectively with the Co-Borrowers, the "Loan Parties"), the Lenders from time to time party thereto, Alter Domus (US) LLC, as Administrative Agent, and Massachusetts Mutual Life Insurance Company, as the Servicer. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Loan and Servicing Agreement.

The undersigned, being a duly elected Responsible Person of the Administrative Borrower and holding the office set forth below such person's name, hereby certifies as follows:

Ex. B-1

1. The Administrative Borrower hereby requests an Advance in the principal amount of \$ \_\_\_\_\_.<sup>1</sup>
2. The Borrower hereby requests that such Advance be made on \_\_\_\_\_.<sup>2</sup>
3. Attached to this Notice of Borrowing is a Borrowing Base Certificate, together with a true, correct and complete calculation in all material respects of the Borrowing Base and all components thereof.
4. The Advance would not cause (on and as of the Advance Date, immediately after giving effect to such Advance and the transactions related thereto, including the use of proceeds thereof), the Advances Outstanding to exceed the Maximum Availability on such Advance Date.
5. On and as of the Advance Date, immediately after giving effect to such Advance and the transactions related thereto, including the use of proceeds thereof, no Market Trigger Event has occurred and is continuing.
6. No Event of Default has occurred and is continuing, or would result from such Advance or application of proceeds therefrom.
7. Each Co-Borrower shall have obtained an investment grade rating (BBB or higher) from NRSRO or from a rating agency approved by the NAIC with respect to the Advances advanced under this Agreement.
8. The representations contained in Sections 4.01, 4.02 and 4.05 are true and correct in all material respects (except that any representation qualified as to "materiality" or "Material Adverse Effect" shall be true and correct in all respects as so qualified) before and immediately after giving effect to such Advance and to the application of proceeds therefrom, on and as of such date as though made on and as of such date (or, in the case of any such representation expressly stated to have been made as of a specific date, as of such specific date).
9. The proceeds of the Advance are to be distributed to the following account:

Account Name:  
Account #:  
Bank Name:  
ABA:

---

<sup>1</sup> The amount must be at least equal to \$1,000,000 or a whole multiple of \$1,000,000 in excess thereof, or if less, the remainder of the Advance.

<sup>2</sup> Pursuant to Section 2.02(a) of the Loan and Servicing Agreement, delivery of the Notice of Borrowing to be no later than 2:00 pm NY time three (3) Business Days prior to the proposed date of such advance (or such shorter period of time agreed to by the Administrative Agent and the Majority Lenders in their sole discretion).

10. All of the conditions applicable to the Advance requested herein as set forth in Section 3.02 of the Loan and Servicing Agreement will have been satisfied on the date of such Advance.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

The undersigned has executed this Notice of Borrowing as of the date first written above.

KUDU INVESTMENT HOLDINGS, LLC, as the  
Administrative Borrower

By: \_\_\_\_\_  
Name:  
Title:



FORM OF BORROWING BASE CERTIFICATE

[Date]

Reference is made to the Loan and Servicing Agreement, dated as of March 23, 2021 (as the same may be amended, restated, or otherwise modified from time to time, the "Loan and Servicing Agreement"), among Kudu Investment Holdings, LLC, a Delaware limited liability company ("Kudu"), Kudu Investment US, LLC, a Delaware limited liability company ("Kudu US", and collectively with Kudu, the "Co-Borrowers"), Kudu Investment Management, LLC ("Holdings"), KFO Holdings, Ltd., a limited liability company incorporated in England and Wales under number 11786202 ("KFO Holdings"), KWCP Holdings UK, Ltd., a limited liability company incorporated in England and Wales under number 11860833 ("KWCP Holdings", and collectively with KFO Holdings, the "UK Guarantors", and collectively with the Co-Borrowers, the "Loan Parties"), the Lenders from time to time party thereto, Alter Domus (US) LLC, as Administrative Agent, and Massachusetts Mutual Life Insurance Company, as the Servicer. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Loan and Servicing Agreement.

This Borrowing Base Certificate is being delivered in connection with:

- \_\_\_ a Notice of Borrowing under Section 2.02(a) of the Loan and Servicing Agreement
- \_\_\_ a Transfer of a Portfolio Asset under Section 3.03 of the Loan and Servicing Agreement
- \_\_\_ Section 5.01(z)(iii)(B) of the Loan and Servicing Agreement

As of the date hereof, the Borrower certifies that all of the information set forth on Annex I is true, correct and complete in all material respects and no information set forth therein contains any material misstatement of fact or omits to state a material fact or any fact necessary to make such information not misleading.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

Exhibit A & C - LTV Certificate / Borrowing Base Certificate

Close Date:	3/23/2021
Availability Period:	3/23/2024
Maturity Date:	3/23/2036
Determination Date:	6/23/2021
Reporting and Payment Date:	6/30/2021

Maximum Facility Amount	\$	300,000,000.00
Advances Outstanding	\$	102,000,000.00
Remaining Commitment	\$	198,000,000.00
Advance Rate		35.0%
<b>Borrowing Base (Advance Rate * Aggregate Investment Value of all Eligible Portfolio Assets)</b>	\$	<b>120,871,491.14</b>
# of Eligible Portfolio Assets		11
Aggregate Investment Value of all Eligible Portfolio Assets	\$	345,347,117.53
Ending Balance of Collection Account (as of Determination Date)	\$	-
Ending Balance of Interest Reserve Account (as of Determination Date)	\$	-
<b>Debt Service Coverage Ratio</b>		<b>█</b>
EBITDA (four quarter period)	\$	█
Debt Service (four quarter period)	\$	3,917,552.65
<b>Debt Service Coverage Ratio Threshold</b>		<b>3.00</b>
Quarterly LTV		29.5%
Maximum Quarterly LTV % Threshold		50.0%

LTV Compliance Check:	<b>PASS</b>
Market Trigger Event:	<b>NO</b>
Partnership Default Trigger Event:	<b>NO</b>

## FORM OF REVOLVING LOAN NOTE

\$ \_\_\_\_\_

[Date]

THIS REVOLVING LOAN NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"). NEITHER THIS NOTE NOR ANY PORTION HEREOF MAY BE OFFERED OR SOLD EXCEPT IN COMPLIANCE WITH THE REGISTRATION PROVISIONS OF THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM SUCH REGISTRATION PROVISIONS.

THIS REVOLVING LOAN NOTE IS NOT PERMITTED TO BE TRANSFERRED, ASSIGNED, EXCHANGED OR OTHERWISE PLEDGED OR CONVEYED EXCEPT IN COMPLIANCE WITH THE TERMS OF THE LOAN AND SERVICING AGREEMENT REFERRED TO HEREIN.

FOR VALUE RECEIVED, [Kudu Investment Holdings, LLC, a Delaware limited liability company ("Kudu Borrower")] [Kudu Investment US, LLC, a Delaware limited liability company ("Kudu US Borrower")] (the "Borrower"), hereby promises to pay to [Name of Lender] ("Lender") or its registered assigns, the principal sum of \$ \_\_\_\_\_ or, if less, the unpaid principal amount of the aggregate advances (the "Advances") made by the Lender to the Borrower pursuant to the Loan and Servicing Agreement (as defined below), on the dates specified in the Loan and Servicing Agreement, and to pay interest on the unpaid principal amount of each Advance made by Lender from the date of such Advance for each day that such unpaid principal amount is outstanding, at such interest rates related to such Advance as provided in the Loan and Servicing Agreement, on each Payment Date and each other date specified in the Loan and Servicing Agreement.

This Note (the "Note") is issued pursuant to the Loan and Servicing Agreement dated as of March 23, 2021 (as amended, restated, supplemented or otherwise modified from time to time, the "Loan and Servicing Agreement"), among the [Kudu Borrower] [Kudu Borrower US], Kudu Investment Management, LLC ("Holdings"), KFO Holdings, Ltd., a limited liability company incorporated in England and Wales under number 11786202 ("KFO Holdings"), KWCP Holdings UK, Ltd., a limited liability company incorporated in England and Wales under number 11860833 ("KWCP Holdings"), the Lenders from time to time party thereto, Alter Domus (US) LLC, as Administrative Agent, and Massachusetts Mutual Life Insurance Company, as the Servicer. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Loan and Servicing Agreement.

Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Advance, together with all fees, charges and other amounts that are treated as interest on such Advance under Applicable Law (collectively, "charges"), exceed the maximum lawful rate (the "Maximum Rate") that may be contracted for, charged, taken, received or reserved by the Lender in accordance with Applicable Law, the rate of interest payable in respect of such Advance hereunder, together with all charges payable in respect thereof, shall be limited to the Maximum Rate. To the extent lawful, the interest and charges that would have been paid in respect of such Advance but were not paid as a result of the operation of this paragraph shall be cumulated and the interest and charges payable to the Lender in respect of such Advances or periods shall be increased (but not above the amount collectible at the Maximum Rate therefor) until such cumulated amount shall have been received by the Lender. Any amount collected by the Lender that exceeds the maximum amount collectible at the Maximum Rate shall be applied to the reduction of the principal balance of such Advance or refunded to the Borrower to which

such Advance was made so that at no time shall the interest and charges paid or payable in respect of such Advance exceed the maximum amount collectible at the Maximum Rate.

Payments of the principal of, and interest on, the Advances shall be made by or on behalf of the Borrower to the Administrative Agent (for the benefit of the Lenders) in immediately available funds in the manner specified for such purpose as provided in the Loan and Servicing Agreement, without the presentation or surrender of this Note or the making of any notation on this Note.

If any payment under this Note falls due on a day that is not a Business Day, then such due date is extended to the next succeeding Business Day.

If any amount is not paid when due, such amount shall bear interest, to be paid upon demand, from the date of such nonpayment until such amount is paid in full (as well after as before judgment) computed at the per annum rate set forth in the Loan and Servicing Agreement.

Portions or all of the principal amount of the Note shall become due and payable at the time or times set forth in the Loan and Servicing Agreement. Any portion or all of the principal amount of this Note may be prepaid, together with interest thereon (and, as set forth in the Loan and Servicing Agreement, certain costs and expenses of the Lender) at the time and in the manner set forth in, but subject to the provisions of, the Loan and Servicing Agreement. The Borrower may borrow, repay and reborrow hereunder upon the terms and conditions set forth in the Loan and Servicing Agreement.

Except as provided in the Loan and Servicing Agreement, the Borrower expressly waives presentment, demand, diligence, protest and all notices of any kind whatsoever with respect to this Note.

The Lender may sell, assign, transfer, negotiate, grant participations in or otherwise dispose of all or any portion of any Advances made by the Lender and represented by this Note and the indebtedness evidenced by this Note, subject to the applicable provisions of the Loan and Servicing Agreement.

The Advances are secured by the Collateral and the Pledged Equity granted pursuant to the Loan and Servicing Agreement. The Lender is entitled to the benefits of the Loan and Servicing Agreement and the other Transaction Documents and may enforce the agreements of the Borrower contained in the Loan and Servicing Agreement and the other Transaction Documents and exercise the remedies provided for by, or otherwise available in respect of, the Loan and Servicing Agreement and the other Transaction Documents, all in accordance with, and subject to the restrictions contained in, the terms of the Loan and Servicing Agreement and the other Transaction Documents. In accordance with the terms of the Loan and Servicing Agreement, if an Event of Default exists, the unpaid balance of the principal of all Advances, together with accrued interest thereon, may be declared, and may become, due and payable in the manner and with the effect provided in the Loan and Servicing Agreement. Pursuant to Section 11.23 of the Loan and Servicing Agreement, the Borrower and the [Kudu Borrower][Kudu US Borrower] are jointly and severally liable with respect to payment and performance of all Obligations (including without limitation any Obligations arising under this Note).

This Note is a "Revolving Loan Note" as referred to in Section 2.03(a) of the Loan and Servicing Agreement. This Note shall be construed in accordance with and governed by the laws of the State of New York.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

Ex. D-2

The undersigned has executed this Note as on the date first written above.

[KUDU INVESTMENT HOLDINGS, LLC][KUDU  
INVESTMENT US, LLC], as the Borrower

By: \_\_\_\_\_  
Name:  
Title:

FORM OF  
U.S. TAX COMPLIANCE CERTIFICATE

(For Non-U.S. Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is made to the Loan and Servicing Agreement, dated as of March 23, 2021 (as the same may be amended, restated, or otherwise modified from time to time, the "Loan and Servicing Agreement"), among Kudu Investment Holdings, LLC, a Delaware limited liability company ("Kudu"), Kudu Investment US, LLC, a Delaware limited liability company ("Kudu US", and collectively with Kudu, the "Co-Borrowers"), Kudu Investment Management, LLC ("Holdings"), KFO Holdings, Ltd., a limited liability company incorporated in England and Wales under number 11786202 ("KFO Holdings"), KWCP Holdings UK, Ltd., a limited liability company incorporated in England and Wales under number 11860833 ("KWCP Holdings", and collectively with KFO Holdings, the "UK Guarantors", and collectively with the Co-Borrowers, the "Loan Parties"), the Lenders from time to time party thereto, Alter Domus (US) LLC, as Administrative Agent, and Massachusetts Mutual Life Insurance Company, as the Servicer. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Loan and Servicing Agreement.

Pursuant to the provisions of Section 2.13 of the Loan and Servicing Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the loan(s) (as well as any note(s) evidencing such loan(s)) in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of each of the Co-Borrowers within the meaning of Section 871(h)(3)(B) of the Code and (iv) it is not a controlled foreign corporation related to the Co-Borrowers as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Co-Borrowers with a certificate of its non-U.S. Person status on IRS Form W-8BEN or W-8BEN-E as applicable. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Co-Borrowers and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Co-Borrowers and the Administrative Agent, with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF LENDER]

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

Name:

Title:

Date:

FORM OF  
U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is made to the Loan and Servicing Agreement, dated as of March 23, 2021 (as the same may be amended, restated, or otherwise modified from time to time, the "Loan and Servicing Agreement"), among Kudu Investment Holdings, LLC, a Delaware limited liability company ("Kudu"), Kudu Investment US, LLC, a Delaware limited liability company ("Kudu US"), and collectively with Kudu, the "Co-Borrowers", Kudu Investment Management, LLC ("Holdings"), KFO Holdings, Ltd., a limited liability company incorporated in England and Wales under number 11786202 ("KFO Holdings"), KWCP Holdings UK, Ltd., a limited liability company incorporated in England and Wales under number 11860833 ("KWCP Holdings"), and collectively with KFO Holdings, the "UK Guarantors", and collectively with the Co-Borrowers, the "Loan Parties"), the Lenders from time to time party thereto, Alter Domus (US) LLC, as Administrative Agent, and Massachusetts Mutual Life Insurance Company, as the Servicer. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Loan and Servicing Agreement.

Pursuant to the provisions of Section 2.13 of the Loan and Servicing Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of either of the Co-Borrowers within the meaning of Section 871(h)(3)(B) of the Code, and (iv) it is not a controlled foreign corporation related to the Co-Borrowers as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on IRS Form W-8BEN or W-8BEN-E, as applicable. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender in writing, and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF PARTICIPANT]

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

Name:

Title:

Date:



FORM OF  
U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is made to the Loan and Servicing Agreement, dated as of March 23, 2021 (as the same may be amended, restated, or otherwise modified from time to time, the "Loan and Servicing Agreement"), among Kudu Investment Holdings, LLC, a Delaware limited liability company ("Kudu"), Kudu Investment US, LLC, a Delaware limited liability company ("Kudu US"), and collectively with Kudu, the "Co-Borrowers", Kudu Investment Management, LLC ("Holdings"), KFO Holdings, Ltd., a limited liability company incorporated in England and Wales under number 11786202 ("KFO Holdings"), KWCP Holdings UK, Ltd., a limited liability company incorporated in England and Wales under number 11860833 ("KWCP Holdings"), and collectively with KFO Holdings, the "UK Guarantors", and collectively with the Co-Borrowers, the "Loan Parties"), the Lenders from time to time party thereto, Alter Domus (US) LLC, as Administrative Agent, and Massachusetts Mutual Life Insurance Company, as the Servicer. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Loan and Servicing Agreement.

Pursuant to the provisions of Section 2.13 of the Loan and Servicing Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such participation, (iii) with respect such participation, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of each of the Co-Borrowers within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to either of the Co-Borrowers as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or W-8BEN-E, as applicable, or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or W-8BEN-E, as applicable, from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF PARTICIPANT]

By:

Name:

Title:

Date:

Ex. E-3



FORM OF  
U.S. TAX COMPLIANCE CERTIFICATE

(For Non-U.S. Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is made to the Loan and Servicing Agreement, dated as of March 23, 2021 (as the same may be amended, restated, or otherwise modified from time to time, the "Loan and Servicing Agreement"), among Kudu Investment Holdings, LLC, a Delaware limited liability company ("Kudu"), Kudu Investment US, LLC, a Delaware limited liability company ("Kudu US", and collectively with Kudu, the "Co-Borrowers"), Kudu Investment Management, LLC ("Holdings"), KFO Holdings, Ltd., a limited liability company incorporated in England and Wales under number 11786202 ("KFO Holdings"), KWCP Holdings UK, Ltd., a limited liability company incorporated in England and Wales under number 11860833 ("KWCP Holdings", and collectively with KFO Holdings, the "UK Guarantors", and collectively with the Co-Borrowers, the "Loan Parties"), the Lenders from time to time party thereto, Alter Domus (US) LLC, as Administrative Agent, and Massachusetts Mutual Life Insurance Company, as the Servicer. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Loan and Servicing Agreement.

Pursuant to the provisions of Section 2.13 of the Loan and Servicing Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the loan(s) (as well as any note(s) evidencing such loan(s)) in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such loan(s) (as well as any note(s) evidencing such loan(s)), (iii) with respect to the extension of credit pursuant to the Loan and Servicing Agreement or any other Transaction Document, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of each of the Co-Borrowers within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to either of the Co-Borrowers as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Co-Borrowers with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or W-8BEN-E, as applicable, or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or W-8BEN-E, as applicable, from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Co-Borrowers and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Co-Borrowers and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF LENDER]

By:

Name:

Title:

Date:

FORM OF PAYMENT DATE REPORT

[SEE ATTACHED]

## Exhibit F – Payment Date Report

Borrower:	Kudu Investment Holdings, LLC		Determination Date:	6/23/2021
Lender:	Massachusetts Mutual Life Insurance Company		Reporting Date:	6/30/2021
Administrative Agent:	Alter Domus (US) LLC		Payment Date:	6/30/2021
Maximum Facility Amount				\$ 300,000,000.00
Advances Outstanding (Total Funded)				\$ 99,200,000.00
Remaining Commitment				\$ 200,800,000.00
Ending Balance of Collection Account				\$ 10,000,000.00
Ending Balance of Interest Reserve Account				\$ 4,513,600.00
All payments so received by the Administrative Agent pursuant to this Section 2.09(a) will be distributed in accordance with the following waterfall:				
<b>2.09 (a)(i)</b>				
First, (A) to the Administrative Agent for the payment in full of all accrued reasonable and documented fees, expenses, losses and indemnities due and payable to the Administrative Agent hereunder or under any other Transaction Document and under the Agent Fee Letter, and then (B) to the Servicer and the Account Bank for the payment in full of all accrued reasonable and documented fees, expenses and indemnities due and payable to the Servicer and Account Bank, respectively, hereunder or under any other Transaction Document and under the Fee Letters;				
<b>Distribution Description</b>	<b>From</b>	<b>Payable to</b>	<b>Cash Distribution</b>	
(A) Accrued Fees, expenses, losses and indemnities	Collection Account	Admin Agent	\$	-
(B) Accrued Fees, expenses, losses and indemnities	Collection Account	Servicer and Account Bank	\$	10,581.33
<b>Total</b>			\$	<b>10,581.33</b>
<b>2.09 (a)(ii)</b>				
Second, to the Administrative Agent for distribution to each Lender, to pay such Lender's Pro Rata Share of accrued and unpaid interest owing to such Lender under this Agreement;				
<b>Distribution Description</b>	<b>From</b>	<b>Payable to</b>	<b>Cash Distribution</b>	
Pro Rata Share of accrued and unpaid interest	Collection or Interest Reserve Account	Admin Agent for distribution to Lender	\$	1,471,360.00
<b>Total</b>			\$	<b>1,471,360.00</b>
<b>2.09 (a)(iii)</b>				
Third, to the extent amounts on deposit in the Interest Reserve Account are less than the Interest Reserve Amount, an amount equal to such shortfall;				
<b>Distribution Description</b>	<b>From</b>	<b>Payable to</b>	<b>Cash Distribution</b>	
Amount equal to such shortfall	Collection Account	Interest Reserve Account	\$	-
<b>Total</b>			\$	<b>-</b>
<b>2.09 (a)(iv)</b>				
Fourth, to the extent a Market Trigger Event has occurred, or would result therefrom, then to the Administrative Agent for distribution to each Lender, to repay such Lender's Pro Rata Share of the Advances Outstanding until the delivery of an LTV Certificate by the Administrative Borrower to the Servicer, demonstrating that the Market Trigger Event no longer exists or, notwithstanding the occurrence of such Market Trigger Event, the LTV is not in excess of the applicable Maximum LTV Percentage; and				
<b>Distribution Description</b>	<b>From</b>	<b>Payable to</b>	<b>Cash Distribution</b>	
If MTE, Pro Rata Share of Advances Outstanding until cured	Collection Account	Admin Agent for distribution to Lender	\$	-
<b>Total</b>			\$	<b>-</b>
<b>2.09 (a)(v)</b>				
Fifth, only to the extent no Market Trigger Event has occurred, or would result therefrom, then to the Loan Parties.				
<b>Distribution Description</b>	<b>From</b>	<b>Payable to</b>	<b>Cash Distribution</b>	
If no MTE, Available to the Borrower	Collection Account	Loan Parties	\$	5,252,366.67
<b>Total</b>			\$	<b>5,252,366.67</b>
<b>Total Waterfall Distribution (USD)</b>			\$	<b>6,734,308.00</b>
<b>Post Waterfall Balance in Collection Account</b>			\$	<b>3,265,692.00</b>
<b>Post Waterfall Balance in Interest Reserve Account</b>			\$	<b>4,513,600.00</b>

FORM OF ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (the "Assignment and Assumption") is dated as of the Effective Date set forth below and is entered into by and between [the][each] Assignor identified in item 1 below ([the][each, an] "Assignor") and [the][each] Assignee identified in item 2 below ([the][each, an] "Assignee"). [It is understood and agreed that the rights and obligations of [the Assignors][the Assignees] hereunder are several and not joint.]<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as amended, the "Credit Agreement"), receipt of a copy of which is hereby acknowledged by [the][each] Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, [the][each] Assignor hereby irrevocably sells and assigns to [the Assignee][the respective Assignees], and [the][each] Assignee hereby irrevocably purchases and assumes from [the Assignor][the respective Assignors], subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of [the Assignor's][the respective Assignors'] rights and obligations in [its capacity as a Lender][their respective capacities as Lenders] under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of [the Assignor][the respective Assignors] under the respective facilities identified below, and (ii) to the extent permitted to be assigned under Applicable Law, all claims, suits, causes of action and any other right of [the Assignor (in its capacity as a Lender)][the respective Assignors (in their respective capacities as Lenders)] against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned by [the][any] Assignor to [the][any] Assignee pursuant to clauses (i) and (ii) above being referred to herein collectively as [the][an] "Assigned Interest"). Each such sale and assignment is without recourse to [the][any] Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by [the][any] Assignor.

1. Assignor[s]: \_\_\_\_\_  
\_\_\_\_\_

<sup>1</sup> Include bracketed language if there are either multiple Assignors or multiple Assignees.

2. Assignee[s]: \_\_\_\_\_  
\_\_\_\_\_

[Assignee is an [Affiliate] of [Identify Lender]

3. Borrower(s): \_\_\_\_\_

4. Administrative Agent: Alter Domus (US) LLC, as the administrative agent under the Credit Agreement

5. Credit Agreement: Loan and Servicing Agreement, dated as of March 23, 2021 (as the same may be amended, restated, or otherwise modified from time to time, the "Loan and Servicing Agreement"), among Kudu Investment Holdings, LLC, a Delaware limited liability company ("Kudu"), Kudu Investment US, LLC, a Delaware limited liability company ("Kudu US"), and collectively with Kudu, the "Co-Borrowers"), Kudu Investment Management, LLC ("Holdings"), KFO Holdings, Ltd., a limited liability company incorporated in England and Wales under number 11786202 ("KFO Holdings"), KWCP Holdings UK, Ltd., a limited liability company incorporated in England and Wales under number 11860833 ("KWCP Holdings"), and collectively with KFO Holdings, the "UK Guarantors", and collectively with the Co-Borrowers, the "Loan Parties"), the Lenders from time to time party thereto, Alter Domus (US) LLC, as Administrative Agent, and Massachusetts Mutual Life Insurance Company, as the Servicer.

6. Assigned Interest[s]:

Assignor[s]	Assignee[s]	Facility Assigned	Aggregate Amount of Commitment/Loans for all Lenders	Amount of Commitment/Loans Assigned	Percentage Assigned of Commitment/Loans	CUSIP Number
			\$	\$	%	
			\$	\$	%	
			\$	\$	%	

7. Effective Date: \_\_\_\_\_, 20\_\_<sup>2</sup>

8. The Assignee is a Disqualified Lender: \_\_\_ Yes \_\_\_ No<sup>3</sup>

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

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<sup>2</sup> To be inserted by Administrative Agent and which shall be the effective date of recordation of transfer in the register therefor.

<sup>3</sup> To be completed by Assignor.

Effective Date: \_\_\_\_\_, 20\_\_.

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR[S]  
[NAME OF ASSIGNOR]

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

[NAME OF ASSIGNOR]

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

ASSIGNEE[S]  
[NAME OF ASSIGNEE]

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

[NAME OF ASSIGNEE]

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

Consented to and Accepted:

Alter Domus (US) LLC, as Administrative Agent

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

Title:

Ex. G-3

Consented to:

Kudu Investment Holdings, LLC

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

Name:

Title:

Kudu Investment US, LLC

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

Name:

Title:



STANDARD TERMS AND CONDITIONS FOR  
ASSIGNMENT AND ASSUMPTION1. Representations and Warranties.

1.1 Assignor[s]. [The][Each] Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of [the][the relevant] Assigned Interest, (ii) [the][such] Assigned Interest is free and clear of any lien, encumbrance or other adverse claim, and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Transaction Documents, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Transaction Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Transaction Document, or (iv) the performance or observance by the Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Transaction Document.

1.2 Assignee[s]. [The][Each] Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets all the requirements to be an assignee under Section 11.04 of the Credit Agreement, including that it is an Eligible Assignee (subject to such consents, if any, as may be required thereunder), (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of [the][the relevant] Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by the Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire the Assigned Interest, is experienced in acquiring assets of such type, (v) it has received a copy of the Credit Agreement, and has received or has been accorded the opportunity to receive copies of the most recent financial statements delivered pursuant to Section 5.01(cc) thereof, as applicable, and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase [the][such] Assigned Interest, (vi) it has, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Assignment and Assumption and to purchase [the][such] Assigned Interest, (vii) if it is a foreign Lender attached to the Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by [the][such] Assignee, (viii) if it is not then currently a Lender under the Credit Agreement, the Assignee shall deliver to the Administrative Agent all documentation and other reasonable information reasonably determined by Administrative Agent to be required by applicable regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act, and (ix) it is not a Disqualified Lender; and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, [the][any] Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Transaction Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Transaction Documents are required to be performed by it as a Lender.



2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of [the][each] Assigned Interest (including payments of principal, interest, fees and other amounts) to [the][the relevant] Assignor for amounts that have accrued to but excluding the Effective Date and to [the][the relevant] Assignee for amounts that have accrued from and after the Effective Date. Notwithstanding the foregoing, the Administrative Agent shall make all payments of interest, fees or other amounts paid or payable in kind from and after the Effective Date to [the][the relevant] Assignee.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of New York.

## FORM OF POWER OF ATTORNEY

[Kudu Investment Management, LLC] [Kudu Investment Holdings, LLC] [Kudu Investment US, LLC]

[Date]

This Power of Attorney is executed and delivered by [Kudu Investment Management, LLC ("Holdings")] [Kudu Investment Holdings, LLC, a Delaware limited liability company ("Kudu") and Kudu Investment US, LLC, a Delaware limited liability company ("Kudu US", and collectively with Kudu, the "Co-Borrowers")], under the Loan and Servicing Agreement, dated as of March 23, 2021 (as the same may be amended, restated, or otherwise modified from time to time, the "Loan and Servicing Agreement"), among [Holdings] [the Co-Borrowers], [Kudu Investment Management, LLC ("Holdings")] [Kudu Investment Holdings, LLC, a Delaware limited liability company ("Kudu") and Kudu Investment US, LLC, a Delaware limited liability company ("Kudu US", and collectively with Kudu, the "Co-Borrowers")], KFO Holdings, Ltd., a limited liability company incorporated in England and Wales under number 11786202 ("KFO Holdings"), KWCP Holdings UK, Ltd., a limited liability company incorporated in England and Wales under number 11860833 ("KWCP Holdings", and collectively with KFO Holdings, the "UK Guarantors", and collectively with the Co-Borrowers, the "Loan Parties"), the Lenders from time to time party thereto, Alter Domus (US) LLC, as Administrative Agent, and Massachusetts Mutual Life Insurance Company, as the Servicer. Capitalized terms used herein and not otherwise defined have the meanings set forth for such terms in the Loan and Servicing Agreement.

No person to whom this Power of Attorney is presented, as authority for \_\_\_\_\_ ("Attorney") to take any action or actions contemplated hereby, shall inquire into or seek confirmation from [the Co-Borrowers] [Holdings] as to the authority of Attorney to take any action described below, or as to the existence of or fulfillment of any condition to this Power of Attorney, which is intended to grant to Attorney unconditionally the authority to take and perform the actions contemplated herein, and [the Co-Borrowers] [Holdings] irrevocably waives any right to commence any suit or action, in law or equity, against any person or entity that acts in reliance upon or acknowledges the authority granted under this Power of Attorney, except in the case of gross negligence, willful misconduct or fraud as determined by a court of competent jurisdiction by final and nonappealable judgement. The power of attorney granted hereby is coupled with an interest and may not be revoked or canceled by [any Co-Borrower] [Holdings] until the Facility Termination Date.

[With effect after the occurrence and during the continuance of an Event of Default, the Co-Borrowers, hereby irrevocably constitute and appoint Attorney (and all officers, employees or agents designated by Attorney), solely in connection with the enforcement of the rights and remedies of the Administrative Agent, the Lenders and the other Secured Parties under the Loan and Servicing Agreement and the other Transaction Documents, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the Co-Borrowers' place and stead and at the Co-Borrowers' expense and in the Co-Borrowers' name or in Attorney's own name, from time to time in Attorney's discretion, to take any and all appropriate action and to execute and deliver any and all documents and instruments that may be necessary or desirable to accomplish the purposes of the foregoing, and, without limiting the generality of the foregoing, hereby grant to Attorney, for the purposes of the foregoing, the power and right, on its behalf, without notice to or assent by it, to do the following, each in accordance with the Loan and Servicing Agreement and the other Transaction Documents: (a) open mail for the Co-Borrowers, and ask, demand, collect, give acquittances and receipts for, take possession of, or endorse and receive payment of, any checks, drafts, notes, acceptances, or other

Ex. H-1

instruments for the payment of moneys due in respect of the Collateral, and sign and endorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications, and notices in respect of the Collateral; (b) effect any repairs to any of the Co-Borrowers' assets, or continue or obtain any insurance and pay all or any part of the premiums therefor and costs thereof, and make, settle and adjust all claims under such policies of insurance, and make all determinations and decisions with respect to such policies; (c) to the extent related to the Collateral and the transactions contemplated by the Transaction Documents, pay or discharge any taxes, Liens, or other encumbrances levied or placed on or threatened against the Co-Borrowers or the Co-Borrowers' property; (d) to the extent related to the Collateral and the transactions contemplated by the Transaction Documents, defend any suit, action or proceeding brought against the Co-Borrowers if the Co-Borrowers do not defend such suit, action or proceeding or if Attorney reasonably believes that it is not pursuing such defense in a manner that will maximize the recovery to Attorney, and settle, compromise or adjust any suit, action, or proceeding described above and, in connection therewith, give such discharges or releases as Attorney may deem appropriate; (e) file or prosecute any claim, litigation, suit or proceeding in any court of competent jurisdiction or before any arbitrator, or take any other action otherwise deemed appropriate by Attorney for the purpose of collecting any and all such moneys due in respect of the Collateral to the Co-Borrowers whenever payable and to enforce any other right in respect of the Co-Borrowers' property; (f) sell, transfer, pledge, make any agreement with respect to, or otherwise deal with, any of the Co-Borrowers' property constituting Collateral, and execute, in connection with such sale or action, any endorsements, assignments or other instruments of conveyance or transfer in connection therewith; (g) to give any necessary receipts or acquittance for amounts collected or received under the Loan and Servicing Agreement; (h) to make all necessary transfers of the Collateral in connection with any such sale or other disposition made pursuant to the Loan and Servicing Agreement; (i) to execute and deliver for value all necessary or appropriate bills of sale, assignments and other instruments in connection with any such sale or other disposition of the Collateral, the Co-Borrowers hereby ratifying and confirming all that such Attorney (or any substitute) shall lawfully do or cause to be done hereunder and pursuant hereto; (j) to send such notification forms as the Attorney deems appropriate to give notice to Obligor of the Secured Parties' interest in the Collateral Portfolio; (k) to sign any agreements, orders or other documents in connection with or pursuant to any Transaction Document; and (l) to cause the certified public accountants then engaged by the Co-Borrowers to prepare and deliver to the Attorney at any time and from time to time, promptly upon Attorney's request, any reports required to be prepared by or on behalf of the Co-Borrowers under the Transaction Documents, all as though Attorney were the absolute owner of the Co-Borrowers' property for all purposes, and to do, at Attorney's option and the Co-Borrowers' expense, at any time or from time to time, all acts and other things that Attorney reasonably deems necessary to perfect, preserve or realize upon the Collateral and the Liens of the Administrative Agent, for the benefit of the Secured Parties, thereon (including without limitation the execution and filing of UCC financing statements and continuation statements), all as fully and effectively as the Co-Borrowers might do. The Co-Borrowers hereby ratify, to the extent permitted by law, all that said attorneys shall lawfully do or cause to be done by virtue hereof.]<sup>6</sup>

[With effect after the occurrence and during the continuance of an Event of Default, Holdings, hereby irrevocably constitutes and appoints Attorney (and all officers, employees or agents designated by Attorney), solely in connection with the enforcement of the rights and remedies of the Administrative Agent, the Lenders and the other Secured Parties under the Loan and Servicing Agreement and the other

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<sup>6</sup> To be included in Borrower's Power of Attorney.

Transaction Document, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in Holdings' place and stead and at Holdings' expense and in Holdings' name or in Attorney's own name, from time to time in Attorney's discretion, to take any and all appropriate action and to execute and deliver any and all documents and instruments that may be necessary or desirable to accomplish the purposes of the Loan and Servicing Agreement and the other Transaction Documents, and, without limiting the generality of the foregoing, hereby grants to Attorney the power and right, on its behalf, without notice to or assent by it, to do the following, each in accordance with the Loan and Servicing Agreement and the other Transaction Documents: (a) to make all necessary transfers of the Pledged Equity in connection with any such sale or other disposition made pursuant to the Loan and Servicing Agreement; (b) to execute and deliver for value all necessary or appropriate bills of sale, assignments and other instruments in connection with any such sale or other disposition of the Pledged Equity, Holdings hereby ratifying and confirming all that such Attorney (or any substitute) shall lawfully do or cause to be done hereunder and pursuant hereto; and (c) to sign any agreements, orders or other documents in connection with or pursuant to any Transaction Document to the extent related to the Pledged Equity, all as though Attorney were the absolute owner of the Pledged Equity for all purposes, and to do, at Attorney's option and Borrower's expense, at any time or from time to time, all acts and other things that Attorney reasonably deems necessary to perfect, preserve or realize upon the Pledged Equity and the Liens of the Administrative Agent, for the benefit of the Secured Parties, thereon (including without limitation the execution and filing of UCC financing statements and continuation statements), all as fully and effectively as Holdings might do. Holdings hereby ratifies, to the extent permitted by law, all that said attorneys shall lawfully do or cause to be done by virtue hereof.]<sup>7</sup>

The undersigned has executed this Power of Attorney as of the date first written above.

[Kudu Investment Management, LLC,

By:  
Name:  
Title:]

[Kudu Investment Holdings, LLC,

By:  
Name:  
Title:

---

<sup>7</sup> To be included in Holdings' Power of Attorney.

Kudu Investment US, LLC,

By:  
Name:  
Title:]



DATED

13 JULY 2021

Certain identified information has been omitted because it is both (i) not material and (ii) the type that the registrant treats as private or confidential.

(1) GROUP ARK INSURANCE LIMITED  
AS ISSUER

(2) THE BANK OF NEW YORK MELLON, LONDON  
BRANCH AS FISCAL AGENT, TRANSFER AGENT AND  
AGENT BANK

(3) THE BANK OF NEW YORK MELLON SA/NV, DUBLIN  
BRANCH AS REGISTRAR

ORIGINAL/COUNTERPART

## **PAYING AGENCY AGREEMENT**

RELATING TO € 39,100,000 FLOATING RATE TIER 2 SUBORDINATED NOTES  
DUE 2041

REFERENCE

**BGELPI AND/OR 579242188**

**ReedSmith**

Reed Smith LLP  
112 avenue Kléber  
75116 Paris  
Phone: +33 (0)1 76 70 40 00  
Fax: +33 (0)1 76 70 41 19

reedsmith.com

## CONTENTS

### CLAUSE

1	DEFINITIONS AND INTERPRETATION.....	1
2	APPOINTMENT OF AGENTS.....	3
3	THE SUBORDINATED NOTES .....	3
4	EXCHANGES OF GLOBAL NOTE CERTIFICATE FOR INDIVIDUAL NOTE CERTIFICATES .....	4
5	TRANSFERS OF SUBORDINATED NOTES.....	4
6	REPLACEMENT OF NOTE CERTIFICATES.....	5
7	PAYMENTS TO THE FISCAL AGENT.....	6
8	PAYMENTS TO NOTEHOLDERS .....	6
9	DUTIES OF THE AGENT BANK.....	8
10	COVENANTS BY THE ISSUER.....	9
11	MISCELLANEOUS DUTIES OF THE AGENTS.....	10
12	FEES AND EXPENSES .....	11
13	TERMS OF APPOINTMENT.....	11
14	CHANGES IN AGENTS .....	13
15	NOTICES.....	15
16	LAW AND JURISDICTION.....	16
17	FORCE MAJEURE .....	17
18	SANCTIONS.....	18
19	RIGHTS OF THIRD PARTIES .....	18
20	MODIFICATION.....	18
21	CONFIDENTIALITY .....	18
22	COUNTERPARTS .....	19

### SCHEDULE

SCHEDULE 1	FORM OF GLOBAL NOTE CERTIFICATE.....	21
SCHEDULE 2	FORM OF INDIVIDUAL NOTE CERTIFICATE .....	26
SCHEDULE 3	TERMS AND CONDITIONS .....	30
SCHEDULE 4	REGULATIONS CONCERNING TRANSFERS AND REGISTRATION OF SUBORDINATED NOTES .....	52
SCHEDULE 5	SPECIFIED OFFICES OF THE AGENTS.....	54



**BETWEEN:**

- (1) **GROUP ARK INSURANCE LIMITED**, a Bermuda exempted insurance company (Registration No. 39617) limited by shares, with its registered office at, Clarendon House, 2 Church Street, Hamilton HM11, Bermuda, in its capacity as Issuer (the "**Issuer**");
- (2) **THE BANK OF NEW YORK MELLON, LONDON BRANCH**, whose registered office is at One Canada Square, London, E14 5AL, United Kingdom in its capacity as fiscal agent, transfer agent and agent bank (in such capacities, the "**Fiscal Agent**", the "**Transfer Agent**", the "**Agent Bank**" and, together with any other person(s) appointed from time to time as paying agents under the terms of this Agreement, the "**Paying Agents**"); and
- (3) **THE BANK OF NEW YORK MELLON SA/NV, DUBLIN BRANCH**, whose registered office is at Riverside Two, Sir John Rogerson's Quay, Grand Canal Dock, Dublin 2, Ireland in its capacity as registrar, (in such capacity, the "**Registrar**").

**RECITALS**

- (A) The Issuer has authorised the creation and issue of €39,100,000 in aggregate principal amount of Floating Rate Tier 2 Subordinated Notes due 2041 (the "**Subordinated Notes**").
- (B) The Subordinated Notes will be constituted by a deed of covenant dated on or about the date hereof (as amended or supplemented from time to time, the "**Deed of Covenant**") entered into by the Issuer.
- (C) The Subordinated Notes will be in registered form in the denominations of €100,000. The Subordinated Notes will be represented by a registered global certificate (the "**Global Note Certificate**"), which will be exchangeable for individual note certificates (the "**Individual Note Certificates**" and, together with the Global Note Certificate, the "**Note Certificates**") in the circumstances specified therein.
- (D) The Issuer, the Registrar, the Transfer Agent and the Paying Agents (collectively, the "**Parties**") wish to record certain arrangements which they have made in relation to the Subordinated Notes.

**IT IS AGREED** as follows:

**1 DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Agreement, the following expressions shall have the following meanings:

"**Agents**" means the Fiscal Agent, the Paying Agents, the Registrar, the Transfer Agent and the Agent Bank, and "**Agent**" means any one of them;

"**Agreement**" means this paying agency agreement between the Issuer and the Agents;

"**Applicable Law**" shall be deemed to include (i) any rule or practice of any Authority by which any Party is bound or with which it is accustomed to comply; (ii) any agreement between any Authorities; and (iii) any agreement between any Authority and any Party that is customarily entered into by institutions of a similar nature;

"**Authority**" means any competent regulatory, prosecuting, Tax or governmental authority in any jurisdiction;

"**Business Day**" means a day on which commercial banks and foreign exchange markets settle payments and are open for general business (including dealings in foreign exchange and foreign currency deposits) in London and Hamilton (Bermuda) and which is a TARGET2 Settlement Day;

"**Business Hours**" means, in respect of a Business Day for the provisions of Clause 9 (Duties of the Agent Bank), between 10 a.m. and 4 p.m. Local Time;

"**Clearing Systems**" means Euroclear and Clearstream, Luxembourg;

"**Clearstream, Luxembourg**" means Clearstream Banking, S.A.;

"**Code**" means the U.S. Internal Revenue Code of 1986, as amended;

"**Common Depository**" means a common depository acting for Euroclear and Clearstream, Luxembourg;

"**Conditions**" means the terms and conditions of the Subordinated Notes (in the form set out in Schedule 3 (Terms and Conditions) hereto and as modified from time to time in accordance with their terms and any references to a numbered "**Condition**" is to the correspondingly numbered provision thereof);

"**Electronic Means**" means the following communication methods: (i) non-secure methods of transmission or communication such as e-mail and facsimile transmission and (ii) secure electronic transmission containing applicable authorisation codes, passwords and/or authentication keys issued by any of the Agents or another method or system specified by any of the Agents as available for use in connection with its services hereunder;

"**Euroclear**" means Euroclear Bank S.A. / N.V.;

"**FATCA Withholding**" means any withholding or deduction required pursuant to an agreement described in Section 1471(b) of the Code or otherwise imposed pursuant to Sections 1471 through 1474 of the Code, any regulations or agreements thereunder, any official interpretations thereof, or any law implementing an intergovernmental approach thereto;

"**Fiscal Agent**", "**Paying Agents**", "**Registrar**", "**Transfer Agent**" and "**Agent Bank**" include any successors thereto appointed from time to time in accordance with Clause 14 (Changes in Agents) and "**Paying Agent**" means any one of the Paying Agents;

"**Local Time**" means the time in the city in which the Fiscal Agent has its Specified Office;

"**Noteholder**" means any person that holds an interest in the Subordinated Note;

"**Regulations**" means the regulations concerning the transfer of Subordinated Notes as the same may from time to time be promulgated by the Issuer and approved by the Registrar (the initial such regulations being set out in Schedule 4 (Regulations concerning transfers and registration of Subordinated Notes));

"**Specified Office**" means the premises of any Paying Agent, the Registrar or Transfer Agent, in each case as set out in Schedule 5 (Specified Offices of the Agents);

"**TARGET2 Settlement Day**" means any day on which the Trans-European Automated Real-Time Gross Settlement Express Transfer (TARGET2) System is operating;

"**Tax**" means any present or future taxes, duties, assessments or governmental charges of whatever nature imposed, levied, collected, withheld or assessed by or on behalf of any Authority having power to tax; and

"**€**" and "**euro**" mean the lawful currency introduced at the third stage of the European economic and monetary union pursuant to the Treaty on the Functioning of the European Union, as amended.

## 1.2 **Meaning of outstanding**

For the purposes of this Agreement (but without prejudice to its status for any other purpose), a Subordinated Note shall be considered to be "outstanding" unless one or more of the following events has occurred:

- (a) it has been redeemed in full or purchased under Condition 6 (Redemption, Purchase and Cancellation) and, in either case, has been cancelled in accordance with Condition 6 (Redemption, Purchase and Cancellation); or
- (b) the due date for its redemption in full has occurred and all sums due in respect of such Subordinated Note (including all accrued interest) have been received by the Fiscal Agent and

remain available for payment against presentation and surrender of the relevant Note Certificate,

provided, however, that, for the purposes of ascertaining the right to attend and vote at any meeting of Noteholders, those Subordinated Notes (if any) which are for the time being held by any person (including but not limited to the Issuer) for the benefit of the Issuer shall (unless and until ceasing to be so held) be deemed not to remain outstanding.

### 1.3 **Clauses and Schedules**

Any reference in this Agreement to a Clause or a Schedule is, unless otherwise stated, a reference to a clause hereof or a schedule hereto.

### 1.4 **Principal and interest**

In this Agreement, any reference to principal or interest includes any additional amounts payable in relation thereto under the Conditions.

### 1.5 **Terms defined in the Conditions**

Capitalised terms and expressions used but not defined herein have the respective meanings given to them in the Conditions.

### 1.6 **Statutes**

Any reference in this Agreement to a statute, any provision thereof or to any statutory instrument, order or regulation made thereunder shall be construed as a reference to such statute, provision, statutory instrument, order or regulation as the same may have been, or may from time to time be, amended or re-enacted.

### 1.7 **Headings**

Headings and sub-headings are for ease of reference only and shall not affect the construction of this Agreement.

### 1.8 **Miscellaneous**

- (a) A reference to a person in this Agreement includes its successors, transferees and assignees save that, with respect to the Paying Agents, the terms of Clause 11 (Miscellaneous Duties of the Agents) shall apply.
- (b) Word importing the singular shall include the plural and vice-versa.

## 2 **APPOINTMENT OF AGENTS**

Upon and subject to the terms of this Agreement and the Conditions, the Issuer hereby appoints each Agent as its agent in respect of the Subordinated Notes at its respective Specified Office, and each Agent hereby accepts such appointment. Each Agent shall perform the duties required of it by this Agreement and the Conditions. The duties and obligations of each Agent hereunder shall be several and not joint.

## 3 **THE SUBORDINATED NOTES**

### 3.1 **Global Note Certificate**

The Global Note Certificate shall:

- (a) be in substantially the form set out in Schedule 1 (Form of Global Note Certificate ); and
- (b) be executed manually, in facsimile or by electronic or digital signature by or on behalf of the Issuer and authenticated manually or by electronic or digital signature on behalf of the Registrar.

### 3.2 **Individual Note Certificates**

Each Individual Note Certificate shall:

- (a) be in substantially the form set out in Schedule 2 (Form of Individual Note Certificate);
- (b) have a unique serial number printed thereon; and
- (c) be executed manually, in facsimile or by electronic or digital signature by or on behalf of the Issuer and authenticated manually or by electronic or digital signature on behalf of the Registrar.

### 3.3 **Signatures**

Any signature on a Note Certificate shall be that of a person who is at the time of the creation and issue of the Subordinated Notes an authorised signatory for such purpose of the Issuer notwithstanding that such person has for any reason (including death) ceased to be such an authorised signatory at the time at which such Note Certificate is delivered.

### 3.4 **Availability of Individual Note Certificates**

The Issuer shall arrange for the duly signed unauthenticated Global Note Certificate to be made available to or to the order of the Fiscal Agent not later than one day prior to the Issue Date. If the Issuer is required to deliver Individual Note Certificates pursuant to the terms of the Global Note Certificate, the Issuer shall promptly arrange for a stock of Individual Note Certificates (unauthenticated and with the names of the registered Noteholders left blank but executed on behalf of the Issuer and otherwise complete) to be made available to the Registrar and the Fiscal Agent and not later than 14 days before the date upon which the Global Note Certificate is to be exchanged for Individual Note Certificates. The Issuer shall also arrange for such Global Note Certificates and Individual Note Certificates as are required to enable the Registrar to perform its obligations under Clause 4 (Exchanges of Global Note Certificate for Individual Note Certificates), Clause 5 (Transfers of Subordinated Notes) and Clause 6 (Replacement of Note Certificates) to be made available to or to the order of the Registrar and the Fiscal Agent from time to time. In the event that Individual Notes Certificates are issued and an Agent informs the Issuer that it is unable to perform its obligations under this Agreement, the Issuer shall forthwith appoint another agent in accordance with Clause 14.4 (Additional and successor agents) which is able to perform such obligations.

### 3.5 **Authority to authenticate**

Each of the Registrar and the Fiscal Agent is authorised by the Issuer to authenticate the Global Note Certificate and the Individual Note Certificate by the signature of any of its officers or any other person duly authorised for the purpose by the Registrar, the Fiscal Agent or (as the case may be) such Paying Agent.

### 3.6 **Duties of the Registrar**

The Registrar and the Fiscal Agent shall hold in safekeeping all unauthenticated Global Note Certificates and Individual Note Certificates delivered to it in accordance with Clause 3.4 (Availability of Individual Note Certificates) and shall ensure that they are authenticated and delivered only in accordance with the terms hereof and of the Global Note Certificate (if applicable).

## 4 **EXCHANGES OF GLOBAL NOTE CERTIFICATE FOR INDIVIDUAL NOTE CERTIFICATES**

If the Global Note Certificate becomes exchangeable for Individual Note Certificates in accordance with its terms, the Registrar shall authenticate and deliver to each person designated by a Clearing System an Individual Note Certificate in accordance with the terms of this Agreement and the Global Note Certificate.

## 5 **TRANSFERS OF SUBORDINATED NOTES**

### 5.1 **Maintenance of the Register**

The Registrar shall maintain in relation to the Subordinated Notes a register (the "**Register**"), which shall be kept outside of the United Kingdom and at its Specified Office in accordance with the

Conditions and be made available by the Registrar to the Issuer and the other Agents for inspection and for the taking of copies or extracts therefrom at all reasonable times. The Register shall show the aggregate principal amount, serial numbers and dates of issue of Note Certificates, the names and addresses of the initial Noteholders thereof and the dates of all transfers to, and the names and addresses of, all subsequent Noteholders thereof, all cancellations of Note Certificates and all replacements of Note Certificates.

#### **5.2 Registration of transfers in the Register**

The Registrar shall receive requests for the transfer of Subordinated Notes in accordance with the Conditions and the Regulations and shall make the necessary entries in the Register.

#### **5.3 Transfer Agent to receive requests for transfers of Subordinated Notes**

The Transfer Agent shall receive requests for the transfer of Subordinated Notes in accordance with the Conditions and the Regulations and assist, if required in the issue of new Note Certificates to give effect to such transfers and, in particular, upon any such request being duly made, shall promptly notify the Registrar of:

- (a) the aggregate principal amount of the Subordinated Notes to be transferred;
- (b) the name(s) and addresses to be entered on the Register of the holder(s) of the new Note Certificate(s) to be issued in order to give effect to such transfer; and
- (c) the place and manner of delivery of the new Note Certificate(s) to be delivered in respect of such transfer,

and shall forward the Note Certificate(s) relating to the Subordinated Notes to be transferred (with the relevant form(s) of transfer duly completed) to the Registrar with such notification.

### **6 REPLACEMENT OF NOTE CERTIFICATES**

#### **6.1 Delivery of replacements**

Subject to receipt of replacement Global Note Certificates and/or Individual Note Certificates (as the case may be), the Fiscal Agent shall, upon and in accordance with the instructions of the Issuer (which instructions may, without limitation, include terms as to the payment of expenses and as to evidence, security and indemnity), complete, authenticate and deliver a Global Note Certificate or Individual Note Certificate which the Issuer has determined to issue as a replacement for any Global Note Certificate or Individual Note Certificate which has been mutilated or defaced or which has been or is alleged to have been destroyed, stolen or lost; provided, however, that the Fiscal Agent shall not deliver any Global Note Certificate or Individual Note Certificate as a replacement for any Global Note Certificate or Individual Note Certificate which has been mutilated or defaced otherwise than against surrender of the same and shall not issue any Global Note Certificate or Individual Note Certificate until the applicant has furnished the Fiscal Agent with such evidence and indemnity as the Issuer and/or the Fiscal Agent may reasonably require and has paid such costs and expenses as may be incurred in connection with such replacement.

#### **6.2 Replacements to be numbered**

Each replacement Global Note Certificate or Individual Note Certificate delivered under this Agreement shall bear a unique serial number.

#### **6.3 Cancellation and destruction**

The Fiscal Agent shall cancel and destroy each mutilated or defaced Global Note Certificate or Individual Note Certificate surrendered to it in respect of which a replacement has been delivered.

#### **6.4 Notification**

The Fiscal Agent shall notify the Issuer and each other Agent of the delivery by it of any replacement Global Note Certificate or Individual Note Certificate specifying the serial number thereof and the serial number (if any and if known) of the Global Note Certificate or Individual Note Certificate which it replaces and confirming that the Global Note Certificate or Individual Note Certificate which it

replaces has been cancelled and destroyed in accordance with Clause 6.3 (Cancellation and destruction).

## **7 PAYMENTS TO THE FISCAL AGENT**

### **7.1 Issuer to pay Fiscal Agent**

Subject to Conditions 5 (Deferral of Interest) and 6 (Redemption, Purchase and Cancellation), the Issuer shall, one Business Day before each date on which any payment in respect of the Subordinated Notes becomes due, transfer to the Fiscal Agent before 10.00 a.m. (local time in the relevant principal financial centre of the country of the relevant currency) such amount as may be required for the purposes of such payment.

### **7.2 Manner and time of payment**

Each amount payable under Clause 7.1 (Issuer to pay Fiscal Agent) shall be paid unconditionally by credit transfer in euro and in immediately available freely transferable, cleared funds not later than 10.00 a.m. (local time in the relevant principal financial centre of the country of the relevant currency) on the relevant day to such account with such bank as the Fiscal Agent may from time to time notify to the Issuer for such purpose. The Issuer shall, on the second Business Day before the due date of each payment by it under Clause 7.1 (Issuer to pay Fiscal Agent), procure that the bank effecting payment for it confirms by authenticated SWIFT message to the Fiscal Agent the payment instructions relating to such payment.

### **7.3 Exclusion of liens and interest**

Each of the Agents shall be entitled to deal with each amount paid to them under this Clause 7 (Payments to the Fiscal Agent) in the same manner as other amounts paid to them as bankers by their customers; provided, however, that:

- (a) they shall not exercise against the Issuer any lien, right of set-off or similar claim in respect thereof;
- (b) they shall not be liable to any person for interest thereon; and
- (c) they shall not be required to segregate any money, except as required by law.

### **7.4 Application by Fiscal Agent**

The Fiscal Agent shall apply each amount paid to it hereunder in accordance with Clause 8 (Payments to Noteholders) and shall not be obliged to repay any such amount unless the claim for the relevant payment becomes void in accordance with Applicable Law, in which event it shall refund at the written request of the Issuer such portion of such amount as relates to such payment by paying the same by credit transfer in euro to such account as the Issuer has by notice to the Fiscal Agent specified for the purpose.

## **8 PAYMENTS TO NOTEHOLDERS**

### **8.1 Payments by Paying Agents**

Each Paying Agent acting through its Specified Office shall make payments of principal and interest in respect of the Subordinated Notes in accordance with the Conditions and, so long as the Subordinated Notes are evidenced by the Global Note Certificate, the terms thereof, provided, however, that:

- (a) if any Global Note Certificate or Individual Note Certificate is presented or surrendered for payment to any Paying Agent and such Paying Agent has delivered a replacement therefor or has been notified that the same has been replaced, such Paying Agent shall as soon as reasonably practicable notify the Issuer of such presentation or surrender and shall not make payment against the same until it is so instructed by the Issuer and has received the amount to be so paid;
- (b) a Paying Agent shall not be obliged (but shall be entitled) to make payments of principal or interest in respect of the Subordinated Notes, if:



- (i) in the case of the Fiscal Agent, it has not received the full amount of any payment due to it under Clause 7.1 (Issuer to pay Fiscal Agent); or
  - (ii) in the case of any other Paying Agent, it is not able to establish that the Fiscal Agent has received (whether or not at the due time) the full amount of any payment due to it under Clause 7.1 (Issuer to pay Fiscal Agent); and
- (c) each Paying Agent shall cancel each Note Certificate against presentation and surrender of which it has made full payment and shall deliver each Note Certificate so cancelled by it to, or to the order of, the Registrar.

#### **8.2 Exclusion of liens and commissions**

No Paying Agent shall exercise any lien, right of set-off or similar claim against any person to whom it makes any payment under Clause 8.1 (Payments by Paying Agents) in respect thereof, nor shall any commission or expense be charged by it to any such person in respect thereof.

#### **8.3 Reimbursement by Fiscal Agent**

If a Paying Agent other than the Fiscal Agent makes any payment in accordance with Clause 8.1 (Payments by Paying Agents):

- (a) it shall notify the Fiscal Agent of the amount so paid by it and the serial number and principal amount of each Note Certificate in relation to which payment of principal or interest was made; and
- (b) subject to and to the extent of compliance by the Issuer with Clause 7.1 (Issuer to pay Fiscal Agent) (whether or not at the due time), the Fiscal Agent shall pay to such Paying Agent out of the funds received by it under Clause 7.1 (Issuer to pay Fiscal Agent), by credit transfer in euro and in immediately available freely transferable, cleared funds to such account with such bank as such Paying Agent has by notice to the Fiscal Agent specified for the purpose, an amount equal to the amount so paid by such Paying Agent.

#### **8.4 Appropriation by Fiscal Agent**

If the Fiscal Agent makes any payment in accordance with Clause 8.1 (Payments by Paying Agents), it shall be entitled to appropriate for its own account out of the funds received by it under Clause 7.1 (Issuer to pay Fiscal Agent) an amount equal to the amount so paid by it.

#### **8.5 Reimbursement by Issuer**

Subject to sub-clauses 8.1(a) and 8.1(b) (Payments by Paying Agents), if a Paying Agent makes a payment in respect of Subordinated Notes on or after the due date for such payment under the Conditions at a time at which the Fiscal Agent has not received the full amount of the relevant payment due to it under Clause 7.1 (Issuer to pay Fiscal Agent) and the Fiscal Agent is not able out of funds received by it under Clause 7.1 (Issuer to pay Fiscal Agent) to reimburse such Paying Agent therefor (whether by payment under Clause 8.3 (Reimbursement by Fiscal Agent) or appropriation under Clause 8.4 (Appropriation by Fiscal Agent)), the Issuer shall from time to time on demand pay to the Fiscal Agent for account of such Paying Agent:

- (a) the amount so paid out by such Paying Agent and not so reimbursed to it; and
- (b) interest on such amount from the date on which it is paid out to the date of reimbursement at a percentage rate per annum equal to the cost to the Paying Agent of funding the amount paid out, as certified by the Paying Agent and expressed as a percentage rate per annum,

provided, however, that any payment made under sub-clause 8.5(a) (Reimbursement by Issuer) shall satisfy pro tanto the obligations of the Issuer under Clause 7.1 (Issuer to pay Fiscal Agent).

#### **8.6 Partial payments**

If at any time and for any reason a Paying Agent makes a partial payment in respect of the Global Note Certificate or any Individual Note Certificate presented for payment to it, such Paying Agent shall enface thereon a statement indicating the amount and date of such payment. In addition, if, on

any due date for payment, less than the full amount of any principal or interest is paid in respect of the Subordinated Notes, the Registrar will note on the Register a memorandum of the amount and date of any payment then made and, if the Global Note Certificate or any Individual Note Certificate is presented for payment in accordance with the Conditions and no payment is then made, the date of presentation of the Global Note Certificate or (as the case may be) such Individual Note Certificate.

#### 8.7 **Notice of any withholding or deduction**

- (a) Each Party shall, within ten Business Days of a written request by another Party, supply to that other Party such forms, documentation and other information relating to it, its operations, or the Subordinated Notes as that other Party reasonably requests for the purposes of that other Party's compliance with Applicable Law and shall notify the relevant other Party reasonably promptly in the event that it becomes aware that any of the forms, documentation or other information provided by such Party is (or becomes) inaccurate in any material respect; provided, however that no Party shall be required to provide any forms, documentation or other information pursuant to this sub-clause; to the extent that: (i) any such form, documentation or other information (or the information required to be provided on such form or documentation) is not reasonably available to such Party and cannot be obtained by such Party using reasonable efforts; or (ii) doing so would or might in the reasonable opinion of such Party constitute a breach of any: (a) Applicable Law; (b) fiduciary duty; or (c) duty of confidentiality;
- (b) The Issuer shall notify each Agent in the event that it determines that any payment to be made by an Agent under the Subordinated Notes is a payment which could be subject to FATCA Withholding if such payment were made to a recipient that is generally unable to receive payments free from FATCA Withholding, and the extent to which the relevant payment is so treated; provided, however, that the Issuer's obligation under this sub-clause 8.7 shall apply only to the extent that such payments are so treated by virtue of characteristics of the Issuer, the Subordinated Notes, or both;
- (c) Notwithstanding any other provision of this Agreement, each Agent shall be entitled to make a deduction or withholding from any payment which it makes under the Subordinated Notes for or on account of any Tax, if and only to the extent so required by Applicable Law, in which event the Agent shall make such payment after such deduction or withholding has been made and shall:
  - (i) where permitted by the Applicable Law, account to the relevant Authority within the time allowed for the amount so deducted or withheld; or
  - (ii) return to the Issuer the amount so deducted or withheld reasonably promptly, and within such time as to allow the Issuer to account to the relevant Authority for such amount within the time allowed, after making such payment, in which case, the Issuer shall so account to the relevant Authority for such amount. For the avoidance of doubt, FATCA Withholding is a deduction or withholding which is deemed to be required by Applicable Law for the purposes of this sub-clause 8.7;
- (d) In the event that any Agent determines that any deduction or withholding for or on account of any Tax will be required by Applicable Law in connection with any payment due to any of the Agents on the Subordinated Notes, then that Agent shall notify the Issuer on making such determination; and
- (e) In the event that the Issuer determines in its sole discretion that any deduction or withholding for or on account of any Tax will be required by Applicable Law in connection with any payment due to any of the Agents on any Subordinated Notes, then the Issuer will be entitled to redirect or reorganise any such payment in any way that it sees fit in order that the payment may be made without such deduction or withholding provided that any such redirected or re-organised payment is made through a recognised institution of international standing and otherwise made in accordance with this Agreement. The Issuer will promptly notify the Agents of any such redirection or reorganisation. For the avoidance of doubt, FATCA Withholding is a deduction or withholding which is deemed to be required by Applicable Law for the purposes of this sub-clause 8.7.

#### 9 **DUTIES OF THE AGENT BANK**

The Agent Bank agrees to comply with the provisions of Condition 4 (Interest) and this Agreement. In particular, the Agent Bank shall:



- (a) determine the Rate of Interest (as defined in the Conditions) applicable to the Subordinated Notes in accordance with the Conditions;
- (b) as soon as practicable after determining the Rate of Interest applicable to the Subordinated Notes for any period (but in any event not later than the first day of the applicable Interest Period (as defined in the Conditions)) pursuant to the Conditions, notify the Issuer, the Noteholders and the Paying Agents thereof in accordance with the Conditions;
- (c) publish the Rate of Interest, Interest Amount and relative Interest Payment Date in accordance with Condition 4 (Interest); and
- (d) maintain records of the quotations obtained, and all rates determined, by it and make such records available for inspection at all reasonable times by the Issuer and the Paying Agents.

## 10 COVENANTS BY THE ISSUER

The Issuer covenants with the Fiscal Agent that, so long as any of the Subordinated Notes remain outstanding, it will:

### 10.1 Notification of Redemption or Repayment

Not less than the number of days specified in the relevant Condition prior to the redemption or repayment date in respect of any Subordinated Note, give to the Fiscal Agent notice in writing of the amount of such redemption or repayment pursuant to the Conditions and duly proceed to redeem or repay such Subordinated Notes accordingly;

### 10.2 Supervisory Consent

So long as any Subordinated Note is outstanding, the Issuer will, where the Regulatory Clearance Condition is required to be satisfied before any payment is made or any other action is taken under this Agreement or the Subordinated Notes, meet such Regulatory Clearance Condition promptly before making such payment or taking such action and promptly provide a copy to the Fiscal Agent;

### 10.3 BMA Objection

So long as any Subordinated Note is outstanding, the Issuer will, having received an objection to the making of any payment or taking of any action pursuant to the Conditions from the BMA following notification thereof to the BMA pursuant to Clause 10.2 (Supervisory Consent), promptly notify the Fiscal Agent in writing thereof and, if permitted by Applicable Law, regulation or by the BMA, provide a copy thereof to the Fiscal Agent;

### 10.4 BMA Notifications

The Issuer undertakes to supply to the Fiscal Agent, in sufficient copies for all the Noteholders:

- (a) the Issuer's annual statutory returns as filed with the BMA (or any successor thereto) as Issuer's regulator (the "**Regulator**"), as soon as reasonably practicable and in any event no later than the date falling 20 Business Days after the date on which such filing is made;
- (b) promptly upon receipt or submission (as the case may be), copies of any approval, direction or order received by the Issuer from the Regulator from time to time or any response from the Issuer in relation to such approval, direction or order, including in connection with any capital release or any other return of surplus capital, in each case to the extent material to the interests of the Noteholders;
- (c) promptly upon submission, copies of any reports and all other material correspondence required or requested by or provided to the Regulator from time to time;

### 10.5 Interest Deferral

So long as any Subordinated Note is outstanding, the Issuer will, where any payment of any interest pursuant to Condition 5 (Deferral of Interest) is mandatorily deferred, give notice of such mandatory deferral to the Noteholders in accordance with Conditions 5(e)(Notice of Deferral) and 15 (Notices) and to the Fiscal Agent, and, in accordance with Condition 5(a)(Regulatory Deficiency Deferral of

Interest), the Issuer will deliver a certificate (on the same date that it gives such notice) signed by two Authorised Signatories (as defined in the Conditions) confirming that: (a) a Regulatory Deficiency Interest Deferral Event has occurred and is continuing, or would occur if payment of interest on the Subordinated Notes were to be made; or (b) a Regulatory Deficiency Interest Deferral Event has ceased to occur and/or payment of interest on the Subordinated Notes would not result in a Regulatory Deficiency Interest Deferral Event occurring;

#### 10.6 **Redemption Deferral**

- (a) So long as any Subordinated Note is outstanding, the Issuer will, in the case of a mandatory deferral of redemption in accordance with Condition 6(b) (Deferral of redemption date) give notice of such mandatory deferral to the Noteholders and the Fiscal Agent in accordance with Conditions 6(b)(iii) (Deferral of redemption date) and 15 (Notices), provided, however, that if the Issuer becomes aware of the operation of the Solvency Condition or a Regulatory Deficiency Interest Deferral Event occurs less than 5 Business Days prior to an Interest Payment Date, the Issuer shall give notice of the interest deferral in accordance with Condition 5 (Deferral of Interest) as soon as reasonably practicable following its becoming aware of, or the occurrence of, such event.
- (b) In accordance with Condition 6(b)(v) (Deferral of redemption date), the Issuer will deliver a certificate (on the same date that it gives such notice) to the Fiscal Agent signed by two Authorised Signatories confirming that: (a) a Regulatory Deficiency Redemption Deferral Event has occurred and is continuing or would occur if redemption of the Subordinated Notes were to be made; or (b) a Regulatory Deficiency Redemption Deferral Event (as applicable) has ceased to occur and/or redemption of the Subordinated Notes would not result in such event occurring.

### 11 **MISCELLANEOUS DUTIES OF THE AGENTS**

#### 11.1 **Records**

The Fiscal Agent shall maintain records of all documents received by it in connection with its duties hereunder and shall make such records available for inspection at all reasonable times by the Issuer, and the other Agents and, in particular, the Registrar shall (a) maintain a record of all Note Certificates delivered hereunder and of their redemption, payment, cancellation, mutilation, defacement, alleged destruction, theft, loss and replacement and (b) make such records available for inspection during Business Hours by the Issuer, the other Paying Agents and each Clearing System.

#### 11.2 **Information**

The Issuer and the Paying Agents shall make available to the Fiscal Agent such information as is reasonably required for the maintenance of the records referred to in Clause 11.1 (Records).

#### 11.3 **Cancellation**

The Issuer may from time to time deliver to, or to the order of the Registrar, Note Certificates of which it or any of its subsidiaries is the holder for cancellation, whereupon the Registrar shall cancel the same and shall make the corresponding entries in the Register.

#### 11.4 **Subordinated Notes in issue**

As soon as practicable (and in any event within three months) after each date on which the Subordinated Notes fall due for redemption in accordance with the Conditions, the Registrar shall notify the Issuer of the serial numbers and principal amount of any Note Certificates against surrender of which payment has been made and of the serial numbers and principal amount of any Note Certificates (and the names and addresses of the Noteholders thereof) which have not yet been surrendered for payment.

#### 11.5 **Forwarding of communications**

The Fiscal Agent shall promptly forward to the Issuer a copy of any notice or communication addressed to the Issuer by any Noteholder which is received by the Fiscal Agent.

## 11.6 Documents available for inspection

The Issuer shall provide to each Agent:

- (a) conformed copies of this Agreement; and
- (b) such other documents as contemplated in the Conditions.

Each of the Paying Agents shall make available for inspection during Business Hours at its Specified Office the documents referred to above. However, if the Agent is not able to make available for inspection at its Specified Office such documents by events beyond its reasonable control, the Agent may provide such documents to a Noteholder electronically, subject to such Noteholder being able to provide evidence satisfactory to the Issuer and the Agent as to its holding and identity.

## 12 FEES AND EXPENSES

### 12.1 Fees

The Issuer shall pay annually in advance to the Fiscal Agent and the Agents such fees as have been agreed by separate fee letter between the Issuer and the Fiscal Agent in respect of the services of the Agents hereunder (plus any applicable value added tax).

### 12.2 Expenses

The Issuer shall reimburse each Agent for all expenses (including, without limitation, legal fees and any publication, advertising, communication, courier, postage and other out-of-pocket expenses) properly incurred (excluding those expenses already reimbursed pursuant to Clause 12.1 (Fees)) by them in connection with their services hereunder (plus any applicable value added tax).

### 12.3 Taxes

The Issuer shall pay all stamp, registration and other taxes and duties (including any interest and penalties thereon or in connection therewith) which are payable upon or in connection with the execution and delivery of this Agreement, and the Issuer shall indemnify each Agent against any claim, demand, action, liability, damages, cost, loss or expense (including, without limitation, properly incurred legal fees and any applicable value added tax) which it incurs as a result or arising out of or in relation to any failure by the Issuer to pay or delay by the Issuer in paying any of the same. All payments by the Issuer under this Clause 12 (Fees and Expenses) or Clause 13.4 (Indemnity in favour of the Agents) shall be made free and clear of, and without setoff, counterclaim, withholding or deduction for, any taxes, duties, assessments or governmental charges of whatsoever nature unless compelled by law, in which case the Issuer will gross-up such payments to the Agents.

## 13 TERMS OF APPOINTMENT

### 13.1 Rights and powers

Each Agent may, in connection with its services hereunder:

- (a) except as ordered by a court of competent jurisdiction or otherwise required by law and regardless of any notice of ownership, trust or any other interest therein, any writing on the Note Certificate relating to any Subordinated Note by any person (other than a duly executed form of transfer) or any notice of any previous loss or theft thereof, but subject to sub-clause 8.1(a) (Payments by Paying Agents), treat the registered Noteholders as absolute owners for all purposes and make payments thereon accordingly;
- (b) assume that the terms of the Global Note Certificate and each Individual Note Certificate as issued are correct;
- (c) rely upon the terms of any notice, certificate communication or other document believed by it to be genuine and shall be protected and shall, other than by reason of its gross negligence, wilful default or fraud, incur no liability for or in respect of action taken, omitted or suffered in reliance upon any notice, communication or other document;

- (d) subject to Clause 12.2 (Expenses), engage and pay for the advice or services of any lawyers or other experts whose advice or services it considers necessary and rely upon any advice so obtained (and such Agent shall be protected and shall, other than by reason of its gross negligence, wilful default or fraud, incur no liability as against the Issuer in respect of any action taken, or permitted to be taken, in accordance with such advice and in good faith); and
- (e) may, and its officers, directors, employees or controlling persons may, become the owner of, or acquire any interest in, the Subordinated Notes with the same rights that it would have if it were not appointed under this Agreement, and may engage or be interested in any financial or other transaction with the Issuer and/or any of their Affiliates and may act as freely as if it were not appointed under this Agreement.

### 13.2 **Extent of duties**

Each Agent shall only be obliged to perform the duties set out herein and no implied duties or obligations shall be read into this Agreement or the Conditions against any Agent. No Agent shall:

- (a) be under any fiduciary duty or other obligation towards or have any relationship of agency or trust for or with any person other than the Issuer;
- (b) be responsible for or liable in respect of the legality, validity or enforceability of the Subordinated Notes or any Note Certificate (other than in respect of authentication of Note Certificates by it in accordance with this Agreement) or any act or omission of any other person (including, without limitation, any other Agent);
- (c) be under any obligation to act if it reasonably believes that if it were to act it would incur expenses for which it would not be reimbursed and it shall bear no liability for not acting on the basis of such reasonable belief;
- (d) be required to take any action which it determines to be contrary to any Applicable Law, regulation or fiscal requirement, or the rules, operating procedures or market practice of any other market or clearing system;
- (e) be responsible for monitoring compliance by any other party or taking any steps to ascertain whether any relevant event under this Agreement or the Conditions shall have occurred and shall have no liability to any person for any loss arising from any breach by that party or any such event; or
- (f) be liable to any person for any matter or thing done or omitted in any way in connection with this Agreement or the Conditions save in relation to its own gross negligence, wilful default or fraud.

### 13.3 **Freedom to transact**

Each Agent may purchase, hold and dispose of Subordinated Notes and may enter into any transaction (including, without limitation, any depository, trust or agency transaction) with any Noteholders or with any other person in the same manner as if it had not been appointed as the agent of the Issuer in relation to the Subordinated Notes.

### 13.4 **Indemnity in favour of the Agents**

The Issuer will indemnify each Agent against any loss, liability, cost, claim, action, demand or expense (including, but not limited to, all costs, charges and expenses paid or incurred in disputing or defending any of the foregoing) which it may directly incur or which may be made against it as a result of or in connection with its appointment or the exercise of its functions, except such as may result from its wilful default, gross negligence or fraud or that of its directors, officers or employees. The indemnity contained in this Clause 13.4 (Indemnity in favour of the Agents) shall survive any cessation of any appointment of an Agent under this Agreement pursuant to Clause 14 (Changes in Agents) or any termination of this Agreement. Any claim by an Agent under this indemnity shall be accompanied by duly documented evidence supporting such claim.

### 13.5 **Liability for losses**

- (a) Notwithstanding anything else in this Agreement, no Agent nor any of its directors, officers, employees or agents shall be liable to the Issuer or any other person for any:

- (i) loss of profit;
- (ii) loss of revenue;
- (iii) loss of anticipated savings;
- (iv) loss of contract or opportunity;
- (v) loss of goodwill or reputation; or
- (vi) indirect, special, or consequential loss or damage of whatever nature including any loss of a type described in sub clauses (i) to (v) (inclusive) above which could be regarded as indirect or consequential,

arising from any representation, any breach of implied term or any duty at common law or under any statute or express term of this Agreement, and whether such liability is asserted on the basis of contract, tort (including negligence) or otherwise and whether or not reasonably foreseeable or actually contemplated by the parties.

## 14 CHANGES IN AGENTS

### 14.1 Resignation

Any Agent may (without reason) resign its appointment upon not less than 30 days' notice to the Issuer (with a copy, in the case of an Agent other than the Fiscal Agent, to the Fiscal Agent); provided, however, that:

- (a) if such resignation would otherwise take effect less than 30 days before or after the Maturity Date or other date for redemption of the Subordinated Notes or any interest payment date in relation to the Subordinated Notes, it shall not take effect until the thirtieth day following such date; and
- (b) in the case of the Fiscal Agent, such resignation shall not take effect until a successor has been duly appointed consistently with Clause 14.4 (Additional and successor agents) or Clause 14.5 (Paying Agents may appoint successors) and notice of such appointment has been given to the Noteholders.

### 14.2 Revocation

The Issuer may revoke its appointment of any Agent by not less than 30 days' notice to such Agent (with a copy, in the case of an Agent other than the Fiscal Agent, to the Fiscal Agent); provided, however, that, in the case of the Fiscal Agent, such revocation shall not take effect until a successor has been duly appointed consistently with Clause 14.4 (Additional and successor agents) or Clause 14.5 (Paying Agents may appoint successors) and notice of such appointment has been given to the Noteholders.

### 14.3 Automatic termination

The appointment of any Agent shall terminate forthwith if (a) such Agent becomes incapable of acting, (b) a secured party takes possession, or a receiver, manager or other similar officer is appointed, of the whole or any part of the undertaking, assets and revenues of such Agent, (c) such Agent admits in writing its insolvency or inability to pay its debts as they fall due, (d) an administrator or liquidator of such Agent or the whole or any part of the undertaking, assets and revenues of such Agent is appointed (or application for any such appointment is made), (e) such Agent takes any action for a readjustment or deferment of any of its obligations or makes a general assignment or an arrangement or composition with or for the benefit of its creditors or declares a moratorium in respect of any of its indebtedness, (f) an order is made or an effective resolution is passed for the winding-up of such Agent or (g) any event occurs which has an analogous effect to any of the foregoing. If the appointment of the Fiscal Agent is terminated in accordance with the preceding sentence, the Issuer shall forthwith appoint a successor in accordance with Clause 14.4 (Additional and successor agents).



#### 14.4 **Additional and successor agents**

The Issuer may appoint a successor registrar or fiscal agent, and additional or successor transfer agent or paying agents, and shall forthwith give notice of any such appointment to the continuing Agents and the Noteholders, whereupon the Issuer, the continuing Agents and the additional or successor registrar, transfer agent, fiscal agent or paying agent shall acquire and become subject to the same rights and obligations between themselves as if they had entered into an agreement in the form mutatis mutandis of this Agreement.

#### 14.5 **Paying Agents may appoint successors**

If the Fiscal Agent gives notice of its resignation in accordance with Clause 14.1 (Resignation) and by the tenth day before the expiry of such notice a successor has not been duly appointed in accordance with Clause 14.4 (Additional and successor agents), the Fiscal Agent may itself, following such consultation with and at the expense of the Issuer, appoint on behalf of the Issuer as its successor any reputable and experienced financial institution and give notice of such appointment to the Issuer, the remaining Agents and the Noteholders, whereupon the Issuer, the remaining Agents and such successor shall acquire and become subject to the same rights and obligations between themselves as if they had entered into an agreement in the form mutatis mutandis of this Agreement.

#### 14.6 **Release**

Upon any resignation or revocation taking effect under Clause 14.1 (Resignation) or Clause 14.2 (Revocation) or any termination taking effect under Clause 14.3 (Automatic termination), the relevant Agent shall:

- (a) be released and discharged from its obligations under this Agreement (save that it shall remain entitled to the benefit of and subject to Clause 12.3 (Taxes), Clause 13 (Terms of Appointment) and Clause 14 (Changes in Agents));
- (b) in the case of the Fiscal Agent, deliver to the Issuer and to its successor a copy, certified as true and up-to-date by an officer or authorised signatory of the Fiscal Agent, of the records maintained by it in accordance with Clause 5.1 (Maintenance of the Register);
- (c) in the case of the Agent Bank, deliver to the Issuer and to its successor a copy, certified as true and up-to-date by an officer or authorised signatory of the Agent Bank, of the records maintained by it in accordance with Clause 9 (Duties of the Agent Bank); and
- (d) as soon as reasonably practicable (upon payment to it of any amount due to it in accordance with Clause 12 (Fees and Expenses)) transfer all moneys and papers (including any unissued Note Certificates held by it hereunder and any documents held by it pursuant to Clause 11.6 (Documents available for inspection)) to its successor and, upon appropriate notice, provide reasonable assistance to its successor for the discharge of its duties and responsibilities hereunder.

#### 14.7 **Merger**

- (a) Any legal entity (i) into which any Agent may be merged or converted or any legal entity with which such Agent may be consolidated, (ii) to which the business of such Agent is transferred, (iii) with which such Agent agrees to transfer its respective rights and obligations hereunder or (iv) which results from any merger, conversion, consolidation or transfer to which such Agent shall be a party shall, to the extent permitted by Applicable Law, be the successor Agent under this Agreement without any further formality, and after such effective date all references in this Agreement to such Agent shall be deemed to be references to such corporation and, by virtue of a transfer by novation, such successor shall acquire and become subject to the same rights and obligations under this Agreement as the relevant Agent as if the successor had entered into this Agreement on the Issue Date (as defined in the Conditions). Notice of any such merger, conversion, consolidation or transfer shall forthwith be given by the relevant Agent to the Issuer.
- (b) The Issuer shall on request enter into any document or agreement necessary to give legal effect to the assignment or transfer including in the case of a novation, a deed of novation in a form agreed with such Agent.

**14.8 Changes in Specified Offices**

If any Agent decides to change its Specified Office, it shall give notice to the Issuer (with a copy to the other Agents) of the address of the new Specified Office stating the date on which such change is to take effect, which date shall be not less than 30 days after the date of such notice. The Issuer shall at its own expense not less than 14 days prior to the date on which such change is to take effect (unless the appointment of the relevant Agent is to terminate pursuant to any of the foregoing provisions of this Clause 14 (*Changes in Agents*) on or prior to the date of such change) give notice thereof to the Noteholders.

**15 NOTICES**

**15.1 Addresses for notices**

All notices and communications hereunder shall be made in writing (by letter or email) and shall be sent as follows:

(a) if to the Issuer, to it at:

Group ARK Insurance Limited  
Clarendon House,  
2 Church Street,  
Hamilton HM11, Bermuda

Attention: Angus Ayliffe

Tel: [REDACTED]

Email: [REDACTED]

with a copy to:

Willkie Farr & Gallagher (UK) LLP  
Citypoint, 1 Ropemaker Street,  
London EC2Y 9 AW, United Kingdom

Attention: Andrew Tromans

Tel: [REDACTED]

Email: [REDACTED]

(b) if to the Fiscal Agent, to it at:

The Bank of New York Mellon, London Branch  
One Canada Square  
London, E14 5AL  
United Kingdom

Attention: Conventional Debt EMEA – Team 4

Email: [REDACTED]

(c) if to the Registrar, to it at:

The Bank of New York Mellon SA/NV, Dublin Branch  
Riverside Two  
Sir John Rogerson's Quay  
Grand Canal Dock  
Dublin 2, Ireland

Attention: Structured Products Services

Email: [REDACTED]

or, in any case, to such other address or email address or for the attention of such other person or department as the addressee has by prior notice to the sender specified for the purpose.

## 15.2 Effectiveness

- (a) Every notice or communication sent in accordance with Clause 15.1 (Addresses for notices) shall be effective, if sent by letter or email, upon receipt by the addressee, provided, however, that any such notice or communication which would otherwise take effect after 4.00 p.m. on any particular day shall not take effect until 10.00 a.m. on the immediately succeeding business day in the place of the addressee.
- (b) In no event shall any of the Agents be liable for any losses arising from any of the Agents receiving or transmitting any data to the Issuer (or any Authorised Person) or acting upon any notice, instruction or other communication via any Electronic Means. None of the Agents shall have a duty or obligation to verify or confirm that the person who sent such instructions or directions is, in fact, a person authorised to give instructions or directions on behalf of the Issuer (or any Authorised Person). The Issuer agrees that the security procedures, if any, to be followed in connection with a transmission of any such notice, instructions or other communications provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances.

## 15.3 Notices to Noteholders

Any notice required to be given to Noteholders under this Agreement and/or the Conditions, or any notice delivered by the Issuer to the Fiscal Agent, shall be given in accordance with the Conditions; provided that so long as any Subordinated Notes are represented by the Global Note Certificate, notices to be given to the Noteholders shall be delivered by the Fiscal Agent to the Noteholders electronically through the Clearing Systems.

## 15.4 Notices in English

All notices and other communications hereunder shall be made in the English language or shall be accompanied by a certified English translation thereof. Any certified English translation delivered hereunder shall be certified a true and accurate translation by a professionally qualified translator or by some other person competent to do so.

## 16 LAW AND JURISDICTION

### 16.1 Governing law

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

### 16.2 English courts

The courts of England have exclusive jurisdiction to settle any dispute (a "**Dispute**"), arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) or the consequences of its nullity.

### 16.3 Appropriate forum

The parties agree that the courts of England are the most appropriate and convenient courts to settle any Dispute and, accordingly, that they will not argue to the contrary.

### 16.4 Service of process

The Issuer agrees that the documents which start any Dispute and any other documents required to be served in relation to those Dispute may be served on it by being delivered to Ark Syndicate Management Limited, 30 Fenchurch Ave, London EC3M 5AD, United Kingdom, or to such other person with an address in England or Wales and/or at such other address in England or Wales as the Issuer may specify by notice in writing to the Agents. Nothing in this paragraph shall affect the right of any Agent to serve process in any other manner permitted by law.



## 16.5 Contractual Recognition of Bail-in Powers

Notwithstanding and to the exclusion of any other term of this Agreement or any other agreements, arrangements, or understanding between the Registrar and the Issuer, the Issuer acknowledges and agrees that a BRRD Liability arising under this Agreement may be subject to the exercise of Bail-in Powers by the Relevant Resolution Authority, and acknowledges, accepts, and agrees to be bound by:

- (a) the effect of the exercise of Bail-in Powers by the Relevant Resolution Authority in relation to any BRRD Liability of the Registrar to the Issuer under this agreement, that (without limitation) may include and result in any of the following, or some combination thereof:
  - (i) the reduction of all, or a portion, of the BRRD Liability or outstanding amounts due thereon;
  - (ii) the conversion of all, or a portion, of the BRRD Liability into shares, other securities or other obligations of the Registrar or another person, and the issue to or conferral on the Issuer of such shares, securities or obligations;
  - (iii) the cancellation of the BRRD Liability; and
  - (iv) the amendment or alteration of any interest, if applicable, thereon, the maturity or the dates on which any payments are due, including by suspending payment for a temporary period; and
- (b) the variation of the terms of this Agreement, as deemed necessary by the Relevant Resolution Authority, to give effect to the exercise of Bail-in Powers by the Relevant Resolution Authority.

In this Clause 16.5:

**"Bail-in Legislation"** means in relation to a member state of the European Economic Area which has implemented, or which at any time implements, the BRRD, the relevant implementing law, regulation, rule or requirement as described in the EU Bail-in Legislation Schedule from time to time.

**"Bail-in Powers"** means any Write-down and Conversion Powers as defined in the EU Bail-in Legislation Schedule, in relation to the relevant Bail-in Legislation.

**"BRRD"** means Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms.

**"BRRD Liability"** means a liability in respect of which the relevant Write-down and Conversion Powers in the applicable Bail-in Legislation may be exercised.

**"EU Bail-in Legislation Schedule"** means the document described as such, then in effect, and published by the Loan Market Association (or any successor person) from time to time at <http://www.lma.eu.com/pages.aspx?p=499>.

**"Relevant Resolution Authority"** means the resolution authority with the ability to exercise any Bail-in Powers in relation to the Registrar.

## 17 FORCE MAJEURE

Notwithstanding anything in this Agreement to the contrary, the Agents shall not be responsible or liable for any delay or failure to perform under this Agreement or for any losses resulting, in whole or in part, from or caused by any event beyond the reasonable control of the Agents, including without limitation: work stoppages, acts of war, terrorism, acts of God, epidemics, governmental actions (including but not limited to nationalisation, expropriation or sanctions imposed at national or international level), exchange or currency controls or restrictions, devaluations or fluctuations, interruption, loss or malfunction of utilities, communications or any computer (software or hardware) services and in no event shall the Agents be obliged to substitute another currency for a currency whose transferability, convertibility or availability has been affected, limited, prohibited or prevented by such law, regulation or event.

## 18 **SANCTIONS**

- 18.1 The Issuer covenants and represents that neither they nor any of their affiliates, subsidiaries, directors or officers are the target or subject of any sanctions enforced by the US Government, (including, without limitation, the Office of Foreign Assets Control of the US Department of the Treasury or the US Department of State), the United Nations Security Council, the European Union, Her Majesty's Treasury or other relevant sanctions authority (collectively "**Sanctions**").
- 18.2 The Issuer covenants and represents that neither they nor any of their affiliates, subsidiaries, directors or officers will use any repayments/reimbursements made pursuant to this Agreement, (i) to fund or facilitate any activities of or business with any person who, at the time of such funding or facilitation, is the subject or target of Sanctions, (ii) to fund or facilitate any activities of or business with any country or territory that is the subject of Sanctions, or (iii) in any other manner that will result in a violation of Sanctions by any person.
- 18.3 Clause 18.1 and 18.2 will not apply if and to the extent that they are or would be unenforceable by reason of breach of (i) any provision of Council Regulation (EC) No 2271/96 of 22 November 1996 (as amended) (or any law or regulation implementing such Regulation in any member state of the EEA; (ii) Council Regulation (EC) No 2271/96 of 22 November 1996 (as amended) as it forms part of UK domestic law by virtue of the European Union (Withdrawal) Act 2018 (as amended, including by the European Union (Withdrawal Agreement) Act 2020); or (iii) any similar blocking or anti-boycott law. However, if the aforementioned Council Regulation purports to make compliance with any portion of this Clause unenforceable by the Issuer, the Issuer will nonetheless take such measures as may be necessary to ensure that the Issuer does not use the services in any manner which would cause the relevant Agent to violate sanctions applicable to the relevant Agent's role.

## 19 **RIGHTS OF THIRD PARTIES**

A person who is not a party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this shall not affect any right or remedy which exists or is available apart from such Act.

## 20 **MODIFICATION**

This Agreement may not be amended without the consent of the Majority Noteholders pursuant to Condition 14 (Modification and Waiver) unless for the purpose of curing any ambiguity or of curing, correcting or supplementing any manifest error or any other defective provision contained in this Agreement and any such amendment to this Agreement shall not, in the sole opinion of the Issuer, be materially prejudicial to the interest of the Noteholders.

## 21 **CONFIDENTIALITY**

- 21.1 Each Agent and the Issuer undertake to respect and protect the confidentiality of all information acquired as a result of or pursuant to this Agreement and will not, without the other Party's prior written consent, disclose any such information to a third party, unless it is required to do so by any Applicable Law or regulation or is specifically authorised to do so hereunder or by any separate agreement, especially where the provision of such information is the object or Party of the service to be provided by such Agent.
- 21.2 In order to provide its services to the Issuer and to satisfy legal obligations it is subject to, each Agent will process (in particular, without being limited to, by collecting, recording, organizing, storing, adapting or altering, retrieving, consulting, using, disclosing by transmission, disseminating or otherwise making available to third parties) data relating to the Issuer (including, without being limited to the Issuer's name, address, occupation, nationality, corporate form, etc.). The Issuer may freely refuse to provide such Agent with this information and thus prevent such Agent from using these data-processing systems. However, such a refusal will be an obstacle preventing the start or continuation of business relations between the Issuer and such Agent. Such Agent will only ask for the information needed to fulfil its obligations.
- 21.3 The Issuer expressly authorizes the transfer of data to third parties or to the head office of each Agent (such as to a sub-custodian or any other person providing services to such Agent) if such transmission is required to allow such Agent to provide its services to the Issuer or to satisfy legal obligations it or such third party is subject to. The Issuer expressly authorizes such transfer, including, to the extent relevant, any transfer to third parties established outside the European Union.

22      **COUNTERPARTS**

22.1      This Agreement may be executed in any number of counterparts, and by the parties on separate counterparts, but shall not be effective until each party has executed at least one counterpart.

22.2      Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

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

Executed by **GROUP ARK INSURANCE LIMITED** as Issuer  
acting by:

\_\_\_\_\_  
[signature of director]

\_\_\_\_\_  
Angus AYLIFFE

Executed by **THE BANK OF NEW YORK MELLON, LONDON BRANCH** as Fiscal Agent,  
Transfer Agent and Agent Bank  
acting by:

\_\_\_\_\_  
[signature]

\_\_\_\_\_  
Michael LEE

Executed by **THE BANK OF NEW YORK MELLON SA/NV, DUBLIN BRANCH** as Registrar  
acting by:

\_\_\_\_\_  
[signature]

\_\_\_\_\_  
Michael LEE

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

Executed by **GROUP ARK INSURANCE LIMITED** as Issuer  
acting by:

\_\_\_\_\_  
[signature of director]

\_\_\_\_\_  
Angus AYLIFFE

Executed by **THE BANK OF NEW YORK MELLON, LONDON BRANCH** as Fiscal Agent,  
Transfer Agent and Agent Bank  
acting by:

*Michael Lee*

MICHAEL LEE  
AUTHORISED SIGNATORY

Digitally signed  
by Michael Lee

\_\_\_\_\_  
[signature]

\_\_\_\_\_  
Michael LEE

Executed by **THE BANK OF NEW YORK MELLON SA/NV, DUBLIN BRANCH** as Registrar  
acting by:

*Michael Lee*

MICHAEL LEE  
AUTHORISED SIGNATORY

Digitally signed  
by Michael Lee

\_\_\_\_\_  
[signature]

\_\_\_\_\_  
Michael LEE

## SCHEDULE 1

### FORM OF GLOBAL NOTE CERTIFICATE

THE SUBORDINATED NOTES REPRESENTED HEREBY HAVE NOT BEEN AND WILL NOT BE REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "**SECURITIES ACT**") OR ANY SECURITIES LAW OF ANY STATE OF THE UNITED STATES. THE HOLDER HEREOF, BY PURCHASING THE SUBORDINATED NOTES REPRESENTED HEREBY, AGREES FOR THE BENEFIT OF THE ISSUER THAT THE SUBORDINATED NOTES REPRESENTED HEREBY MAY BE REOFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED ONLY IN COMPLIANCE WITH THE SECURITIES ACT AND OTHER APPLICABLE LAWS.

ISIN: XS2360500842

### GROUP ARK INSURANCE LIMITED

(an insurance company incorporated under the laws of Bermuda)

€39,100,000

### Floating Rate Tier 2 Subordinated Notes due 2041

#### GLOBAL NOTE CERTIFICATE

- 1. Introduction:** This Global Note is issued in respect of the €39,100,000 Floating Rate Tier 2 Subordinated Notes due 2041 (the "**Subordinated Notes**") of Group Ark Insurance Limited (the "**Issuer**"). The Subordinated Notes are constituted by a deed of covenant dated on or about the date hereof (as amended or supplemented from time to time, the "**Deed of Covenant**") entered into by the Issuer and are the subject of a paying agency agreement dated on or about the date hereof (as amended or supplemented from time to time, the "**Paying Agency Agreement**") and made between the Issuer, The Bank of New York Mellon SA/NV, Dublin Branch as registrar (the "**Registrar**", which expression includes any successor registrar appointed from time to time in connection with the Subordinated Notes), The Bank of New York Mellon, London Branch as fiscal agent, and the other paying agents and the transfer agents named therein.
- 2. References to Conditions:** Any reference herein to the "**Conditions**" is to the terms and conditions of the Subordinated Notes attached hereto and any reference to a numbered "**Condition**" is to the correspondingly numbered provision thereof.
- 3. Registered holder:** This is to certify that:

The Bank of New York Depository (Nominees) Limited

as the nominee of the Common Depository on behalf of Euroclear Bank S.A. / N.V. ("**Euroclear**") and Clearstream Banking, SA ("**Clearstream, Luxembourg**"), is the person registered in the register maintained by the Registrar in relation to the Subordinated Notes (the "**Register**") as the duly registered holder (the "**Holder**") of €39,100,000 in aggregate principal amount of Subordinated Notes or such other principal amount as may from time to time be entered in the Register in accordance with the Paying Agency Agreement and this Global Note Certificate.
- 4. Promise to pay:** The Issuer, for value received, hereby promises to pay such principal sum to the Holder on 7 October 2041 or on such earlier date or dates as the same may become payable in accordance with the Conditions, and to pay interest on such principal sum in arrears on the dates and at the rates specified in the Conditions, together with any additional amounts payable in accordance with the Conditions, all subject to and in accordance with the Conditions.
- 5. Subordination:** Notwithstanding paragraph 4 (Promise to pay), in the event of the winding-up of the Issuer, the claims of the Noteholders will rank subordinate to claims of all Senior Creditors (in the manner set out in Condition 2(a) (Status and Subordination)) and no payment shall be made in respect thereof hereunder unless all the claims of the Senior Creditors have been satisfied in full prior to such payment.
- 6. Exchange for Individual Note Certificates:** This Global Note Certificate will be exchanged in whole (but not in part) for duly authenticated and completed individual note certificates ("**Individual Note**")



**Certificates**") in substantially the form (subject to completion) set out in Schedule 2 (Form of Individual Note Certificate) to the Paying Agency Agreement if any of the following events occurs:

- (a) Euroclear or Clearstream, Luxembourg is closed for business for a continuous period of 14 days (other than by reason of legal holidays) or announces an intention permanently to cease business; or
- (b) any of the circumstances described in Condition 11 (Default and remedies on default) occurs.

The Issuer shall notify the Holder of the occurrence of any of the events specified in and (b) as soon as practicable thereafter.

**7. Failure to deliver Individual Note Certificates or to pay: If**

- (a) Individual Note Certificates have not been issued and delivered by 5.00 p.m. (London time) on the thirtieth day after the date on which the same are due to be issued and delivered in accordance with paragraph 8 (Delivery of Individual Note Certificates) below; or
- (b) any of the Subordinated Notes evidenced by this Global Note Certificate has become due and payable in accordance with the Conditions or the date for final redemption of the Subordinated Notes has occurred and, in either case, payment in full of the amount of principal falling due with all accrued interest thereon has not been made to the Holder on the due date for payment in accordance with the terms of this Global Note Certificate, then this Global Note Certificate (including the obligation to deliver Individual Note Certificates) will become void at 5.00 pm (London time) on such thirtieth day (in the case of (a)) or at 5.00 pm (London time) on such due date (in the case of (b)) and the Holder will have no further rights hereunder, but without prejudice to the rights which the Holder or others may have under the Deed of Covenant.

**8. Delivery of Individual Note Certificates:** Whenever this Global Note Certificate is to be exchanged for Individual Note Certificates, such Individual Note Certificates shall be issued in an aggregate principal amount equal to the principal amount of this Global Note Certificate within five business days of the delivery, by or on behalf of the Holder, Euroclear and/or Clearstream, Luxembourg, to the Registrar of such information as is required to complete and deliver such Individual Note Certificates (including, without limitation, the names and addresses of the persons in whose names the Individual Note Certificates are to be registered and the principal amount of each such person's holding) against the surrender of this Global Note Certificate at the Specified Office (as defined in the Conditions) of the Registrar. Such exchange shall be effected in accordance with the provisions of the Paying Agency Agreement and the regulations concerning the transfer and registration of Subordinated Notes scheduled thereto and, in particular, shall be effected without charge to any Noteholder, but against such indemnity as the Registrar may require in respect of any tax or other duty of whatsoever nature which may be levied or imposed in connection with such exchange. In this paragraph, "**business day**" means a day on which commercial banks are open for business (including dealings in foreign currencies) in the city in which the Registrar has its Specified Office.

**9. Conditions apply:** Save as otherwise provided herein, the Holder of this Global Note Certificate shall have the benefit of, and be subject to, the Conditions and, for the purposes of this Global Note Certificate, any reference in the Conditions to "**Note Certificate**" or "**Note Certificates**" shall, except where the context otherwise requires, be construed so as to include this Global Note Certificate.

**10. Notices:** Notwithstanding Condition 15 (Notices), so long as this Global Note Certificate is held on behalf of Euroclear, Clearstream, Luxembourg or any other clearing system (an "**Alternative Clearing System**"), notices to Noteholders represented by this Global Note Certificate may be given by delivery of the relevant notice to Euroclear, Clearstream, Luxembourg or (as the case may be) such Alternative Clearing System.

**11. Determination of entitlement:** This Global Note Certificate is evidence of entitlement only and is not a document of title. Entitlements are determined by the Register and only the Holder is entitled to payment in respect of this Global Note Certificate.

**12. Authentication:** This Global Note Certificate shall not be valid for any purpose until it has been authenticated for and on behalf of The Bank of New York Mellon SA/NV, Dublin Branch as registrar.

**13. Governing law:** This Global Note Certificate and any non-contractual obligations arising out of or in connection with it are governed by English law.

**AS WITNESS** the manual or facsimile signature of a duly authorised person for and on behalf of the Issuer.

**GROUP ARK INSURANCE LIMITED**

By:.....

(duly authorised)

**ISSUED** on \_\_ July 2021

**AUTHENTICATED** for and on behalf of **THE BANK OF NEW YORK MELLON SA/ NV DUBLIN BRANCH** as Registrar without recourse, warranty or liability

By:.....

(duly authorised)



**FORM OF TRANSFER**

FOR VALUE RECEIVED \_\_\_\_\_, being the registered holder of this Global Note Certificate, hereby transfers to \_\_\_\_\_

\_\_\_\_\_ of \_\_\_\_\_

[currency] \_\_\_\_\_ in principal amount of the €39,100,000 Floating Rate Tier 2 Subordinated Notes due 2041 (the "**Subordinated Notes**") of Group Ark Insurance Limited (the "**Issuer**") and irrevocably requests and authorises The Bank of New York Mellon SA/NV, Dublin Branch in its capacity as registrar in relation to the Subordinated Notes (or any successor to The Bank of New York Mellon SA/NV, Dublin Branch, in its capacity as such) to effect the relevant transfer by means of appropriate entries in the register kept by it.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
(duly authorised)

**Notes**

The name of the person by or on whose behalf this form of transfer is signed must correspond with the name of the registered holder as it appears on the face of this Global Note Certificate.

- (a) A representative of such registered holder should state the capacity in which he signs, e.g. executor.
- (b) The signature of the person effecting a transfer shall conform to any list of duly authorised specimen signatures supplied by the registered holder or be certified by a recognised bank, notary public or in such other manner as the Registrar may require.
- (c) Any transfer of Subordinated Notes shall be in an amount equal to €100,000 or an integral multiple thereof.

**TERMS AND CONDITIONS**

[Terms and Conditions to be inserted]

**FISCAL AGENT, AGENT BANK AND TRANSFER AGENT**

**The Bank of New York Mellon, London Branch**

One Canada Square

London, E14 5AL

United Kingdom

AND

**REGISTRAR**

**The Bank of New York Mellon SA/NV, Dublin Branch**

Riverside Two,

Sir John Rogerson's Quay,

Grand Canal Dock,

Dublin 2, Ireland

**SCHEDULE 2**

**FORM OF INDIVIDUAL NOTE CERTIFICATE**

THE SUBORDINATED NOTES REPRESENTED HEREBY HAVE NOT BEEN AND WILL NOT BE REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "**SECURITIES ACT**") OR ANY SECURITIES LAW OF ANY STATE OF THE UNITED STATES. THE HOLDER HEREOF, BY PURCHASING THE SUBORDINATED NOTES REPRESENTED HEREBY, AGREES FOR THE BENEFIT OF THE ISSUER THAT THE SUBORDINATED NOTES REPRESENTED HEREBY MAY BE REOFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED ONLY IN COMPLIANCE WITH THE SECURITIES ACT AND OTHER APPLICABLE LAWS.

Serial Number: .....

**GROUP ARK INSURANCE LIMITED**

(an insurance company incorporated under the laws of Bermuda)

**€ 39,100,000**

**Floating Rate Tier 2 Subordinated Notes due 2041**

This Note Certificate is issued in respect of the €39,100,000 Floating Rate Tier 2 Subordinated Notes due 2041 (the "**Subordinated Notes**") of Group Ark Insurance Limited (the "**Issuer**"). The Subordinated Notes are constituted by a deed of covenant dated on or about the date hereof (as amended or supplemented from time to time, the "**Deed of Covenant**") entered into by the Issuer and are the subject of a paying agency agreement dated on or about the date hereof (as amended or supplemented from time to time, the "**Paying Agency Agreement**") and made between the Issuer, The Bank of New York Mellon SA/NV, Dublin Branch as registrar (the "**Registrar**", which expression includes any successor registrar appointed from time to time in connection with the **Subordinated Notes**), The Bank of New York Mellon, London Branch as fiscal agent and the other paying agents and the transfer agents named therein.

Any reference herein to the "**Conditions**" is to the terms and conditions of the Subordinated Notes endorsed hereon and any reference to a numbered "**Condition**" is to the correspondingly numbered provision thereof.

This is to certify that:

.....  
of .....  
.....

is the person registered in the register maintained by the Registrar in relation to the Subordinated Notes (the "**Register**") as the duly registered holder or, if more than one person is so registered, the first-named of such persons (the "**Noteholder**") of:

€[.....]  
( ..... [CURRENCY IN WORDS])

in aggregate principal amount of the Subordinated Notes.

The Issuer, for value received, hereby promises to pay such principal sum to the Noteholder on 7 October 2041 or on such earlier date or dates as the same may become payable in accordance with the Conditions, and to pay interest on such principal sum in arrears on the dates and at the rates specified in the Conditions, together with any additional amounts payable in accordance with the Conditions, all subject to and in accordance with the Conditions.

This Note Certificate is evidence of entitlement only and is not a document of title. Entitlements are determined by the Register and only the Noteholder is entitled to payment in respect of this Note Certificate.

This Note Certificate shall not be valid for any purpose until it has been authenticated for and on behalf of The Bank of New York Mellon SA/NV, Dublin Branch as registrar.

**AS WITNESS** the manual or facsimile signature of a duly authorised person for and on behalf of the Issuer.

**GROUP ARK INSURANCE LIMITED**

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

(duly authorised)

**ISSUED** as of [issue date]

**AUTHENTICATED** for and on behalf of

**THE BANK OF NEW YORK MELLON SA/NV,**

**DUBLIN BRANCH**

as Registrar without recourse, warranty or liability

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

(duly authorised)

**FORM OF TRANSFER**

FOR VALUE RECEIVED \_\_\_\_\_, being the registered holder of this Note Certificate, hereby transfers to of \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

€\_\_\_\_\_ in principal amount of the €39,100,000 Floating Rate Tier 2 Subordinated Notes due 2041 (the "**Notes**") of Group Ark Insurance Limited (the "**Issuer**") and irrevocably requests and authorises The Bank of New York Mellon SA/NV, Dublin Branch in its capacity as registrar in relation to the Subordinated Notes (or any successor to The Bank of New York Mellon SA/NV, Dublin Branch in its capacity as such) to effect the relevant transfer by means of appropriate entries in the register kept by it.

Dated: \_\_\_\_\_

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

(duly authorised)

**Notes**

The name of the person by or on whose behalf this form of transfer is signed must correspond with the name of the registered holder as it appears on the face of this Note Certificate.

- (a) A representative of such registered holder should state the capacity in which he signs, e.g. executor.
- (b) The signature of the person effecting a transfer shall conform to any list of duly authorised specimen signatures supplied by the registered holder or be certified by a recognised bank, notary public or in such other manner as the Registrar may require.
- (d) Any transfer of Notes shall be in an amount equal to €100,000 or any integral multiple thereof.

[Attached to each Note Certificate:]

[Terms and Conditions]

[At the foot of the Terms and Conditions:]

**FISCAL AGENT, AGENT BANK AND TRANSFER AGENT**

**The Bank of New York Mellon, London Branch**

One Canada Square

London, E14 5AL

United Kingdom

AND

**REGISTRAR AND PAYING AGENT**

**The Bank of New York Mellon SA/NV, Dublin Branch**

Riverside Two,

Sir John Rogerson's Quay,

Grand Canal Dock,

Dublin 2, Ireland

**SCHEDULE 3**  
**TERMS AND CONDITIONS**

The following (subject to amendment, and other than the words in italics) is the text of the terms and conditions of the Subordinated Notes which will appear on the reverse of each of the definitive certificates evidencing the Subordinated Notes. The wording appearing in italics below is included for disclosure purposes only and does not form part of the terms and conditions of the Subordinated Notes.

The €39,100,000 Floating Rate Tier 2 Subordinated Notes due 2041 (ISIN: XS2360500842) (the "**Subordinated Notes**") of Group Ark Insurance Limited, an insurance company limited by shares incorporated under the laws of Bermuda (the "**Issuer**"), are constituted by a deed of covenant dated on or about 28 June 2021 (as amended or supplemented from time to time, the "**Deed of Covenant**") entered into by the Issuer and an agency agreement dated on or about 28 June 2021 (as amended or supplemented from time to time, the "**Paying Agency Agreement**") between the Issuer, The Bank of New York Mellon SA/NV, Dublin Branch as registrar (the "**Registrar**", which expression includes any successor registrar appointed from time to time in connection with the Subordinated Notes) and The Bank of New York Mellon, London Branch as fiscal agent (the "**Fiscal Agent**", which expression includes any successor or additional fiscal agent appointed from time to time in connection with the Subordinated Notes), the paying agents named therein (together with the Fiscal Agent, the "**Paying Agents**", which expression includes any successor or additional paying agents appointed from time to time in connection with the Subordinated Notes), the transfer agents named therein (the "**Transfer Agents**", which expression includes any successor or additional transfer agents appointed from time to time in connection with the Subordinated Notes) and The Bank of New York Mellon, London Branch as agent bank (the "**Agent Bank**", which expression includes any successor agent bank appointed from time to time in connection with the Subordinated Notes). The Fiscal Agent, Paying Agents, Transfer Agents and Agent Bank are together the "**Agents**". Certain provisions of these Conditions are summaries of the Paying Agency Agreement and the Deed of Covenant and are subject to their detailed provisions. The Noteholders (as defined below) are bound by, and are deemed to have notice of, all the provisions of the Deed of Covenant and the Paying Agency Agreement applicable to them. Copies of the Deed of Covenant and the Paying Agency Agreement are available for inspection by Noteholders during normal business hours at the Specified Offices (as defined in the Paying Agency Agreement) of each of the Agents. However, if the Agent is not able to make available for inspection at its Specified Office such documents by events beyond its reasonable control, the Agent may provide such documents to a Noteholder electronically, subject to such Noteholder being able to provide evidence satisfactory to the Issuer and the Agent as to its holding and identity.

**1 FORM AND DENOMINATION**

The Subordinated Notes are in registered form in the denominations of €100,000 and integral multiples thereof (each, an "**Authorised Denomination**"). On or about 13 July 2021 (the "**Issue Date**"), the Subordinated Notes will initially be represented by a global certificate (the "**Global Certificate**") registered in the name of a nominee for, and deposited with, the common depository for Euroclear Bank S.A. / N.V. ("**Euroclear**") and Clearstream Banking, SA ("**Clearstream, Luxembourg**").

Except in the limited circumstances described in the Global Certificate, owners of interests in Subordinated Notes represented by the Global Certificate will not be entitled to receive definitive certificates in respect of their individual holdings of Subordinated Notes. The Subordinated Notes are not issuable in bearer form. So long as the Subordinated Notes are represented by the Global Certificate and the rules of Euroclear and Clearstream, Luxembourg so permit, transfers of interests in the Subordinated Notes through the relevant clearing systems shall be in principal amounts of at least €100,000 and integral multiples thereof.

**2 STATUS OF THE SUBORDINATED NOTES**

- (a) Status and Subordination: The Subordinated Notes constitute direct, unconditional, unsecured and subordinated obligations of the Issuer which will at all times rank (including in the event of a Winding-Up):
- (i) junior and subordinate to present or future claims of Senior Creditors;
  - (ii) pari passu in right of repayment:
    - (A) without preference among themselves;

- (B) with all subordinated obligations of the Issuer (excluding the obligations of the Issuer in respect of Junior Securities (as defined below)) which constitute, and all claims relating to a guarantee or other like or similar undertaking or arrangement given or undertaken by the Issuer in respect of any obligations of any other person which constitute, or (in either case) would but for any applicable limitation on the amount of such capital constitute, Tier 2 Capital (excluding the obligations of such person to holders of Junior Securities), and all obligations which rank, or are expressed to rank, pari passu therewith ("**Parity Securities**"), in each case both as regards the right to receive periodic payments and the right to receive repayment of capital on a Winding-Up of the Issuer; and
- (iii) senior to and in priority to the claims of holders of:
  - (A) all classes of share capital (including preferred shares) of the Issuer,
  - (B) any subordinated obligations of the Issuer expressed to rank junior to the Subordinated Notes;
  - (C) all undated subordinated notes of the Issuer,
 (the "**Junior Securities**"),

in each case both as regards the right to receive periodic payments and the right to receive repayment of capital on a Winding-Up of the Issuer;

and accordingly all claims in respect of the Subordinated Notes in a Winding-Up shall be conditional upon all claims in respect of all Senior Creditors which have been admitted in the Winding-Up first having been satisfied (or provided for) in full, such that amounts will become payable in the Winding-Up in respect of the Subordinated Notes only if any to the extent that the same can be paid and there shall remain thereafter sufficient assets to satisfy in full all claims so admitted in respect of all Senior Creditors.

No security or collateral is, or will be, given to secure the payment obligations under the Subordinated Notes and any security or collateral that may have been or may in the future be given in connection with other indebtedness of the Issuer shall not secure the payment obligations under the Subordinated Notes.

- (b) Additional Subordination under Relevant Rules: By purchasing the Subordinated Notes, each Noteholder is deemed to agree and acknowledge that the Subordinated Notes will be subordinated to the claims of all Senior Creditors on the terms and to the minimum extent necessary under the Relevant Rules as in effect from time to time so as to permit the Subordinated Notes to qualify as Tier 2 Capital.
- (c) Set-off: By acceptance of the Subordinated Notes and subject to applicable law, each Noteholder will be deemed to have waived any right of set-off or counterclaim that such Noteholder might otherwise have against the Issuer in respect of or arising under the Subordinated Notes whether prior to or in any Winding-Up of the Issuer. Notwithstanding the preceding sentence, if any obligations owed by any Noteholder to the Issuer are discharged by set-off of amounts in respect of or arising under the Subordinated Notes, such Noteholder will immediately, unless prohibited by applicable law, pay an amount equal to the amount of such discharge to the Issuer or, if applicable, the bankruptcy receiver or liquidator of the Issuer and, until such time as payment is made, will hold a sum equal to such amount on trust for the Issuer or, if applicable, the bankruptcy receiver or liquidator in the Issuer's Winding-Up. Accordingly, such discharge will be deemed not to have taken place.
- (d) No Insolvency. The Subordinated Notes do not contain any terms or conditions designed to accelerate or induce the Issuer's insolvency or effect similar proceedings.
- (e) Solvency Condition: Without prejudice to Condition 2(a) (Status and Subordination) above, all payments under or arising from the Subordinated Notes shall be conditional upon the Issuer being solvent at the time for payment by the Issuer, and no amount shall be payable under or arising from the Subordinated Notes unless and until such time as the Issuer could make such payment and still be solvent immediately thereafter (the "**Solvency Condition**").



For the purposes of this Condition 2(e) (Solvency Condition), the Issuer will be solvent if (i) it is able to pay its debts owed to creditors other than Junior Creditors as they fall due and (ii) its Assets exceed its Liabilities. Should the Issuer consider itself not solvent for the purpose of this Condition 2(e) (Solvency Condition), it will have to produce a certificate as to the insolvency of the Issuer signed by two Authorised Signatories or, if there is a Winding-Up or administration of the Issuer, by two directors or authorised signatories of, the liquidator or, as the case may be, the administrator of the Issuer shall be treated and accepted by the Issuer, the Noteholders and all other interested parties as correct and sufficient evidence thereof and (in the absence of manifest error or bad faith) shall be binding on all such persons.

### 3 REGISTER, TITLE AND TRANSFERS

- (a) Register: The Registrar will maintain a register (the "**Register**") in respect of the Subordinated Notes in accordance with the provisions of the Paying Agency Agreement. The Register shall at all times be held outside of the United Kingdom. In these Conditions, the holder of a Subordinated Note means the person in whose name such Subordinated Note is for the time being registered in the Register (or, in the case of a joint holding, the first named thereof) and "**Noteholder**" shall be construed accordingly. A certificate (each, a "**Note Certificate**") will be issued to each Noteholder in respect of its registered holding. Each Note Certificate will be numbered serially with an identifying number which will be recorded in the Register.
- (b) Title: The Noteholder shall (except as otherwise required by law) be treated as the absolute owner of such Subordinated Note for all purposes (whether or not it is overdue and regardless of any notice of ownership, trust or any other interest therein, any writing on the Note Certificate relating thereto (other than the endorsed form of transfer) or any notice of any previous loss or theft of such Note Certificate) and no person shall be liable for so treating such Noteholder. No person shall have any right to enforce any term or condition of the Subordinated Notes under the Contracts (Rights of Third Parties) Act 1999 (of England and Wales) or under the Contracts (Rights of Third Parties) Act 2016 (of Bermuda) but this shall not affect any right or remedy which exists or is available apart from such Acts.
- (c) Transfers: Subject to paragraphs (f) (Closed periods) and (g) (Regulations concerning transfers and registration) below, a Subordinated Note may be transferred upon surrender of the relevant Note Certificate, with the endorsed form of transfer duly completed, at the Specified Office of the Registrar or any Transfer Agent, together with such evidence as the Registrar or (as the case may be) such Transfer Agent may reasonably require to prove the title of the transferor and the authority of the individuals who have executed the form of transfer; provided, however, that a Subordinated Note may not be transferred unless: (i) the principal amount of Subordinated Notes transferred and (where not all of the Subordinated Notes held by a Noteholder are being transferred) the principal amount of the balance of Subordinated Notes not transferred are Authorised Denominations; and (ii) the transferee of such Subordinated Note is a Qualified Investor. Where not all the Subordinated Notes represented by the surrendered Note Certificate are the subject of the transfer, a new Note Certificate in respect of the balance of the Subordinated Notes will be issued to the transferor.

Transfers of interests in the Subordinated Notes evidenced by the Global Certificate will be effected in accordance with the rules of Euroclear and Clearstream, Luxembourg.

- (d) Registration and delivery of Note Certificates: Within five business days of the surrender of a Note Certificate in accordance with paragraph (c) (Transfers) above, the Registrar will register the transfer in question and deliver a new Note Certificate of a like principal amount to the Subordinated Notes transferred to each relevant Noteholder at its Specified Office or (as the case may be) the Specified Office of any Transfer Agent or (at the request and risk of any such relevant Noteholder) by uninsured first class mail (airmail if overseas) to the address specified for the purpose by such relevant Noteholder. In this paragraph, "**business day**" means a day on which commercial banks are open for general business (including dealings in foreign currencies) in the city where the Registrar or (as the case may be) the relevant Transfer Agent has its Specified Office.
- (e) No charge: The transfer of a Subordinated Note will be effected without charge by or on behalf of the Issuer, the Registrar or any Transfer Agent but against such indemnity as the Registrar or (as the case may be) such Transfer Agent may require in respect of any tax or other duty of whatsoever nature which may be levied or imposed in connection with such transfer.

- (f) Closed periods: Noteholders may not require transfers to be registered during the period of 15 days ending on the due date for any payment of principal or interest in respect of the Subordinated Notes.
- (g) Regulations concerning transfers and registration: All transfers of Subordinated Notes and entries on the Register are subject to the detailed regulations concerning the transfer of Subordinated Notes scheduled to the Paying Agency Agreement. The regulations may be changed by the Issuer with the prior written approval of the Registrar. A copy of the current regulations will be mailed (free of charge) by the Registrar to any Noteholder who requests in writing a copy of such regulations.

#### 4 INTEREST

- (a) Interest: The Subordinated Notes bear interest from the Issue Date. Subject to Condition 2(e) (Solvency Condition) and Condition 5 (Deferral of Interest), interest shall be payable on 5 January, 5 April, 5 July and 5 October in each year (each, an "**Interest Payment Date**") in accordance with Condition 8 (Payments); provided, however, that if any Interest Payment Date would otherwise fall on a date which is not a Business Day, it will be postponed to the next Business Day unless it would thereby fall into the next calendar month, in which case it will be brought forward to the preceding Business Day; provided, further, that the first Interest Payment Date shall be the earliest date falling on 5 January, 5 April, 5 July and 5 October following the Issue Date (the "**First Interest Payment Date**"). Each period beginning on (and including) the Issue Date or any Interest Payment Date and ending on (but excluding) the next Interest Payment Date is herein called an "**Interest Period**".
- (b) Interest Accrual: Each Subordinated Note will cease to bear interest from the due date for redemption (which due date shall, in the case of deferral of a redemption date in accordance with Condition 6(b) (Deferral of redemption date), be the latest date to which redemption of the Subordinated Notes is so deferred) unless, upon due presentation, payment of principal is improperly withheld or refused, in which case it will continue to bear interest in accordance with this Condition 4 (Interest) (both before and after judgment) until whichever is the earlier of (a) the day on which all sums due in respect of such Subordinated Note up to that day are received by or on behalf of the relevant Noteholder and (b) the day which is seven days after the Fiscal Agent has notified the Noteholders that it has received all sums due in respect of the Subordinated Notes up to such seventh day (except to the extent that there is any subsequent default in payment).
- (c) Rate of Interest: The rate of interest applicable to the Subordinated Notes (the "**Rate of Interest**") will be determined by the Agent Bank on the following basis:
  - (i) subject to (ii) below, with respect to the Rate of Interest for each Interest Period, the Agent Bank will determine the rate (the "**Reference Rate**") for deposits in euro for a period equal to the relevant Interest Period which appears on the display page designated EURIBOR01 on Reuters (or such other page as may replace that page on that service, or such other service as may be nominated as the information vendor, for the purpose of displaying comparable rates) as of 11.00 a.m. (Brussels time) on the second Brussels Banking Day (as defined below) before the first day of the relevant Interest Period (the "**Interest Determination Date**"), provided, however, that any such Reference Rate, which would otherwise be negative, shall instead be zero;
 

and the Rate of Interest for such Interest Period shall be the sum of the Margin and of the Reference Rate.
  - (ii) with respect to any period of time (including the first Interest Period), for which interest is payable, that is shorter than a full quarterly Interest Period (i.e. a period that start on any of 5 January, 5 April, 5 July and 5 October and ends on the immediately following of 5 January, 5 April, 5 July and 5 October), the Reference Rate shall be calculated by the Agent Bank by linear interpolation as if the periods above were Interest Periods and by reference to two rates which appear on the display page designated EURIBOR01 on Reuters (or such other page as may replace that page on that service, or such other service as may be nominated as the information vendor, for the purpose of displaying comparable rates) (the "**Relevant Screen Page**") as of the Interest Determination Date where:

- (X) one Reference Rate shall be determined as if the relevant Interest Period were the period of time for which rates are available next shorter than the length of the relevant Interest Period; and
- (Y) the other Reference Rate shall be determined as if the relevant Interest Period were the period of time for which rates are available next longer than the length of the relevant Interest Period,

provided, however, that any such Reference Rate, which would otherwise be negative, shall instead be zero, and the Rate of Interest for such Interest Period shall be the sum of the applicable Margin and of the Reference Rate;

- (iii) if such Reference Rate does not appear on the Relevant Screen Page, the Agent Bank will:
  - (A) request the principal Euro-zone office of each of four major banks selected by the Issuer in the Euro interbank market to provide a quotation of the Reference Rate at which deposits in euro are offered by it in the euro interbank market at approximately 11.00 a.m. (Brussels time) on the Interest Determination Date to prime banks in the euro interbank market for a period equal to the relevant Interest Period and in an amount that is representative for a single transaction of a comparable size in that market at that time; and
  - (B) determine the arithmetic mean (rounded, if necessary, to the nearest one hundred-thousandth of a percentage point, 0.000005 being rounded upwards) of such quotations, provided, however, that such arithmetic mean shall not be less than zero;

and the Rate of Interest for such Interest Period shall be the sum of such arithmetic mean and the applicable Margin;

- (iv) if fewer than two such quotations are provided as requested, the Agent Bank will determine the arithmetic mean (rounded, if necessary, as aforesaid) of the Reference Rates (the "**Average Reference Rate**") quoted by major banks in the Euro-zone, selected by the Issuer, at approximately 11.00 a.m. (Brussels time) on the first day of the relevant Interest Period for loans in euro to leading European banks for a period equal to the relevant Interest Period and in an amount that is representative for a single transaction in that market at that time, provided, however, that such arithmetic mean shall not be less than zero, and the Rate of Interest for such Interest Period shall be the sum of the applicable Margin and the Average Reference Rate;
- (v) if the Agent Bank is unable to determine a rate or (as the case may be) an arithmetic mean in accordance with Condition 4(c)(iii) or Condition 4(c)(iv) in relation to any Interest Period, the Rate of Interest applicable to the Subordinated Notes during such Interest Period will be the sum of the applicable Margin and the rate (or, as the case may be, the arithmetic mean) last determined in relation to the Subordinated Notes in respect of a preceding Interest Period;
- (vi) if notwithstanding the provisions of Condition 4(c)(iii), the Issuer (in consultation with the Agent Bank) determines that a Benchmark Event has occurred then the following provisions shall apply:
  - (A) the Issuer shall use its reasonable endeavours to appoint an Independent Adviser, as soon as is reasonably practicable, to determine:
    - (1) a Successor Reference Rate; or
    - (2) if the Independent Adviser determines that there is no Successor Reference Rate, an Alternative Reference Rate,

and, in each case, an Adjustment Spread (if any) (in any such case, acting in good faith and in a commercially reasonable manner) no later than 5 (five) Business Days prior to the Interest Determination Date relating to the next Interest Period (the "**IA Determination Cut-off Date**") for the purposes of determining the Rate of Interest applicable to the Subordinated Notes for such next Interest Period and

for all other future Interest Periods (subject to the subsequent operation of this Condition 4(c)(vi) during any other future Interest Period(s));

(B) if a Successor Reference Rate or, failing which, an Alternative Reference Rate (as applicable) is determined by the Independent Adviser in accordance with this Condition 4(c)(vi):

(1) such Successor Reference Rate or Alternative Reference Rate (as applicable) shall be the rate for all future Interest Periods (subject to the subsequent operation of, and adjustment as provided in, this Condition 4(c)(vi));

(2) if the Independent Adviser:

1) determines that an Adjustment Spread is required to be applied to such Successor Reference Rate or Alternative Reference Rate (as applicable) and determines the quantum of, or a formula or methodology for determining, such Adjustment Spread, then such Adjustment Spread shall be applied to such Successor Reference Rate or Alternative Reference Rate (as applicable) for all future Interest Periods (subject to the subsequent operation of, and adjustment as provided in, this Condition 4(c)(vi)); or

2) is unable to determine the quantum of, or a formula or methodology for determining, an Adjustment Spread, then such Successor Reference Rate or Alternative Reference Rate (as applicable) will apply without an Adjustment Spread for all future Interest Periods (subject to the subsequent operation of, and adjustment as provided in, this Condition 4(c)(vi)); and

(3) the Issuer (acting in good faith and in a commercially reasonable manner) may in consultation with the Independent Adviser and the Agent Bank, specify:

1) changes to these Conditions or the Paying Agency Agreement in order to follow market practice in relation to such Successor Reference Rate or Alternative Reference Rate (as applicable); and

2) any other changes which the Issuer (acting in good faith and in a commercially reasonable manner) determines are reasonably necessary to ensure the proper operation and comparability to the Original Reference Rate of such Successor Reference Rate or Alternative Reference Rate (as applicable),

which changes shall apply to the Subordinated Notes for all future Interest Periods (subject to the subsequent operation of this Condition 4(c)(vi)); and

(4) promptly following the determination of (i) any Successor Reference Rate or Alternative Reference Rate (as applicable) and (ii) if applicable, any Adjustment Spread, the Issuer shall give notice thereof and of any changes (and the effective date thereof) pursuant to this Condition 4(c)(vi) to each of the Paying Agents and the Noteholders as soon as possible after their determination in accordance with Condition 15 (Notices).

If the Independent Adviser cannot select a Successor Reference Rate or an Alternative Reference Rate prior to the IA Determination Cut-off Date in accordance with this Condition 4(c)(vi), the Rate of Interest shall be determined as at the last preceding Interest Determination Date.

For the avoidance of doubt, the Successor Reference Rate (after application, if applicable, of the Adjustment Spread) and Alternative Reference Rate (after application, if applicable, of the Adjustment Spread) cannot be negative.

An Independent Adviser appointed pursuant to this Condition 4(c)(vi) shall act in good faith and in a commercially reasonable manner as an expert and in consultation with the Issuer. In the absence of fraud, negligence or wilful default, the Independent Adviser shall have no liability whatsoever to the Issuer, the Paying Agents, or the Noteholders for any determination made by it pursuant to this Condition 4(c)(vi).

For the purpose of this Condition 4(c)(vi), the Rate of Interest for such Interest Period shall be the sum of the applicable Margin and (as the case may be):

- either the Successor Reference Rate (after application, if applicable, of the Adjustment Spread);
  - or the Alternative Reference Rate (after application, if applicable, of the Adjustment Spread).
- (d) Calculation of Interest Amount: The Agent Bank will, as soon as practicable after the Interest Determination Date in relation to each Interest Period, calculate the amount of interest (the "**Interest Amount**") payable in respect of each Subordinated Note for such Interest Period. The Interest Amount will be calculated by applying the Rate of Interest for such Interest Period to the Calculation Amount, multiplying the product by the actual number of days in such Interest Period divided by 360, rounding the resulting figure to the nearest cent (half a cent being rounded upwards) and multiplying such rounded figure by a fraction equal to the Authorised Denomination of such Subordinated Note divided by the Calculation Amount.
- (e) Publication: The Agent Bank will cause each Rate of Interest and Interest Amount determined by it, together with the relevant Interest Payment Date, to be notified to the other Agents and any quotation system (if any) as soon as practicable after such determination but in any event not later than the first day of the relevant Interest Period. Notice thereof shall also promptly be given to the Noteholders. The Agent Bank will be entitled to recalculate any Interest Amount (on the basis of the foregoing provisions) without notice in the event of an extension or shortening of the relevant Interest Period. If the Calculation Amount is less than the Authorised Denomination, the Agent Bank shall not be obliged to publish each Interest Amount but instead may publish only the Calculation Amount and the Interest Amount in respect of a Subordinated Note having the minimum Authorised Denomination.
- (f) Notifications etc.: All notifications, opinions, determinations, certificates, calculations, quotations and decisions given, expressed, made or obtained for the purposes of this Condition by the Agent Bank will (in the absence of wilful default, fraud or manifest error) be binding on the Issuer, the Agents and the Noteholders and (subject as aforesaid) no liability to any such person will attach to the Agent Bank in connection with the exercise or non-exercise by it of its powers, duties and discretions for such purposes.
- (g) Calculation Amount: Interest shall be calculated per €1000 in principal amount of the Subordinated Notes (the "**Calculation Amount**").

## 5 DEFERRAL OF INTEREST

- (a) Regulatory Deficiency Deferral of Interest:
- (i) Subject to Condition 5(a)(ii), payment of interest on the Subordinated Notes by the Issuer will be mandatorily deferred on each Regulatory Deficiency Interest Deferral Date.
  - (ii) Any deferral under Condition 5(a)(i) shall be of all (and not less than all) of the Interest Amount accrued on the Subordinated Notes and due and payable as of such Regulatory Deficiency Interest Deferral Date.



(iii) The Issuer shall notify the Noteholders and the Fiscal Agent of any Regulatory Deficiency Interest Deferral Date in accordance with Condition 5(e) (Notice of Deferral). A certificate signed by two Authorised Signatories confirming that:

(A) a Regulatory Deficiency Interest Deferral Event has occurred and is continuing, or would occur if payment of interest on the Subordinated Notes were to be made; or

(B) a Regulatory Deficiency Interest Deferral Event has ceased to occur and/or payment of interest on the Subordinated Notes would not result in a Regulatory Deficiency Interest Deferral Event occurring,

shall be treated and accepted by the Issuer, the Noteholders and all other interested parties as correct and sufficient evidence thereof, and (in the absence of manifest error or bad faith) shall be binding on all such persons.

(b) No default: Notwithstanding any other provision in these Conditions the deferral by the Issuer of any payment of interest in accordance with Condition 2(e) (Solvency Condition) or Condition 5(a) (Regulatory Deficiency Deferral of Interest) will not constitute a default by the Issuer and will not give Noteholders any right to accelerate repayment of the Subordinated Notes or take any enforcement action under the Subordinated Notes.

(c) Arrears of Interest and Additional Interest Amounts: Any interest on the Subordinated Notes not paid on an Interest Payment Date as a result of the obligation of the Issuer to defer such payment of interest pursuant to Condition 5(a) (Regulatory Deficiency Deferral of Interest) or due to the operation of the Solvency Condition contained in Condition 2(e) (Solvency Condition) shall (without double counting), to the extent and so long as the same remains unpaid, constitute "**Arrears of Interest**".

Each amount of Arrears of Interest shall bear interest (as if it constituted the principal of the Subordinated Notes) at the Rate of Interest from time to time applicable to the Subordinated Notes (an "**Additional Interest Amount**"). Any Additional Interest Amounts which are not paid on the Interest Payment Date at the end of the applicable Interest Period shall become Arrears of Interest and bear interest accordingly.

(d) Payment of Arrears of Interest and Additional Interest Amounts: Any Arrears of Interest and Additional Interest Amounts may (subject to Condition 2(e) (Solvency Condition) and, to the extent required, the satisfaction of the Regulatory Clearance Condition) be paid by the Issuer in whole or in part at any time upon the expiry of not less than 14 days' notice to such effect given by the Issuer to the Fiscal Agent and the Noteholders in accordance with Condition 15 (Notices) and in any event will become due and payable by the Issuer in whole (and not in part) upon the earliest of the following dates:

(i) the next Interest Payment Date which is not a Regulatory Deficiency Interest Deferral Date;

(ii) the date on which the Issuer pays any dividend or other distribution on any shares in its capital;

(iii) the date on which the Issuer makes a payment of interest on, or redeems purchases, cancels, reduces or acquires, any Junior Securities or Parity Securities (save where the Issuer is not able to defer, pass or eliminate the relevant payment or other obligation in accordance with the terms of the relevant Junior Securities or Parity Securities);

(iv) the date on which the Winding-Up of the Issuer occurs; or

(v) the date fixed for any redemption of the Subordinated Notes pursuant to Condition 6 (Redemption, Purchase and Cancellation) (subject to any deferral of such redemption date pursuant to Condition 6(b) (Deferral of redemption date)) or Condition 11 (Default and remedies on default).

(e) Notice of Deferral: The Issuer shall notify the Fiscal Agent and the Noteholders in writing in accordance with Condition 15 (Notices) not less than 5 Business Days prior to the relevant Interest Payment Date:

- (i) in the case of a deferral due to the operation of the Solvency Condition contained in Condition 2(e) (Solvency Condition), specifying that interest will not be paid because of the operation of such Solvency Condition; or
- (ii) in the case of Condition 5(a) (Regulatory Deficiency Deferral of Interest), specifying that interest will not be paid because a Regulatory Deficiency Interest Deferral Event has occurred and is continuing or would occur if payment of interest was made on such Interest Payment Date, provided, however, that if the Issuer becomes aware of the operation of the Solvency Condition or a Regulatory Deficiency Interest Deferral Event occurs, less than 5 Business Days prior to an Interest Payment Date the Issuer shall give notice of the interest deferral in accordance with Condition 15 (Notices) as soon as reasonably practicable following its becoming aware of, or the occurrence of, such event.

## 6 REDEMPTION, PURCHASE AND CANCELLATION

- (a) Scheduled redemption: Subject to Conditions 2(e) (Solvency Condition), 6(b) (Deferral of redemption date) and 6(i) (Preconditions to redemption and purchases), unless previously redeemed, or purchased and cancelled, the Subordinated Notes will be redeemed at their principal amount on the Maturity Date together with any Arrears of Interest (together with all corresponding Additional Interest Amounts) and any other accrued and unpaid interest to (but excluding) the Maturity Date in accordance with the terms of Condition 8 (Payments).
- (b) Deferral of redemption date:
  - (i) Subject to Condition 6(b)(ii), no Subordinated Notes shall be redeemed:
    - (A) on or after the Maturity Date pursuant to Condition 6(a) (Scheduled redemption); or
    - (B) prior to the Maturity Date pursuant to Condition 6(c) (Redemption for tax reasons) or Condition 6(d) (Redemption upon the occurrence of a Capital Event) or Condition 6(e) (Redemption at the option of the Issuer);

if Condition 2(e) (Solvency Condition) is not satisfied or if a Regulatory Deficiency Redemption Deferral Event has occurred and is continuing or would occur if redemption is made pursuant to this Condition 6 (Redemption, Purchase and Cancellation).
  - (ii) Deferral under Condition 6(b)(i) (Deferral of redemption date) shall be limited to the proportion of the amounts due and payable which would cause a Regulatory Deficiency Redemption Deferral Event to occur and be continuing. In the event that a partial payment is made pursuant to this Condition 6(b)(ii), any partial payments shall be applied pro rata in respect of the Subordinated Notes.
  - (iii) The Issuer shall notify the Fiscal Agent and the Noteholders in accordance with Condition 15 (Notices) no later than 5 Business Days prior to any date set for redemption of the Subordinated Notes if such redemption is to be deferred in accordance with this Condition 6(b) (Deferral of redemption date) provided, however, that if the Issuer becomes aware of the operation of the Solvency Condition or a Regulatory Deficiency Interest Deferral Event occurs less than 5 Business Days prior to an Interest Payment Date, the Issuer shall give notice of the interest deferral in accordance with Condition 15 (Notices) as soon as reasonably practicable following its becoming aware of, or the occurrence of, such event.
  - (iv) If redemption of the Subordinated Notes does not occur on the Maturity Date, or, if applicable, the date specified in the notice of redemption by the Issuer under Condition 6(c) (Redemption for tax reasons) or Condition 6(d) (Redemption upon the occurrence of a Capital Event), as a result of Condition 6(b)(i) (Deferral of redemption date), the Issuer shall (subject to satisfaction of the Regulatory Clearance Condition and, in the case of (A) and (B) below only, Condition 2(e) (Solvency Condition)) redeem such Subordinated Notes at their principal amount together with any Arrears of Interest (together with all corresponding Additional Interest Amounts) and any other accrued and unpaid interest upon the earliest of:

- (A) (in case of a failure to redeem the Subordinated Notes due to the operation of Condition 6(b)(i) (Deferral of redemption date) only) the date falling 10 Business Days after the date the Regulatory Deficiency Redemption Deferral Event has ceased (unless on such 10<sup>th</sup> Business Day a further Regulatory Deficiency Redemption Deferral Event has occurred and is continuing or redemption of the Subordinated Notes on such date would result in a Regulatory Deficiency Redemption Deferral Event occurring, in which case the provisions of Condition 6(b)(i) (Deferral of redemption date) and this Condition 6(b)(iv) will apply mutatis mutandis to determine the due date for redemption of the Subordinated Notes); or
- (B) the date falling 10 Business Days after the BMA has agreed to the repayment or redemption of the Subordinated Notes; or
- (C) the date on which a Winding-Up occurs.

If Condition 6(b)(i) (Deferral of redemption date) does not apply, but redemption of the Subordinated Notes does not occur on the Maturity Date or, if applicable, the date specified in the notice of redemption by the Issuer under Condition 6(c) (Redemption for tax reasons) or Condition 6(d) (Redemption upon the occurrence of a Capital Event), as a result of the Solvency Condition not being satisfied at such time and immediately after such payment, the Issuer shall (subject to the satisfaction of the Regulatory Clearance Condition), redeem such Subordinated Notes at their principal amount together with any Arrears of Interest (together with all corresponding Additional Interest Amounts) and any other accrued and unpaid interest on the date falling 10 Business Days immediately following the day that (i) the issuer is solvent for the purposes of Condition 2(e) (Solvency Condition) and (ii) redemption of the Subordinated Notes would not result in the Issuer ceasing to be solvent for the purposes of Condition 2(e) (Solvency Condition); provided that if on such Business Day specified for redemption a Regulatory Deficiency Redemption Deferral Event has occurred and is continuing, or would occur if the Subordinated Notes were to be redeemed, or if the Solvency Condition would not be satisfied on such date and immediately after the redemption, then the Subordinated Notes shall not be redeemed on such date and Condition 2(e) (Solvency Condition) and Condition 6(b)(i) (Deferral of redemption date) will apply mutatis mutandis to determine the date of redemption of the Subordinated Notes.

- (v) A certificate signed by two Authorised Signatories confirming that (A) a Regulatory Deficiency Redemption Deferral Event has occurred and is continuing, or would occur if redemption of the Subordinated Notes were to be made or (B) a Regulatory Deficiency Redemption Deferral Event has ceased to occur and/or redemption of the Subordinated Notes would not result in a Regulatory Deficiency Redemption Deferral Event occurring, shall be treated and accepted by the Issuer, the Noteholders and all other interested parties as correct and sufficient evidence thereof and (in the absence of manifest error or bad faith) shall be binding on all such persons.
  - (vi) Notwithstanding any other provision in these Conditions, the deferral of redemption of the Subordinated Notes in accordance with Condition 2(e) (Solvency Condition) or this Condition 6(b) (Deferral of redemption date) will not constitute a default by the Issuer and will not give Noteholders any right to accelerate the Subordinated Notes or take any enforcement action under the Subordinated Notes.
- (c) Redemption for tax reasons: Subject to Condition 2(e) (Solvency Condition), Condition 6(b)(i) (Deferral of redemption date) and Condition 6(i) (Preconditions to redemption and purchase) below, the Subordinated Notes may be redeemed at the option of the Issuer in whole, but not in part, on any Interest Payment Date after the fifth (5<sup>th</sup>) anniversary of the Issue Date (unless such redemption or purchase (i) is to be financed out of the proceeds of an issuance of securities that qualify as either Tier 2 Capital or Tier 1 Capital and (ii) has been approved by the BMA, in which case the Subordinated Notes may be redeemed at the Issuer's option prior to such fifth (5<sup>th</sup>) anniversary), on giving not less than 15 nor more than 60 days' notice to the Noteholders (which notice shall be irrevocable) at their outstanding principal amounts (together with any Arrears of Interest, Additional Interest Amounts and any other accrued but unpaid interest to (but excluding) the date fixed for redemption), if:
- (A) immediately before the giving of such notice, the Issuer receives an opinion of external counsel in Bermuda experienced in such matters that the Issuer:



- (1) has or will become obliged to pay additional amounts as described under Condition 9 (Taxation); or
  - (2) would not be entitled to claim a deduction in computing taxation liabilities (and provided such taxation liabilities exist) in Bermuda in respect of any payment of interest to be made on the next Interest Payment Date or the value of such deduction to the Issuer would be reduced;
- (B) in each case as a result of any change in, or amendment to, the laws or regulations of Bermuda or any authority therein or thereof having power to tax, or any change in the application or official interpretation of such laws or regulations, including a decision of any court or tribunal, which change or amendment becomes effective on or after the Issue Date; and
  - (C) such obligation or loss of entitlement, as the case may be, cannot be avoided by the Issuer taking reasonable measures available to it,

(any such early redemption events (A), (B) and (C) under this Condition 6(c) (Redemption for tax reasons), a "**Tax Event**");

provided that (in the case of (A)(2) above) no such notice of redemption shall be given earlier than 90 days prior to the earliest date on which the Issuer would not be entitled to claim a deduction in computing taxation liabilities (and provided such taxation liabilities exist) in Bermuda in respect of any payment of interest to be made on the next Interest Payment Date or the value of such deduction to the Issuer would be reduced were a payment in respect of the Subordinated Notes then due.

- (d) Redemption upon the occurrence of a Capital Event: Subject to Condition 2(e) (Solvency Condition), Condition 6(b) (Deferral of redemption date) and Condition 6(i) (Preconditions to redemption and purchase) below, if a Capital Event occurs, the Subordinated Notes may be redeemed at the option of the Issuer in whole, but not in part, on any Interest Payment Date after the fifth (5<sup>th</sup>) anniversary of the Issue Date (unless such redemption or purchase (i) is to be financed out of the proceeds of an issuance of securities that qualify as either Tier 2 Capital or Tier 1 Capital and (ii) has been approved by the BMA, in which case the Subordinated Notes may be redeemed at the Issuer's option prior to such fifth (5<sup>th</sup>) anniversary), at their outstanding principal amounts (together with any Arrears of Interest, Additional Interest Amounts and any other accrued but unpaid interest to (but excluding) the date fixed for redemption); provided that the Issuer provides not less than 15 days' nor more than 60 days' prior notice to the Fiscal Agent and the Noteholders in accordance with Condition 15 (Notices) (such notice being irrevocable) specifying the date fixed for such redemption.
- (e) Redemption at the option of the Issuer: Subject to Condition 2(e) (Solvency Condition) and Condition 6(i) (Preconditions to redemption and purchase) below, the Subordinated Notes may be redeemed on the First Call Date or on any Interest Payment Date thereafter, at the option of the Issuer, in whole or in part, at their outstanding principal amounts (together with any Arrears of Interest, Additional Interest Amounts and any other accrued but unpaid interest to (but excluding) the date fixed for redemption); provided that the Issuer provides not less than 15 days' nor more than 60 days' prior notice to the Fiscal Agent and the Noteholders in accordance with Condition 15 (Notices) specifying the date fixed for such redemption. Subject to Conditions 8(a) and 8(b), upon the expiry of such notice, the Issuer shall redeem the Subordinated Notes. Any such notice of redemption may, in the Issuer's sole discretion, be subject to one or more conditions precedent, including, but not limited to, the completion of an equity offering, financing or other corporate transaction. Additionally, if such redemption or notice is subject to the satisfaction of one or more conditions precedent, such notice shall state that, in the Issuer's sole discretion, the redemption date may be postponed by up to 60 days following the notice of redemption, and such notice may be rescinded in the event that any or all such conditions shall not have been satisfied by the redemption date (including as it may be postponed). The Issuer shall notify the Fiscal Agent, the Lead Arranger and the Noteholders at least two Business Days prior to the redemption date if any such redemption has been rescinded or delayed. For the avoidance of doubt, in the event of any such postponement of the redemption date, any calculation of or determination concerning the redemption price that depends on the redemption date (including the amount of accrued and unpaid interest on the relevant Subordinated Notes to, but excluding, the redemption date) shall be made by reference to the redemption as so postponed.

- (f) No other redemption: The Issuer shall not be entitled to redeem the Subordinated Notes otherwise than as provided in Condition 6(a) (Scheduled redemption), Condition 6(b) (Deferral of redemption date), Condition 6(c) (Redemption for tax reasons), Condition 6(d) (Redemption upon the occurrence of a Capital Event) and Condition 6(e) (Redemption at the option of the Issuer).
- (g) Purchase: Subject to Condition 2(e) (Solvency Condition) and Condition 6(i) (Preconditions to redemption and purchases), the Issuer may at any time purchase Subordinated Notes in the open market or otherwise and at any price. All Subordinated Notes purchased by or on behalf of the Issuer may be held, reissued, resold or, at the option of the Issuer and the relevant purchaser, surrendered for cancellation to the Fiscal Agent.
- (h) Cancellation: All Subordinated Notes redeemed by the Issuer pursuant to this Condition 6, and all Subordinated Notes purchased and surrendered for cancellation pursuant to Condition 6(g) (Purchase), will forthwith be cancelled. Any such Subordinated Notes so surrendered for cancellation may not be reissued or resold and the obligations of the Issuer in respect of any such Subordinated Notes shall be discharged.
- (i) Preconditions to redemption and purchases:
  - (i) Prior to the publication of any notice of redemption or any purchase of the Subordinated Notes, the Issuer will be required to have complied with the Regulatory Clearance Condition and be in continued compliance with both the Enhanced Capital Requirement and with the Relevant Rules.
  - (ii) The Issuer shall not redeem any Subordinated Notes or purchase any Subordinated Notes (i) unless at the time of such redemption or purchase it is in compliance with both the Enhanced Capital Requirement and with the Relevant Rules, (ii) where such redemption or purchase would cause a breach of the Enhanced Capital Requirement and (iii) prior to the fifth anniversary of the Issue Date, unless such redemption or purchase is to be financed out of the proceeds of an issuance of securities that qualify as either Tier 2 Capital or Tier 1 Capital.
  - (iii) A certificate signed by two Authorised Signatories confirming such compliance shall be treated and accepted by the Issuer, the Noteholders and all other interested parties as correct and sufficient evidence thereof and (in the absence of manifest error or bad faith) shall be binding on all such persons.

## 7 VARIATION AND SUBSTITUTION

If a Capital Event or a Tax Event occurs, the Issuer may, at its sole option, as an alternative to redemption of the Subordinated Notes, at any time, without the consent of any Noteholder, vary any term or condition of the Subordinated Notes or substitute all (but not less than all) of the Subordinated Notes for other notes, so that the varied Subordinated Notes or the substituted notes, as the case may be, constitute Qualifying Equivalent Securities.

The principal amount of the Qualifying Equivalent Securities to be received by Noteholders in substitution shall be equal to the principal amount of the Subordinated Notes.

Any variation or substitution of the Subordinated Notes is subject to no more than 60 nor less than 30 calendar days' prior notice by the Issuer to the Fiscal Agent, the Lead Arranger and the Noteholders (which notice shall be irrevocable and shall specify the date fixed for such variation or substitution) in accordance with the notice provisions governing the Subordinated Notes and to:

- (a) the Issuer being in compliance with the Relevant Rules on the date of such variation or substitution (after giving effect to such variation or substitution), and such variation or substitution not resulting directly or indirectly in a breach of the Relevant Rules;
- (b) in respect of substitution only, all payments of interest, including Arrears of Interest, and any other amount payable under the Subordinated Notes that, in each case, has accrued to Noteholders and has not been paid, being satisfied in full on or prior to the date of such variation or substitution; and

- (c) immediately after the substitution or variation, the Issuer not triggering its right to redeem the Subordinated Notes pursuant to provisions of Conditions 6(c) and 6(d).

The Issuer shall deliver to the Fiscal Agent on the date fixed for any such variation or substitution (i) a certificate signed by two Authorised Signatories stating that the provisions of this Condition 7 have been complied with and (ii) a legal opinion from an Independent Adviser standing to the effect that the varied Subordinated Notes or the substituted Subordinated Notes constitute Qualifying Equivalent Securities.

## 8 PAYMENTS

- (a) **Principal:** Payments of principal shall be made by transfer to a euro-denominated account maintained by the payee and notified to the Issuer and (in the case of redemption) upon surrender (or, in the case of part payment only, endorsement) of the relevant Note Certificates at the Specified Office of any Paying Agent.
- (b) **Interest:** Payments of interest (including, without limitation, Arrears of Interest and Additional Interest Amounts) shall be made by transfer to a euro-denominated account maintained by the payee and notified to the Issuer and (in the case of interest (including, without limitation, Arrears of Interest and Additional Interest Amounts) payable on redemption) upon surrender (or, in the case of part payment only, endorsement) of the relevant Note Certificates at the Specified Office of any Paying Agent.
- (c) **Payments subject to fiscal laws:** Payments will be subject in all cases to any fiscal or other laws and regulations applicable thereto in the place of payment, but without prejudice to the provisions of Condition 9 (Taxation). No commissions or expenses shall be charged to the Noteholders in respect of such payments.
- (d) **Payments on business days:** If the due date for payment of any amount in respect of any Subordinated Note is not a business day in the place of presentation (following any modification in accordance with Condition 4(a) (Interest)), the Noteholder shall not be entitled to payment in such place of the amount due until the next succeeding business day in such place and shall not be entitled to any further interest or other payment in respect of any such delay. In this Condition 8(d), "business day" means, in respect of any place of presentation, any day on which banks are open for presentation and payment of bearer debt securities and for dealings in foreign currencies in such place of presentation and, in the case of payment by transfer to a euro-denominated account as referred to above, on which dealings in foreign currencies may be carried on both in London and in such place of presentation.
- (e) **Partial payments:** If the Fiscal Agent makes a partial payment in respect of any Subordinated Note presented to it for payment, such Paying Agent will endorse thereon a statement indicating the amount and the date of such payment.
- (f) **No commissions:** No commissions or expenses shall be charged to the Noteholders in respect of any payments made in accordance with this Condition 8.
- (g) **Record date:** Each payment in respect of a Subordinated Note will be made to the person shown as the Noteholder in the Register at the opening of business in the place of the Registrar's Specified Office on the Clearing System Business Day immediately preceding the due date for such payment.
- (h) **Agents:** The names of the initial Paying Agents and their initial specified offices are set out at the end of these Conditions. The Issuer reserves the right at any time to vary or terminate the appointment of any Paying Agent or Agent Bank and to appoint a successor fiscal agent or agent bank and additional or other paying agents, provided, however, that the Issuer will at all times maintain a fiscal agent and agent bank.

Notice of any termination or appointment and of any changes in specified offices of any of the Paying Agents or their Specified Offices will be given to the Noteholders promptly by the Issuer in accordance with Condition 15 (Notices).

In acting under the Paying Agency Agreement and in connection with the Subordinated Notes, the Paying Agents and the Agent Bank act solely as agents of the Issuer and do not assume any obligations towards or relationship of agency or trust for or with any of the Noteholders.

So long as the Subordinated Notes are represented by the Global Certificate, each payment in respect of the Global Certificate will be made to the person shown as the holder of such Global Certificate in the Register at the close of business (of the relevant clearing system) on the Clearing System Business Day before the due date for such payments, where "**Clearing System Business Day**" means a weekday (Monday to Friday, inclusive) except 25 December and 1 January.

## 9 TAXATION

All payments of principal and interest in respect of the Subordinated Notes by or on behalf of the Issuer shall be made free and clear of, and without withholding or deduction for or on account of, any present or future taxes, duties, assessments or governmental charges of whatever nature imposed, levied, collected, withheld or assessed by or on behalf of Bermuda or any political subdivision thereof or any authority therein or thereof having power to tax, unless the withholding or deduction of such taxes, duties, assessments or governmental charges is required by law. In that event the Issuer shall pay such additional amounts as will result in receipt by the Noteholders after such withholding or deduction of such amounts as would have been received by them had no such withholding or deduction been required, except that no such additional amounts shall be payable in respect of any Subordinated Note:

- (a) held by a Noteholder which is liable to such taxes, duties, assessments or governmental charges in respect of such Subordinated Note by reason of its having some connection with Bermuda other than the mere holding of the Subordinated Note;
- (b) where the present or future taxes, duties or governmental charges of whatever nature imposed, levied, collected, withheld or assessed are so imposed, levied, collected or withheld outside Bermuda on the income or gains of the relevant Noteholder; or
- (c) where (in the case of a payment of principal or interest on redemption) the relevant Note Certificate is surrendered for payment more than 30 days after the Relevant Date except to the extent that the relevant Noteholder would have been entitled to such additional amounts if it had surrendered the relevant Note Certificate on the last day of such period of 30 days.

In these Conditions, "**Relevant Date**" means whichever is the later of (1) the date on which the payment in question first becomes due and (2) if the full amount payable has not been received by the Fiscal Agent on or prior to such due date, the date on which (the full amount having been so received) notice to that effect has been given to the Noteholders.

Any reference in these Conditions to principal or interest shall be deemed to include any additional amounts in respect of principal or interest (as the case may be) which may be payable under this Condition 9.

If the Issuer becomes subject at any time to any taxing jurisdiction other than the Bermuda references in these Conditions to Bermuda shall be construed as references to Bermuda and/or such other jurisdiction.

The Issuer has been issued a tax assurance certificate by the Minister of Finance of Bermuda pursuant to section 2 of the Exempted Undertakings Tax Protection Act 1996 (the "**Tax Assurance**") which states that in the event of there being enacted in Bermuda any legislation imposing tax computed on profits or income or computed on any capital asset, gain or appreciation, or any tax in the nature of estate duty or inheritance tax, then the imposition of any tax described therein shall not be applicable to the Issuer or to any of its operations or the shares, debentures or other obligations of the Issuer, provided that such assurance will not prevent the application of any such tax or duty to persons ordinarily resident in Bermuda or prevent any tax payable in accordance with the provisions of the Land Tax Act 1967 or otherwise payable in relation to the land leased to the Issuer. The Tax Assurance shall be in effect until 31 March 2035. The Issuer will not be required under the law of Bermuda to make any deduction or withholding on account of tax from any payment it may make under the Subordinated Notes.

## 10 PRESCRIPTION

Claims against the Issuer for payment in respect of the Subordinated Notes shall be prescribed and become void unless made within 10 years (in the case of principal) or five years (in the case of interest including, without limitation, Arrears of Interest and Additional Interest Amounts) from the appropriate Relevant Date in respect of them.



11 **DEFAULT AND REMEDIES ON DEFAULT**

- (a) **Payment default:** If the Issuer fails to meet any of its payment obligations on the date that such payment obligations were due under the Subordinated Notes and such payment obligations are not met within 30 days of the date that such payment obligations were due, any Noteholder may, at its own discretion and without further notice, institute proceedings in order to recover the amounts due from the Issuer to such Noteholder, provided, however, that a Noteholder may not petition the Winding-Up of the Issuer or institute any other proceedings seeking the same equivalent relief in respect of the Issuer. For the avoidance of doubt, no amount shall be due from the Issuer in circumstances where payment of such amount is deferred in accordance with Condition 2(e) (Solvency Condition), Condition 5(a) (Regulatory Deficiency Deferral of Interest) or Condition 6(b) (Deferral of redemption date).
- (b) **Winding-Up:** Upon the Winding-Up of the Issuer (or other equivalent proceedings), the Subordinated Notes shall automatically become due and payable at their outstanding principal amount together with interest (including Arrears of Interest and Additional Interest Amounts) (if any) accrued to such date and the claim in respect thereof will be subject to the subordination provided for in Condition 2. In addition, any other amounts in respect of the Subordinated Notes (including any damages awarded for breach of any obligations under these Conditions in respect of which the Solvency Condition was not satisfied on the date upon which the same would otherwise have become due and payable ("**Solvency Claims**") will be payable by the Issuer in a Winding-Up or administration of the Issuer, and the claim in respect thereof will be subject to the subordination provided for in Condition 2. A Solvency Claim shall not bear interest.
- (c) **Enforcement:** Without prejudice to Condition 11(a) above, any Noteholder may institute such proceedings or take such steps or actions against the Issuer as it may think fit to enforce any obligation, term, condition or provision binding on the Issuer under the Subordinated Notes or the Deed of Covenant, provided, however, that a Noteholder may not at any time file for the Winding-Up of the Issuer and provided, further, that in no event shall the Issuer, by virtue of the institution of any such proceedings or the taking of such steps or actions, be obliged to pay any sum or sums (in cash or otherwise) sooner than the same would otherwise have been payable by it.
- (d) **Extent of Noteholders' remedy:** No remedy against the Issuer, other than as referred to in this Condition 11, shall be available to the Noteholders, whether for the recovery of amounts owing in respect of the Subordinated Notes or in respect of any breach by the Issuer of any of its other obligations under or in respect of the Subordinated Notes.

12 **UNDERTAKINGS OF THE ISSUER**

The undertakings in this Condition 12 remain in force from the Issue Date for so long as any Subordinated Note is outstanding.

- (a) The Issuer undertakes to supply to the Noteholders:
  - (i) no later than 60 calendar days following the end of the preceding financial quarter, the Issuer's and its Group's quarterly unaudited income statement and balance sheet, in each case prepared in accordance with GAAP; and
  - (ii) no later than 120 calendar days following the end of the fiscal year, the Issuer's and its Group's consolidated annual financial statements prepared in accordance with GAAP.
- (b) The Issuer undertakes not to directly or indirectly:
  - (i) declare or pay any dividend on or in respect of its Capital Stock, or purchase, redeem, retire or otherwise acquire for value any of its Capital Stock; or
  - (ii) make any payment or other distribution on any of its securities that rank junior to or pari passu with the Subordinated Notes,

(all such payments and other actions under (i) and (ii), a "**Restricted Payment**"), unless, at the time of, and after giving effect to, such Restricted Payment: (A) the Issuer is not and will not be in breach of the Relevant Rules, the Enhanced Capital Requirement or any of the

Conditions; and (B) no Regulatory Deficiency Deferral Event is existing at the time of (nor will start to exist immediately after and as a consequence of) the Restricted Payment.

- (c) The Issuer undertakes not to materially change the nature of its business to any business that it would not be able to carry out as a Bermuda-licensed insurance and reinsurance company.
- (d) Subject to compliance with all applicable laws and regulations, the Issuer agrees to promptly notify in accordance with Condition 15 (*Notices*) the Lead Arranger and/or the Noteholders of any regulatory filings or other requirements that the Issuer becomes aware of that the Issuer, the Lead Arranger and/or the Noteholders may be required to respond to as a result of the entry into of the Subscription Deed, the issuance of the Subordinated Notes, or any actions taken by or anticipated to be taken by the Issuer in connection therewith.
- (e) The Issuer undertakes to maintain its corporate existence and continue to be duly organised and validly existing under the laws of Bermuda.
- (f) The Issuer undertakes to comply in all material respects with all applicable laws and orders to which it may be subject.

### 13 REPLACEMENT OF NOTE CERTIFICATES

If any Note Certificate is lost, stolen, mutilated, defaced or destroyed, it may be replaced at the Specified Office of the Registrar, subject to all applicable laws, upon payment by the claimant of the expenses incurred in connection with such replacement and on such terms as to evidence, security, indemnity and otherwise as the Issuer may reasonably require. Mutilated or defaced Note Certificates must be surrendered before replacements will be issued.

### 14 MODIFICATION AND WAIVER

Subject to and in accordance with Condition 4(c) (*Rate of Interest*) and Condition 7 (*Variation and Substitution*), none of the Subordinated Notes, these Conditions, the Deed of Covenant or the Paying Agency Agreement may be amended without the consent of the Majority Noteholders, *provided* that the Paying Agency Agreement may be amended without the consent of such Noteholders for the purpose of curing any ambiguity or of curing, correcting or supplementing any manifest or proven error or any other defective provision contained therein and any such amendment to the Paying Agency Agreement shall not, in the sole opinion of the Issuer, be materially prejudicial to the interests of the Noteholders.

### 15 NOTICES

Notices to the Noteholders shall be valid if delivered to the Specified Office of the Fiscal Agent (who shall deliver them to the Noteholders) in accordance with the terms of the Paying Agency Agreement and [REDACTED], French branch as Lead Arranger at the following address: [REDACTED] and by email to [REDACTED] or any other address as notified from time to time by the relevant party.

### 16 GOVERNING LAW

The Subordinated Notes and any non-contractual obligations arising out of or in connection with the Subordinated Notes are governed by, and shall be construed in accordance with, English law, except that the subordination provisions of the Subordinated Notes set out in Condition 2(a) (*Status and Subordination*) will be governed by and construed in accordance with the laws of Bermuda.

### 17 JURISDICTION

The courts of England have exclusive jurisdiction to settle any dispute (a "**Dispute**") arising out of or in connection with the Subordinated Notes (including a dispute regarding any non-contractual obligation arising out of or in connection with the Subordinated Notes). The Issuer agrees that the courts of England are the most appropriate and convenient courts to settle any Dispute and, accordingly, that it will not argue to the contrary.

**DEFINED TERMS**

In these Conditions:

**"Additional Interest Amount"** has the meaning given in Condition 5(c) (Arrears of Interest and Additional Interest Amounts);

**"Adjustment Spread"** means a spread (which may be positive or negative) or formula or methodology for calculating a spread, which is required to be applied to a Successor Reference Rate or an Alternative Reference Rate (as applicable) in order to reduce or eliminate, to the extent reasonably practicable in the circumstances, any economic prejudice or benefit (as applicable) to the Noteholders as a result of the replacement of the Original Reference Rate with such Successor Reference Rate or Alternative Reference Rate (as applicable) and is the spread, formula or methodology which:

- (a) in the case of a Successor Reference Rate, is formally recommended in relation to the replacement of the Original Reference Rate with such Successor Reference Rate by any Relevant Nominating Body; or
- (b) in the case of a Successor Reference Rate for which no such recommendation has been made or in the case of an Alternative Reference Rate, the Independent Adviser (in consultation with the Issuer) determines is recognised or acknowledged as being in customary market usage in international debt capital markets transactions which reference the Original Reference Rate, where such rate has been replaced by such Successor Reference Rate or Alternative Reference Rate (as applicable); or
- (c) if no such customary market usage is recognised or acknowledged, the Independent Adviser (in consultation with the Issuer) determines (acting in good faith and in a commercially reasonable manner) to be appropriate;

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

**"Alternative Reference Rate"** means the rate which has replaced the Original Reference Rate in customary market usage in the international debt capital markets for the purposes of determining floating rates of interest in respect of notes denominated in euro. Should the Alternative Reference Rate be negative, the Alternative Reference Rate shall be deemed to be equal to zero;

**"Arrears of Interest"** has the meaning given in Condition 5(c) (Arrears of Interest and Additional Interest Amounts);

**"Assets"** means the unconsolidated gross assets of the Issuer as shown in the latest published audited balance sheet of the Issuer, but adjusted for contingencies and subsequent events;

**"Authorised Signatory"** means any Director or other person authorised to bind the Issuer;

**"Average Reference Rate"** has the meaning given in Condition 4(c)(iv) (Rate of Interest);

**"Benchmark Event"** means:

- (a) the Original Reference Rate has ceased to be published on the Relevant Screen Page as a result of such benchmark ceasing to be calculated or administered; or
- (b) a public statement by the administrator of the Original Reference Rate that it will, by a specified date within the following 6 months, cease publishing such Original Reference Rate permanently or indefinitely (in circumstances where no successor administrator has been appointed that will continue publication of such Original Reference Rate); or
- (c) a public statement by the supervisor of the administrator of the Original Reference Rate that such Original Reference Rate has been or will be, by a specified date within the following 6 months, permanently or indefinitely discontinued; or
- (d) a public statement by the supervisor of the administrator of the Original Reference Rate that means that such Original Reference Rate will be prohibited from being used or that its use will



be subject to restrictions or adverse consequences, in each case by a specified date within the following 6 months; or

- (e) there has taken place a change in customary market practice in the international debt capital markets applicable generally to floating rate notes denominated in euro (determined according to factors including, but not limited, to public statements, opinions and publications of industries bodies and organisations) that, in the view of the Issuer (acting in good faith and commercially), such Original Reference Rate is no longer representative of an underlying market or the methodology to calculate such Original Reference Rate has materially changed; or
- (f) it has or will on or prior to a specified date within the following 6 months become unlawful for the Agent Bank or the Issuer to calculate any payments due to be made to the Noteholders using the Original Reference Rate (including, without limitation, under the Benchmarks Regulation, if applicable);

**"Benchmarks Regulation"** means Regulation (EU) No. 2016/1011 of the European Parliament and of the Council of 8th June, 2016, as amended;

**"BMA"** means the Bermuda Monetary Authority (or any successor which carries on the role of regulator of financial services companies generally in Bermuda);

**"Brussels Banking Day"** means a day on which commercial banks are open for general business (including dealings in foreign exchange and foreign currency deposits) in Brussels;

**"Business Day"** means a day on which commercial banks and foreign exchange markets settle payments and are open for general business (including dealings in foreign exchange and foreign currency deposits) in London, Hamilton (Bermuda) and which is a TARGET2 Settlement Day; provided, however, that, for the purpose of Condition 8(d) (Payments on business days), "business day" shall have the meaning given in Condition 8(d), and provided, further, that, for the purpose of Condition 3(d) (Registration and delivery of Note Certificates), "business day" shall have the meaning given in Condition 3(d);

**"Calculation Amount"** has the meaning given in Condition 4(g) (Calculation Amount);

**"Capital Event"** means, at any time on or after the Issue Date, a change in the regulatory classification of the Subordinated Notes that results or would be likely to result in the exclusion of the Subordinated Notes in whole or, to the extent not prohibited by the Relevant Rules, in part, from the Issuer's Tier 2 Capital other than where such exclusion is only as a result of any applicable limitation on the amount of such capital;

**"Capital Stock"** means any and all shares (whether voting or non-voting, and including preferred shares) in the equity of such person or entity;

**"Clearing System Business Day"** means a day on which the clearing system for which the Subordinated Notes are being held is open for business;

**"Clearstream, Luxembourg"** means Clearstream Banking, SA;

**"Directors"** means the members of the board of directors of the Issuer from time to time;

**"Dispute"** has the meaning given in Condition 17 (Jurisdiction);

**"Enhanced Capital Requirement"** means the "enhanced capital requirement" as defined in the Relevant Rules, applicable to the Issuer;

**"Euro-zone"** means the region comprised of member states of the European Union that adopt the single currency in accordance with the Treaty establishing the European Community, as amended by the Treaty on the European Union and the Treaty of Amsterdam;

**"Euroclear"** means Euroclear Bank S.A. / N.V.;

**"First Call Date"** means the Interest Payment Date falling on or immediately after the tenth anniversary of the Issue Date;



**"First Interest Payment Date"** has the meaning given in Condition 4(a) (Interest);

**"GAAP"** means the generally accepted accounting principles in the United Kingdom or the United States, or such other generally accepted accounting principles as may be applicable to the Issuer and/or its parent company from time to time;

**"Group"** means Ark Insurance Holdings Limited (or its successor) and its consolidated subsidiaries;

**"Holding Company"** means, in relation to a person, any other person in respect of which it is a Subsidiary;

**"Independent Adviser"** means an independent financial institution of international repute or an independent financial adviser with appropriate expertise appointed by the Issuer;

**"Insurance Act"** means the Bermuda Insurance Act 1978 and related regulations, as amended from time to time;

**"Interest Amount"** has the meaning given to it in Condition 4(d) (Calculation of Interest Amount);

**"Interest Determination Date"** has the meaning given to it in Condition 4(c) (Rate of Interest);

**"Interest Payment Date"** has the meaning given in Condition 4(a) (Interest);

**"Interest Period"** means a period from (and including) one Interest Payment Date (or in the case of the first Interest Period only, the Issue Date) up to (but excluding) the next following Interest Payment Date;

**"Issue Date"** has the meaning given in Condition 1 (Form and Denomination);

**"Junior Creditors"** means creditors of the Issuer who are not Senior Creditors;

**"Junior Securities"** has the meaning given to it in Condition 2(a) (Status and Subordination);

**"Lead Arranger"** means [REDACTED];

**"Liabilities"** means the unconsolidated gross liabilities of the Issuer, as shown in the latest published audited balance sheet of the Issuer, but adjusted for contingent liabilities and for subsequent events, all in such manner as the Directors may determine;

**"Majority Noteholder"** means a Noteholder or Noteholders holding in aggregate: (a) in the case of Condition 12 (Undertakings of the Issuer), 75 per cent. or more of the Principal Amount Outstanding of the Subordinated Notes; and (b) in all other cases, 100 per cent. of the Principal Amount Outstanding of the Subordinated Notes. For the avoidance of doubt, Subordinated Notes held indirectly or directly by Affiliates of the Issuer shall not be included for the purposes of this definition;

**"Margin"** means:

- (a) for the period that begins (and includes) the Issue Date and ends on (but excludes) the Step-Up Date: 5,75% per annum;
- (b) for the period that begins (and includes) the Step-Up Date and ends on (but excludes) the Maturity Date: 6,75% per annum; and
- (c) for the period that begins (and includes) the Maturity Date: 7,75% per annum;

**"Maturity Date"** means the Interest Payment Date falling on or immediately after the twentieth anniversary of the Issue Date;

**"Noteholder"** means any person that holds an interest in the Subordinated Notes;

**"Original Reference Rate"** means EURIBOR. Should the Original Reference Rate be negative, the Original Reference Rate shall be deemed to be equal to zero;

**"Parity Securities"** has the meaning given to it in Condition 2(a) (Status and Subordination);

**"Principal Amount Outstanding of the Subordinated Notes"** means the original principal amount of the Subordinated Notes outstanding under Condition 6(a) (Scheduled Redemption);

**"Qualified Investor"** means a person:

- (a) who is an **"Accredited Investor"** as defined in Regulation D of the United States Securities Act 1933 (the **"Securities Act"**);
- (b) who is a "Qualified Institutional Buyer" as defined in the Securities Act;
- (c) who is a "qualified investor" as defined in Article 2(e) of Regulation (EU) 2017/1129;
- (d) who is a "Qualified Participant" as defined in section 9(2) of the Bermuda Investment Funds Act 2006;
- (e) to whom the offering of Subordinated Notes could lawfully be communicated by virtue of section 21(1) of the Financial Services and Markets Act 2000;
- (f) who is a "well-informed investor" as defined by the Luxembourg law of 13 February 2007 on specialised investment funds;
- (g) who is a "Professional Client" or an "Eligible Counterparty" as defined by the Markets in Financial Instruments Directive, as amended;
- (h) who is a "qualified Investor" as defined by the Swiss Federal Collective Investment Schemes Act; or
- (i) in any other jurisdiction who would satisfy the requirements of any of paragraphs (a) to (h) above if they were subject to the securities laws of such jurisdictions;

**"Qualifying Equivalent Securities"** means securities which have terms not materially less favourable to the Noteholders, as reasonably determined by the Issuer in consultation with an Independent Adviser, consulting firm or comparable expert, in each case being independent and of international standing on the subject, and which:

- (a) satisfy the criteria for the eligibility for inclusion of the proceeds of the Subordinated Notes as Tier 2 Capital under the Relevant Rules;
- (b) contain terms providing for the same interest rate and interest payment dates as apply to the Subordinated Notes;
- (c) rank senior to, or have the same ranking as, the Subordinated Notes;
- (d) preserve all obligations as to repayment of the Subordinated Notes, including (without limitation) as to timing of such repayment (including preserving the same Maturity Date);
- (e) do not contain terms providing for loss absorption through principal write-down or conversion into ordinary shares; and
- (f) preserve any rights to any accrued and unpaid interest, and any existing rights to other amounts payable under the Subordinated Notes which have accrued to Noteholders and not been paid;

**"Rate of Interest"** has the meaning given to it in Condition 4(c) (Rate of Interest);

**"Reference Rate"** has the meaning given to it in Condition 4(c) (Rate of Interest);

**"Regulatory Clearance Condition"** means, in respect of any proposed act on the part of the Issuer, the Issuer having notified the BMA, and obtained the consent or non-objection of the BMA, in relation to such act (in any case only if and to the extent required by the BMA and/or pursuant to the Relevant Rules);

**"Regulatory Deficiency Deferral Event"** means a Regulatory Deficiency Interest Deferral Event or a Regulatory Deficiency Redemption Deferral Event;

**"Regulatory Deficiency Interest Deferral Date"** means each Interest Payment Date in respect of which a Regulatory Deficiency Interest Deferral Event has occurred and is continuing or would occur if payment of the full amount of interest otherwise due was made on such Interest Payment Date;

**"Regulatory Deficiency Interest Deferral Event"** means: (a) any event which causes the Enhanced Capital Requirement to be breached and such breach is an event which, under the Relevant Rules, would require the Issuer to defer a payment of interest in respect of the Subordinated Notes in order for the Subordinated Notes to constitute Tier 2 Capital (for the avoidance of doubt, a breach of one or several of the Issuer's subsidiaries' capital requirements that would not trigger a breach of the Enhanced Capital Requirement will not be considered as a Regulatory Deficiency Interest Deferral Event); or (b) the BMA has otherwise provided written notice to the Issuer prohibiting the Issuer from making payments under the Subordinated Notes;

**"Regulatory Deficiency Redemption Deferral Event"** means any event which causes the Enhanced Capital Requirement to be breached and such breach is an event which, under the Relevant Rules, would require the Issuer to defer or suspend a scheduled repayment or redemption of the Subordinated Notes in order for the Subordinated Notes to constitute Tier 2 Capital. For the avoidance of doubt, any event which (i) causes the capital requirement of one or several of the Issuer's subsidiaries to be breached but (ii) that would not cause the Enhanced Capital Requirement to be breached and (iii) that would not constitute an event which, under the Relevant Rules, would require the Issuer to defer or suspend a scheduled repayment or redemption of the Subordinated Notes in order for the Subordinated Notes to constitute Tier 2 Capital, will not be considered as a Regulatory Deficiency Redemption Deferral Event;

**"Relevant Date"** has the meaning given in Condition 9 (Taxation);

**"Relevant Nominating Body"** means:

- (a) the European Central Bank or any other central bank or supervisory authority which is responsible for supervising the administrator of the Original Reference Rate; or
- (b) any working group or committee established, approved or sponsored by, chaired or co-chaired by or constituted at the request of (i) the European Central Bank, (ii) any other central bank or supervisory authority which is responsible for supervising the administrator of the Original Reference Rate, (iii) a group of the aforementioned central banks or other supervisory authorities or (iv) the Financial Stability Board or any part thereof;

**"Relevant Rules"** means the Insurance Act, and the rules and regulations promulgated thereunder, and any other legislation, rules or regulations of Bermuda or of the BMA from time to time relating to the characteristics, features or criteria of own funds or capital resources and which are, at such time, applicable to the Issuer;

**"Senior Creditors"** means:

- (a) any policyholders and policy beneficiaries of the Issuer and its Subsidiaries (and, for the avoidance of doubt, the claims of Senior Creditors who are policyholders and/or policy beneficiaries shall include all amounts to which any such policyholder or policy beneficiary (as applicable) would be entitled in its capacity as such under any applicable legislation or rules relating to the Winding-Up of insurance companies to reflect any right to receive, or expectation of receiving, policyholder or policy beneficiary benefits which such policyholder or policy beneficiary (as applicable) may have);
- (b) creditors of the Issuer (other than policyholders) who are unsubordinated creditors of the Issuer including, without limitation, tax authorities and holders of senior guarantees issued by the Issuer;
- (c) any senior or subordinated secured creditors of the Issuer; and
- (d) any other creditors to whose claims the Subordinated Notes must be subordinated under the Relevant Rules so as to permit the Subordinated Notes to qualify as Tier 2 Capital;

**"Step-Up Date"** means the Interest Payment Date falling on or immediately after the tenth anniversary of the Issue Date;

**"Subsidiary"** means any person (referred to as the "first person") in respect of which another person:

- (a) has the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:
- (i) cast, or control the casting of, more than 50 per cent. of the maximum number of votes that might be cast at a general meeting of the first person;
  - (ii) appoint or remove all, or the majority, of the Directors or other equivalent officers of the first person; or
- give directions with respect to the operating and financial policies of the first person with which the Directors or other equivalent officers of the first person are obliged to comply;  
or
- (b) holds beneficially more than 50 per cent. of the issued share capital of the first person (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital);

**"Successor Reference Rate"** means the rate that the Independent Adviser (in consultation with the Issuer) determines is a successor or replacement to the Original Reference Rate, which has been formally recommended by any Relevant Nominating Body. Should the Successor Reference Rate be negative, the Successor Reference Rate shall be deemed to be equal to zero;

**"TARGET2 Settlement Day"** means any day on which the Trans-European Automated Real-Time Gross Settlement Express Transfer (TARGET2) System is operating;

**"Tier 1 Capital"** means capital which is treated as a constituent of Tier 1 under the Relevant Rules;

**"Tier 2 Capital"** means capital which is treated as a constituent of Tier 2 under the Relevant Rules;

**"Winding-Up"** means at any time when: (i) an order is made, or an effective resolution is passed, for the winding-up, dissolution or liquidation of the Issuer or any other analogous procedures in any jurisdiction (except, in any such case, a solvent winding-up solely for the purpose of a reconstruction, amalgamation or substitution of the Issuer, the terms of which have previously been approved by the Noteholders); or (ii) a provisional liquidator, receiver, administrator or similar officer is appointed in respect of the Issuer and has given notice that it intends to declare a dividend; and

**"€"** and **"euro"** mean the lawful currency introduced at the third stage of the European economic and monetary union pursuant to the Treaty on the Functioning of the European Union, as amended.

## SCHEDULE 4

### REGULATIONS CONCERNING TRANSFERS AND REGISTRATION OF SUBORDINATED NOTES

1. The Subordinated Notes are in the denomination of €100,000. Subordinated Notes may only be held in holdings in the aggregate principal amount of €100,000 and integral multiples thereof (each, an "**Authorised Holding**").
2. Subject to paragraph 4 and paragraph 11 below, Subordinated Notes may be transferred by execution of the relevant form of transfer under the hand of the transferor or, where the transferor is a corporation, under its common seal or under the hand of two of its officers duly authorised in writing. Where the form of transfer is executed by an attorney or, in the case of a corporation, under seal or under the hand of two of its officers duly authorised in writing, a copy of the relevant power of attorney certified by a financial institution in good standing or a notary public or in such other manner as the Registrar may require or, as the case may be, copies certified in the manner aforesaid of the documents authorising such officers to sign and witness the affixing of the seal must be delivered with the form of transfer. In this Schedule, "**transferor**" shall, where the context permits or requires, include joint transferors and shall be construed accordingly.
3. The Note Certificate, if any, issued in respect of the Subordinated Notes to be transferred must be surrendered for registration, together with the form of transfer (including any certification as to compliance with restrictions on transfer included in such form of transfer) endorsed thereon, duly completed and executed, at the Specified Office of the Registrar or any Transfer Agent, and together with such evidence as the Registrar or (as the case may be) the relevant Transfer Agent may reasonably require to prove the title of the transferor and the authority of the persons who have executed the form of transfer. The signature of the person effecting a transfer of a Subordinated Note shall conform to any list of duly authorised specimen signatures supplied by such Noteholder or be certified by a financial institution in good standing, notary public or in such other manner as the Registrar or such Transfer Agent may require.
4. No Noteholder may require the transfer of a Subordinated Note to be registered during the period of 15 calendar days ending on the due date for any payment of principal or interest in respect of such Subordinated Note.
5. The executors or administrators of a deceased Noteholder (not being one of several joint Noteholders) and, in the case of the death of one or more of several joint Noteholders, the survivor or survivors of such joint Noteholders, shall be the only persons recognised by the Issuer as having any title to such Subordinated Note.
6. Any person becoming entitled to any Subordinated Notes in consequence of the death or bankruptcy of such Noteholder may, upon producing such evidence that he holds the position in respect of which he proposes to act under this paragraph or of his title as the Registrar or the relevant Transfer Agent may require (including legal opinions), become registered himself as such Noteholder or, subject to the provisions of these Regulations, the Subordinated Notes and the Conditions as to transfer, may transfer such Subordinated Notes. The Issuer, the Transfer Agents, the Registrar and the Paying Agents shall be at liberty to retain any amount payable upon the Subordinated Notes to which any person is so entitled until such person is so registered or duly transfers such Subordinated Notes.
7. Unless otherwise required by him and agreed by the Issuer and the Registrar, the Noteholder shall be entitled to receive only one Note Certificate in respect of his holding.
8. The joint Noteholders shall be entitled to one Note Certificate only in respect of their joint holding which shall, except where they otherwise direct, be delivered to the joint Noteholder whose name appears first in the Register in respect of the joint holding.
9. Where there is more than one transferee (to hold other than as joint Noteholders), separate forms of transfer (obtainable from the Specified Office of the Registrar or any Transfer Agent) must be completed in respect of each new holding.
10. A Noteholder may transfer all or part only of his holding of Subordinated Notes; provided that both the principal amount of Subordinated Notes transferred and the principal amount of the balance not transferred are an Authorised Holding. Where a Noteholder has transferred part only of his holding of Subordinated Notes, a new Note Certificate in respect of the balance of such holding will be delivered to him.

11. The Issuer, the Transfer Agents and the Registrar shall, save in the case of the issue of replacement Subordinated Notes pursuant to the Conditions, make no charge to the Noteholders for the registration of any holding of Subordinated Notes or any transfer thereof or for the issue of any Subordinated Notes or for the delivery thereof at the Specified Office of any Transfer Agent or the Registrar or by uninsured post to the address specified by the Noteholder, but such registration, transfer, issue or delivery shall be effected against such indemnity from the Noteholder or the transferee thereof as the Registrar or the relevant Transfer Agent may require in respect of any tax or other duty of whatever nature which may be levied or imposed in connection with such registration, transfer, issue or delivery.
12. Provided a transfer of a Subordinated Note is duly made in accordance with all applicable requirements and restrictions upon transfer and the Subordinated Note(s) transferred are presented to a Transfer Agent and/or the Registrar in accordance with the Agency Agreement and these Regulations, and subject to unforeseen circumstances beyond the control of such Transfer Agent or the Registrar arising, such Transfer Agent or the Registrar will, within five business days of the request for transfer being duly made, deliver at its Specified Office to the transferee or despatch by uninsured post (at the request and risk of the transferee) to such address as the transferee entitled to the Subordinated Notes in relation to which such Note Certificate is issued may have specified, a Note Certificate in respect of which entries have been made in the Register, all formalities complied with and the name of the transferee completed on the Note Certificate by or on behalf of the Registrar; and, for the purposes of this paragraph, "**business day**" means a day on which commercial banks are open for business (including dealings in foreign currencies) in the cities in which the Registrar and (if applicable) the relevant Transfer Agent have their respective Specified Offices.



**SCHEDULE 5**

**SPECIFIED OFFICES OF THE AGENTS**

Specified Office and Contact Details of the Fiscal Agent, Transfer Agent and Agent Bank:

**The Bank of New York Mellon, London Branch**

One Canada Square  
London E14 5AL  
United Kingdom

Phone Number: [REDACTED]

Email: [REDACTED]

Specified Office and Contact Details of the Registrar and Paying Agent:

**The Bank of New York Mellon SA/NV, Dublin Branch**

Riverside Two  
Sir John Rogerson's Quay  
Grand Canal Dock  
Dublin 2, Ireland

Email: [REDACTED]





DATED

11 AUGUST 2021

Certain identified information has been omitted because it is both (i) not material and (ii) the type that the registrant treats as private or confidential.

(1) GROUP ARK INSURANCE LIMITED  
AS ISSUER

(2) THE BANK OF NEW YORK MELLON, LONDON  
BRANCH AS FISCAL AGENT, TRANSFER AGENT AND  
AGENT BANK

(3) THE BANK OF NEW YORK MELLON SA/NV, DUBLIN  
BRANCH AS REGISTRAR

ORIGINAL/COUNTERPART

## PAYING AGENCY AGREEMENT

RELATING TO US\$47,000,000 FLOATING RATE TIER 2 SUBORDINATED NOTES  
DUE 2041

REFERENCE

BGELPI AND/OR 579508131

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**CONTENTS**

**CLAUSE**

1	DEFINITIONS AND INTERPRETATION.....	1
2	APPOINTMENT OF AGENTS.....	3
3	THE SUBORDINATED NOTES .....	3
4	EXCHANGES OF GLOBAL NOTE CERTIFICATE FOR INDIVIDUAL NOTE CERTIFICATES .....	4
5	TRANSFERS OF SUBORDINATED NOTES.....	4
6	REPLACEMENT OF NOTE CERTIFICATES.....	5
7	PAYMENTS TO THE FISCAL AGENT.....	6
8	PAYMENTS TO NOTEHOLDERS .....	6
9	DUTIES OF THE AGENT BANK.....	8
10	COVENANTS BY THE ISSUER.....	9
11	MISCELLANEOUS DUTIES OF THE AGENTS.....	10
12	FEES AND EXPENSES .....	11
13	TERMS OF APPOINTMENT.....	11
14	CHANGES IN AGENTS .....	13
15	NOTICES.....	15
16	LAW AND JURISDICTION.....	16
17	FORCE MAJEURE .....	17
18	SANCTIONS.....	17
19	RIGHTS OF THIRD PARTIES .....	18
20	MODIFICATION.....	18
21	CONFIDENTIALITY .....	18
22	COUNTERPARTS .....	18

**SCHEDULE**

SCHEDULE 1	FORM OF GLOBAL NOTE CERTIFICATE.....	19
SCHEDULE 2	FORM OF INDIVIDUAL NOTE CERTIFICATE .....	24
SCHEDULE 3	TERMS AND CONDITIONS .....	28
SCHEDULE 4	REGULATIONS CONCERNING TRANSFERS AND REGISTRATION OF SUBORDINATED NOTES .....	50
SCHEDULE 5	SPECIFIED OFFICES OF THE AGENTS.....	52

THIS PAYING AGENCY AGREEMENT dated

11 August 2021

**BETWEEN:**

- (1) **GROUP ARK INSURANCE LIMITED**, a Bermuda exempted insurance company (Registration No. 39617) limited by shares, with its registered office at, Clarendon House, 2 Church Street, Hamilton HM11, Bermuda, in its capacity as Issuer (the "**Issuer**");
- (2) **THE BANK OF NEW YORK MELLON, LONDON BRANCH**, whose registered office is at One Canada Square, London, E14 5AL, United Kingdom in its capacity as fiscal agent, transfer agent and agent bank (in such capacities, the "**Fiscal Agent**", the "**Transfer Agent**", the "**Agent Bank**" and, together with any other person(s) appointed from time to time as paying agents under the terms of this Agreement, the "**Paying Agents**"); and
- (3) **THE BANK OF NEW YORK MELLON SA/NV, DUBLIN BRANCH**, whose registered office is at Riverside Two, Sir John Rogerson's Quay, Grand Canal Dock, Dublin 2, Ireland in its capacity as registrar, (in such capacity, the "**Registrar**").

**RECITALS**

- (A) The Issuer has authorised the creation and issue of US\$47,000,000 in aggregate principal amount of Floating Rate Tier 2 Subordinated Notes due 2041 (the "**Subordinated Notes**").
- (B) The Subordinated Notes will be constituted by a deed of covenant dated on or about the date hereof (as amended or supplemented from time to time, the "**Deed of Covenant**") entered into by the Issuer.
- (C) The Subordinated Notes will be in registered form in denominations of US\$200,000 and integral multiples of US\$1,000 in excess thereof. The Subordinated Notes will be represented by a registered global certificate (the "**Global Note Certificate**"), which will be exchangeable for individual note certificates (the "**Individual Note Certificates**" and, together with the Global Note Certificate, the "**Note Certificates**") in the circumstances specified therein.
- (D) The Issuer, the Registrar, the Transfer Agent and the Paying Agents (collectively, the "**Parties**") wish to record certain arrangements which they have made in relation to the Subordinated Notes.

**IT IS AGREED** as follows:**1 DEFINITIONS AND INTERPRETATION****1.1 Definitions**

In this Agreement, the following expressions shall have the following meanings:

"**Agents**" means the Fiscal Agent, the Paying Agents, the Registrar, the Transfer Agent and the Agent Bank, and "**Agent**" means any one of them;

"**Agreement**" means this paying agency agreement between the Issuer and the Agents;

"**Applicable Law**" shall be deemed to include (i) any rule or practice of any Authority by which any Party is bound or with which it is accustomed to comply; (ii) any agreement between any Authorities; and (iii) any agreement between any Authority and any Party that is customarily entered into by institutions of a similar nature;

"**Authority**" means any competent regulatory, prosecuting, Tax or governmental authority in any jurisdiction;

"**Business Day**" means a day on which commercial banks and foreign exchange markets settle payments and are open for general business (including dealings in foreign exchange and foreign currency deposits) in New York, London and Hamilton (Bermuda);

"**Business Hours**" means, in respect of a Business Day for the provisions of Clause 9 (*Duties of the Agent Bank*), between 10 a.m. and 4 p.m. Local Time;

"**Clearing Systems**" means Euroclear and Clearstream, Luxembourg;

"**Clearstream, Luxembourg**" means Clearstream Banking, S.A.;

"**Code**" means the U.S. Internal Revenue Code of 1986, as amended;

"**Common Depository**" means a common depository acting for Euroclear and Clearstream, Luxembourg;

"**Conditions**" means the terms and conditions of the Subordinated Notes (in the form set out in Schedule 3 (*Terms and Conditions*) hereto and as modified from time to time in accordance with their terms and any references to a numbered "**Condition**" is to the correspondingly numbered provision thereof);

"**Electronic Means**" means the following communication methods: (i) non-secure methods of transmission or communication such as e-mail and facsimile transmission and (ii) secure electronic transmission containing applicable authorisation codes, passwords and/or authentication keys issued by any of the Agents or another method or system specified by any of the Agents as available for use in connection with its services hereunder;

"**Euroclear**" means Euroclear Bank S.A. / N.V.;

"**FATCA Withholding**" means any withholding or deduction required pursuant to an agreement described in Section 1471(b) of the Code or otherwise imposed pursuant to Sections 1471 through 1474 of the Code, any regulations or agreements thereunder, any official interpretations thereof, or any law implementing an intergovernmental approach thereto;

"**Fiscal Agent**", "**Paying Agents**", "**Registrar**", "**Transfer Agent**" and "**Agent Bank**" include any successors thereto appointed from time to time in accordance with Clause 14 (*Changes in Agents*) and "**Paying Agent**" means any one of the Paying Agents;

"**Local Time**" means the time in the city in which the Fiscal Agent has its Specified Office;

"**Noteholder**" means any person that holds an interest in the Subordinated Note;

"**Regulations**" means the regulations concerning the transfer of Subordinated Notes as the same may from time to time be promulgated by the Issuer and approved by the Registrar (the initial such regulations being set out in Schedule 4 (*Regulations concerning transfers and registration of Subordinated Notes*));

"**Specified Office**" means the premises of any Paying Agent, the Registrar or Transfer Agent, in each case as set out in Schedule 5 (*Specified Offices of the Agents*);

"**Tax**" means any present or future taxes, duties, assessments or governmental charges of whatever nature imposed, levied, collected, withheld or assessed by or on behalf of any Authority having power to tax; and

"**US\$**" and "**U.S. Dollar**" mean the lawful currency of the United States of America.

## 1.2 **Meaning of outstanding**

For the purposes of this Agreement (but without prejudice to its status for any other purpose), a Subordinated Note shall be considered to be "outstanding" unless one or more of the following events has occurred:

- (a) it has been redeemed in full or purchased under Condition 6 (*Redemption, Purchase and Cancellation*) and, in either case, has been cancelled in accordance with Condition 6 (*Redemption, Purchase and Cancellation*); or
- (b) the due date for its redemption in full has occurred and all sums due in respect of such Subordinated Note (including all accrued interest) have been received by the Fiscal Agent and remain available for payment against presentation and surrender of the relevant Note Certificate,

*provided, however, that*, for the purposes of ascertaining the right to attend and vote at any meeting of Noteholders, those Subordinated Notes (if any) which are for the time being held by any person

(including but not limited to the Issuer) for the benefit of the Issuer shall (unless and until ceasing to be so held) be deemed not to remain outstanding.

**1.3 Clauses and Schedules**

Any reference in this Agreement to a Clause or a Schedule is, unless otherwise stated, a reference to a clause hereof or a schedule hereto.

**1.4 Principal and interest**

In this Agreement, any reference to principal or interest includes any additional amounts payable in relation thereto under the Conditions.

**1.5 Terms defined in the Conditions**

Capitalised terms and expressions used but not defined herein have the respective meanings given to them in the Conditions.

**1.6 Statutes**

Any reference in this Agreement to a statute, any provision thereof or to any statutory instrument, order or regulation made thereunder shall be construed as a reference to such statute, provision, statutory instrument, order or regulation as the same may have been, or may from time to time be, amended or re-enacted.

**1.7 Headings**

Headings and sub-headings are for ease of reference only and shall not affect the construction of this Agreement.

**1.8 Miscellaneous**

(a) A reference to a person in this Agreement includes its successors, transferees and assignees save that, with respect to the Paying Agents, the terms of Clause 11 (*Miscellaneous Duties of the Agents*) shall apply.

(b) Word importing the singular shall include the plural and vice-versa.

**2 APPOINTMENT OF AGENTS**

Upon and subject to the terms of this Agreement and the Conditions, the Issuer hereby appoints each Agent as its agent in respect of the Subordinated Notes at its respective Specified Office, and each Agent hereby accepts such appointment. Each Agent shall perform the duties required of it by this Agreement and the Conditions. The duties and obligations of each Agent hereunder shall be several and not joint.

**3 THE SUBORDINATED NOTES**

**3.1 Global Note Certificate**

The Global Note Certificate shall:

- (a) be in substantially the form set out in Schedule 1 (*Form of Global Note Certificate*); and
- (b) be executed manually, in facsimile or by electronic or digital signature by or on behalf of the Issuer and authenticated manually or by electronic or digital signature on behalf of the Registrar.

**3.2 Individual Note Certificates**

Each Individual Note Certificate shall:

- (a) be in substantially the form set out in Schedule 2 (*Form of Individual Note Certificate*);

- (b) have a unique serial number printed thereon; and
- (c) be executed manually, in facsimile or by electronic or digital signature by or on behalf of the Issuer and authenticated manually or by electronic or digital signature on behalf of the Registrar.

### 3.3 Signatures

Any signature on a Note Certificate shall be that of a person who is at the time of the creation and issue of the Subordinated Notes an authorised signatory for such purpose of the Issuer notwithstanding that such person has for any reason (including death) ceased to be such an authorised signatory at the time at which such Note Certificate is delivered.

### 3.4 Availability of Individual Note Certificates

The Issuer shall arrange for the duly signed unauthenticated Global Note Certificate to be made available to or to the order of the Fiscal Agent not later than one day prior to the Issue Date. If the Issuer is required to deliver Individual Note Certificates pursuant to the terms of the Global Note Certificate, the Issuer shall promptly arrange for a stock of Individual Note Certificates (unauthenticated and with the names of the registered Noteholders left blank but executed on behalf of the Issuer and otherwise complete) to be made available to the Registrar and the Fiscal Agent and not later than 14 days before the date upon which the Global Note Certificate is to be exchanged for Individual Note Certificates. The Issuer shall also arrange for such Global Note Certificates and Individual Note Certificates as are required to enable the Registrar to perform its obligations under Clause 4 (*Exchanges of Global Note Certificate for Individual Note Certificates*), Clause 5 (*Transfers of Subordinated Notes*) and Clause 6 (*Replacement of Note Certificates*) to be made available to or to the order of the Registrar and the Fiscal Agent from time to time. In the event that Individual Notes Certificates are issued and an Agent informs the Issuer that it is unable to perform its obligations under this Agreement, the Issuer shall forthwith appoint another agent in accordance with Clause 14.4 (*Additional and successor agents*) which is able to perform such obligations.

### 3.5 Authority to authenticate

Each of the Registrar and the Fiscal Agent is authorised by the Issuer to authenticate the Global Note Certificate and the Individual Note Certificate by the signature of any of its officers or any other person duly authorised for the purpose by the Registrar, the Fiscal Agent or (as the case may be) such Paying Agent.

### 3.6 Duties of the Registrar

The Registrar and the Fiscal Agent shall hold in safekeeping all unauthenticated Global Note Certificates and Individual Note Certificates delivered to it in accordance with Clause 3.4 (*Availability of Individual Note Certificates*) and shall ensure that they are authenticated and delivered only in accordance with the terms hereof and of the Global Note Certificate (if applicable).

## 4 EXCHANGES OF GLOBAL NOTE CERTIFICATE FOR INDIVIDUAL NOTE CERTIFICATES

If the Global Note Certificate becomes exchangeable for Individual Note Certificates in accordance with its terms, the Registrar shall authenticate and deliver to each person designated by a Clearing System an Individual Note Certificate in accordance with the terms of this Agreement and the Global Note Certificate.

## 5 TRANSFERS OF SUBORDINATED NOTES

### 5.1 Maintenance of the Register

The Registrar shall maintain in relation to the Subordinated Notes a register (the "**Register**"), which shall be kept outside of the United Kingdom and at its Specified Office in accordance with the Conditions and be made available by the Registrar to the Issuer and the other Agents for inspection and for the taking of copies or extracts therefrom at all reasonable times. The Register shall show the aggregate principal amount, serial numbers and dates of issue of Note Certificates, the names and addresses of the initial Noteholders thereof and the dates of all transfers to, and the names and addresses of, all subsequent Noteholders thereof, all cancellations of Note Certificates and all replacements of Note Certificates.



**5.2 Registration of transfers in the Register**

The Registrar shall receive requests for the transfer of Subordinated Notes in accordance with the Conditions and the Regulations and shall make the necessary entries in the Register.

**5.3 Transfer Agent to receive requests for transfers of Subordinated Notes**

The Transfer Agent shall receive requests for the transfer of Subordinated Notes in accordance with the Conditions and the Regulations and assist, if required in the issue of new Note Certificates to give effect to such transfers and, in particular, upon any such request being duly made, shall promptly notify the Registrar of:

- (a) the aggregate principal amount of the Subordinated Notes to be transferred;
- (b) the name(s) and addresses to be entered on the Register of the holder(s) of the new Note Certificate(s) to be issued in order to give effect to such transfer; and
- (c) the place and manner of delivery of the new Note Certificate(s) to be delivered in respect of such transfer,

and shall forward the Note Certificate(s) relating to the Subordinated Notes to be transferred (with the relevant form(s) of transfer duly completed) to the Registrar with such notification.

**6 REPLACEMENT OF NOTE CERTIFICATES**

**6.1 Delivery of replacements**

Subject to receipt of replacement Global Note Certificates and/or Individual Note Certificates (as the case may be), the Fiscal Agent shall, upon and in accordance with the instructions of the Issuer (which instructions may, without limitation, include terms as to the payment of expenses and as to evidence, security and indemnity), complete, authenticate and deliver a Global Note Certificate or Individual Note Certificate which the Issuer has determined to issue as a replacement for any Global Note Certificate or Individual Note Certificate which has been mutilated or defaced or which has been or is alleged to have been destroyed, stolen or lost; *provided, however*, that the Fiscal Agent shall not deliver any Global Note Certificate or Individual Note Certificate as a replacement for any Global Note Certificate or Individual Note Certificate which has been mutilated or defaced otherwise than against surrender of the same and shall not issue any Global Note Certificate or Individual Note Certificate until the applicant has furnished the Fiscal Agent with such evidence and indemnity as the Issuer and/or the Fiscal Agent may reasonably require and has paid such costs and expenses as may be incurred in connection with such replacement.

**6.2 Replacements to be numbered**

Each replacement Global Note Certificate or Individual Note Certificate delivered under this Agreement shall bear a unique serial number.

**6.3 Cancellation and destruction**

The Fiscal Agent shall cancel and destroy each mutilated or defaced Global Note Certificate or Individual Note Certificate surrendered to it in respect of which a replacement has been delivered.

**6.4 Notification**

The Fiscal Agent shall notify the Issuer and each other Agent of the delivery by it of any replacement Global Note Certificate or Individual Note Certificate specifying the serial number thereof and the serial number (if any and if known) of the Global Note Certificate or Individual Note Certificate which it replaces and confirming that the Global Note Certificate or Individual Note Certificate which it replaces has been cancelled and destroyed in accordance with Clause 6.3 (*Cancellation and destruction*).

## 7 PAYMENTS TO THE FISCAL AGENT

### 7.1 Issuer to pay Fiscal Agent

Subject to Conditions 5 (*Deferral of Interest*) and 6 (*Redemption, Purchase and Cancellation*), the Issuer shall, one Business Day before each date on which any payment in respect of the Subordinated Notes becomes due, transfer to the Fiscal Agent before 10.00 a.m. (local time in the relevant principal financial centre of the country of the relevant currency) such amount as may be required for the purposes of such payment.

### 7.2 Manner and time of payment

Each amount payable under Clause 7.1 (*Issuer to pay Fiscal Agent*) shall be paid unconditionally by credit transfer in U.S. Dollar and in immediately available freely transferable, cleared funds not later than 10.00 a.m. (local time in the relevant principal financial centre of the country of the relevant currency) on the relevant day to such account with such bank as the Fiscal Agent may from time to time notify to the Issuer for such purpose. The Issuer shall, on the second Business Day before the due date of each payment by it under Clause 7.1 (*Issuer to pay Fiscal Agent*), procure that the bank effecting payment for it confirms by authenticated SWIFT message to the Fiscal Agent the payment instructions relating to such payment.

### 7.3 Exclusion of liens and interest

Each of the Agents shall be entitled to deal with each amount paid to them under this Clause 7 (*Payments to the Fiscal Agent*) in the same manner as other amounts paid to them as bankers by their customers; *provided, however*, that:

- (a) they shall not exercise against the Issuer any lien, right of set-off or similar claim in respect thereof;
- (b) they shall not be liable to any person for interest thereon; and
- (c) they shall not be required to segregate any money, except as required by law.

### 7.4 Application by Fiscal Agent

The Fiscal Agent shall apply each amount paid to it hereunder in accordance with Clause 8 (*Payments to Noteholders*) and shall not be obliged to repay any such amount unless the claim for the relevant payment becomes void in accordance with Applicable Law, in which event it shall refund at the written request of the Issuer such portion of such amount as relates to such payment by paying the same by credit transfer in U.S. Dollar to such account as the Issuer has by notice to the Fiscal Agent specified for the purpose.

## 8 PAYMENTS TO NOTEHOLDERS

### 8.1 Payments by Paying Agents

Each Paying Agent acting through its Specified Office shall make payments of principal and interest in respect of the Subordinated Notes in accordance with the Conditions and, so long as the Subordinated Notes are evidenced by the Global Note Certificate, the terms thereof, *provided, however, that*:

- (a) if any Global Note Certificate or Individual Note Certificate is presented or surrendered for payment to any Paying Agent and such Paying Agent has delivered a replacement therefor or has been notified that the same has been replaced, such Paying Agent shall as soon as reasonably practicable notify the Issuer of such presentation or surrender and shall not make payment against the same until it is so instructed by the Issuer and has received the amount to be so paid;
- (b) a Paying Agent shall not be obliged (but shall be entitled) to make payments of principal or interest in respect of the Subordinated Notes, if:
  - (i) in the case of the Fiscal Agent, it has not received the full amount of any payment due to it under Clause 7.1 (*Issuer to pay Fiscal Agent*); or



- (ii) in the case of any other Paying Agent, it is not able to establish that the Fiscal Agent has received (whether or not at the due time) the full amount of any payment due to it under Clause 7.1 (*Issuer to pay Fiscal Agent*); and
- (c) each Paying Agent shall cancel each Note Certificate against presentation and surrender of which it has made full payment and shall deliver each Note Certificate so cancelled by it to, or to the order of, the Registrar.

## 8.2 Exclusion of liens and commissions

No Paying Agent shall exercise any lien, right of set-off or similar claim against any person to whom it makes any payment under Clause 8.1 (*Payments by Paying Agents*) in respect thereof, nor shall any commission or expense be charged by it to any such person in respect thereof.

## 8.3 Reimbursement by Fiscal Agent

If a Paying Agent other than the Fiscal Agent makes any payment in accordance with Clause 8.1 (*Payments by Paying Agents*):

- (a) it shall notify the Fiscal Agent of the amount so paid by it and the serial number and principal amount of each Note Certificate in relation to which payment of principal or interest was made; and
- (b) subject to and to the extent of compliance by the Issuer with Clause 7.1 (*Issuer to pay Fiscal Agent*) (whether or not at the due time), the Fiscal Agent shall pay to such Paying Agent out of the funds received by it under Clause 7.1 (*Issuer to pay Fiscal Agent*), by credit transfer in U.S. Dollar and in immediately available freely transferable, cleared funds to such account with such bank as such Paying Agent has by notice to the Fiscal Agent specified for the purpose, an amount equal to the amount so paid by such Paying Agent.

## 8.4 Appropriation by Fiscal Agent

If the Fiscal Agent makes any payment in accordance with Clause 8.1 (*Payments by Paying Agents*), it shall be entitled to appropriate for its own account out of the funds received by it under Clause 7.1 (*Issuer to pay Fiscal Agent*) an amount equal to the amount so paid by it.

## 8.5 Reimbursement by Issuer

Subject to sub-clauses 8.1(a) and 8.1(b) (*Payments by Paying Agents*), if a Paying Agent makes a payment in respect of Subordinated Notes on or after the due date for such payment under the Conditions at a time at which the Fiscal Agent has not received the full amount of the relevant payment due to it under Clause 7.1 (*Issuer to pay Fiscal Agent*) and the Fiscal Agent is not able out of funds received by it under Clause 7.1 (*Issuer to pay Fiscal Agent*) to reimburse such Paying Agent therefor (whether by payment under Clause 8.3 (*Reimbursement by Fiscal Agent*) or appropriation under Clause 8.4 (*Appropriation by Fiscal Agent*)), the Issuer shall from time to time on demand pay to the Fiscal Agent for account of such Paying Agent:

- (a) the amount so paid out by such Paying Agent and not so reimbursed to it; and
- (b) interest on such amount from the date on which it is paid out to the date of reimbursement at a percentage rate per annum equal to the cost to the Paying Agent of funding the amount paid out, as certified by the Paying Agent and expressed as a percentage rate per annum,

*provided, however, that any payment made under sub-clause 8.5(a) (Reimbursement by Issuer) shall satisfy pro tanto the obligations of the Issuer under Clause 7.1 (Issuer to pay Fiscal Agent).*

## 8.6 Partial payments

If at any time and for any reason a Paying Agent makes a partial payment in respect of the Global Note Certificate or any Individual Note Certificate presented for payment to it, such Paying Agent shall enface thereon a statement indicating the amount and date of such payment. In addition, if, on any due date for payment, less than the full amount of any principal or interest is paid in respect of the Subordinated Notes, the Registrar will note on the Register a memorandum of the amount and date of any payment then made and, if the Global Note Certificate or any Individual Note Certificate

is presented for payment in accordance with the Conditions and no payment is then made, the date of presentation of the Global Note Certificate or (as the case may be) such Individual Note Certificate.

#### 8.7 Notice of any withholding or deduction

- (a) Each Party shall, within ten Business Days of a written request by another Party, supply to that other Party such forms, documentation and other information relating to it, its operations, or the Subordinated Notes as that other Party reasonably requests for the purposes of that other Party's compliance with Applicable Law and shall notify the relevant other Party reasonably promptly in the event that it becomes aware that any of the forms, documentation or other information provided by such Party is (or becomes) inaccurate in any material respect; *provided, however that* no Party shall be required to provide any forms, documentation or other information pursuant to this sub-clause; to the extent that: (i) any such form, documentation or other information (or the information required to be provided on such form or documentation) is not reasonably available to such Party and cannot be obtained by such Party using reasonable efforts; or (ii) doing so would or might in the reasonable opinion of such Party constitute a breach of any: (a) Applicable Law; (b) fiduciary duty; or (c) duty of confidentiality;
- (b) The Issuer shall notify each Agent in the event that it determines that any payment to be made by an Agent under the Subordinated Notes is a payment which could be subject to FATCA Withholding if such payment were made to a recipient that is generally unable to receive payments free from FATCA Withholding, and the extent to which the relevant payment is so treated; *provided, however, that* the Issuer's obligation under this sub-clause 8.7 shall apply only to the extent that such payments are so treated by virtue of characteristics of the Issuer, the Subordinated Notes, or both;
- (c) Notwithstanding any other provision of this Agreement, each Agent shall be entitled to make a deduction or withholding from any payment which it makes under the Subordinated Notes for or on account of any Tax, if and only to the extent so required by Applicable Law, in which event the Agent shall make such payment after such deduction or withholding has been made and shall:
  - (i) where permitted by the Applicable Law, account to the relevant Authority within the time allowed for the amount so deducted or withheld; or
  - (ii) return to the Issuer the amount so deducted or withheld reasonably promptly, and within such time as to allow the Issuer to account to the relevant Authority for such amount within the time allowed, after making such payment, in which case, the Issuer shall so account to the relevant Authority for such amount. For the avoidance of doubt, FATCA Withholding is a deduction or withholding which is deemed to be required by Applicable Law for the purposes of this sub-clause 8.7;
- (d) In the event that any Agent determines that any deduction or withholding for or on account of any Tax will be required by Applicable Law in connection with any payment due to any of the Agents on the Subordinated Notes, then that Agent shall notify the Issuer on making such determination; and
- (e) In the event that the Issuer determines in its sole discretion that any deduction or withholding for or on account of any Tax will be required by Applicable Law in connection with any payment due to any of the Agents on any Subordinated Notes, then the Issuer will be entitled to redirect or reorganise any such payment in any way that it sees fit in order that the payment may be made without such deduction or withholding provided that any such redirected or re-organised payment is made through a recognised institution of international standing and otherwise made in accordance with this Agreement. The Issuer will promptly notify the Agents of any such redirection or reorganisation. For the avoidance of doubt, FATCA Withholding is a deduction or withholding which is deemed to be required by Applicable Law for the purposes of this sub-clause 8.7.

#### 9 DUTIES OF THE AGENT BANK

The Agent Bank agrees to comply with the provisions of Condition 4 (*Interest*) and this Agreement. In particular, the Agent Bank shall:

- (a) determine the Rate of Interest (as defined in the Conditions) applicable to the Subordinated Notes in accordance with the Conditions;

- (b) as soon as practicable after determining the Rate of Interest applicable to the Subordinated Notes for any period (but in any event not later than the first day of the applicable Interest Period (as defined in the Conditions)) pursuant to the Conditions, notify the Issuer, the Noteholders and the Paying Agents thereof in accordance with the Conditions;
- (c) publish the Rate of Interest, Interest Amount and relative Interest Payment Date in accordance with Condition 4 (*Interest*); and
- (d) maintain records of the quotations obtained, and all rates determined, by it and make such records available for inspection at all reasonable times by the Issuer and the Paying Agents.

## 10 COVENANTS BY THE ISSUER

The Issuer covenants with the Fiscal Agent that, so long as any of the Subordinated Notes remain outstanding, it will:

### 10.1 Notification of Redemption or Repayment

Not less than the number of days specified in the relevant Condition prior to the redemption or repayment date in respect of any Subordinated Note, give to the Fiscal Agent notice in writing of the amount of such redemption or repayment pursuant to the Conditions and duly proceed to redeem or repay such Subordinated Notes accordingly;

### 10.2 Supervisory Consent

So long as any Subordinated Note is outstanding, the Issuer will, where the Regulatory Clearance Condition is required to be satisfied before any payment is made or any other action is taken under this Agreement or the Subordinated Notes, meet such Regulatory Clearance Condition promptly before making such payment or taking such action and promptly provide a copy to the Fiscal Agent;

### 10.3 BMA Objection

So long as any Subordinated Note is outstanding, the Issuer will, having received an objection to the making of any payment or taking of any action pursuant to the Conditions from the BMA following notification thereof to the BMA pursuant to Clause 10.2 (*Supervisory Consent*), promptly notify the Fiscal Agent in writing thereof and, if permitted by Applicable Law, regulation or by the BMA, provide a copy thereof to the Fiscal Agent;

### 10.4 BMA Notifications

The Issuer undertakes to supply to the Fiscal Agent, in sufficient copies for all the Noteholders:

- (a) the Issuer's annual statutory returns as filed with the BMA (or any successor thereto) as Issuer's regulator (the "**Regulator**"), as soon as reasonably practicable and in any event no later than the date falling 20 Business Days after the date on which such filing is made;
- (b) promptly upon receipt or submission (as the case may be), copies of any approval, direction or order received by the Issuer from the Regulator from time to time or any response from the Issuer in relation to such approval, direction or order, including in connection with any capital release or any other return of surplus capital, in each case to the extent material to the interests of the Noteholders;
- (c) promptly upon submission, copies of any reports and all other material correspondence required or requested by or provided to the Regulator from time to time;

### 10.5 Interest Deferral

So long as any Subordinated Note is outstanding, the Issuer will, where any payment of any interest pursuant to Condition 5 (*Deferral of Interest*) is mandatorily deferred, give notice of such mandatory deferral to the Noteholders in accordance with Conditions 5(e)(*Notice of Deferral*) and 15 (Notices) and to the Fiscal Agent, and, in accordance with Condition 5(a)(*Regulatory Deficiency Deferral of Interest*), the Issuer will deliver a certificate (on the same date that it gives such notice) signed by two Authorised Signatories (as defined in the Conditions) confirming that: (a) a Regulatory Deficiency Interest Deferral Event has occurred and is continuing, or would occur if payment of interest on the

Subordinated Notes were to be made; or (b) a Regulatory Deficiency Interest Deferral Event has ceased to occur and/or payment of interest on the Subordinated Notes would not result in a Regulatory Deficiency Interest Deferral Event occurring;

10.6 **Redemption Deferral**

- (a) So long as any Subordinated Note is outstanding, the Issuer will, in the case of a mandatory deferral of redemption in accordance with Condition 6(b) (*Deferral of redemption date*) give notice of such mandatory deferral to the Noteholders and the Fiscal Agent in accordance with Conditions 6(b)(iii) (*Deferral of redemption date*) and 15 (Notices), *provided, however, that* if the Issuer becomes aware of the operation of the Solvency Condition or a Regulatory Deficiency Interest Deferral Event occurs less than 5 Business Days prior to an Interest Payment Date, the Issuer shall give notice of the interest deferral in accordance with Condition 5 (*Deferral of Interest*) as soon as reasonably practicable following its becoming aware of, or the occurrence of, such event.
- (b) In accordance with Condition 6(b)(v) (*Deferral of redemption date*), the Issuer will deliver a certificate (on the same date that it gives such notice) to the Fiscal Agent signed by two Authorised Signatories confirming that: (a) a Regulatory Deficiency Redemption Deferral Event has occurred and is continuing or would occur if redemption of the Subordinated Notes were to be made; or (b) a Regulatory Deficiency Redemption Deferral Event (as applicable) has ceased to occur and/or redemption of the Subordinated Notes would not result in such event occurring.

11 **MISCELLANEOUS DUTIES OF THE AGENTS**

11.1 **Records**

The Fiscal Agent shall maintain records of all documents received by it in connection with its duties hereunder and shall make such records available for inspection at all reasonable times by the Issuer, and the other Agents and, in particular, the Registrar shall (a) maintain a record of all Note Certificates delivered hereunder and of their redemption, payment, cancellation, mutilation, defacement, alleged destruction, theft, loss and replacement and (b) make such records available for inspection during Business Hours by the Issuer, the other Paying Agents and each Clearing System.

11.2 **Information**

The Issuer and the Paying Agents shall make available to the Fiscal Agent such information as is reasonably required for the maintenance of the records referred to in Clause 11.1 (*Records*).

11.3 **Cancellation**

The Issuer may from time to time deliver to, or to the order of the Registrar, Note Certificates of which it or any of its subsidiaries is the holder for cancellation, whereupon the Registrar shall cancel the same and shall make the corresponding entries in the Register.

11.4 **Subordinated Notes in issue**

As soon as practicable (and in any event within three months) after each date on which the Subordinated Notes fall due for redemption in accordance with the Conditions, the Registrar shall notify the Issuer of the serial numbers and principal amount of any Note Certificates against surrender of which payment has been made and of the serial numbers and principal amount of any Note Certificates (and the names and addresses of the Noteholders thereof) which have not yet been surrendered for payment.

11.5 **Forwarding of communications**

The Fiscal Agent shall promptly forward to the Issuer a copy of any notice or communication addressed to the Issuer by any Noteholder which is received by the Fiscal Agent.

11.6 **Documents available for inspection**

The Issuer shall provide to each Agent:

- (a) conformed copies of this Agreement; and
- (b) such other documents as contemplated in the Conditions.

Each of the Paying Agents shall make available for inspection during Business Hours at its Specified Office the documents referred to above. However, if the Agent is not able to make available for inspection at its Specified Office such documents by events beyond its reasonable control, the Agent may provide such documents to a Noteholder electronically, subject to such Noteholder being able to provide evidence satisfactory to the Issuer and the Agent as to its holding and identity.

## 12 FEES AND EXPENSES

### 12.1 Fees

The Issuer shall pay annually in advance to the Fiscal Agent and the Agents such fees as have been agreed by separate fee letter between the Issuer and the Fiscal Agent in respect of the services of the Agents hereunder (plus any applicable value added tax).

### 12.2 Expenses

The Issuer shall reimburse each Agent for all expenses (including, without limitation, legal fees and any publication, advertising, communication, courier, postage and other out-of-pocket expenses) properly incurred (excluding those expenses already reimbursed pursuant to Clause 12.1 (*Fees*)) by them in connection with their services hereunder (plus any applicable value added tax).

### 12.3 Taxes

The Issuer shall pay all stamp, registration and other taxes and duties (including any interest and penalties thereon or in connection therewith) which are payable upon or in connection with the execution and delivery of this Agreement, and the Issuer shall indemnify each Agent against any claim, demand, action, liability, damages, cost, loss or expense (including, without limitation, properly incurred legal fees and any applicable value added tax) which it incurs as a result or arising out of or in relation to any failure by the Issuer to pay or delay by the Issuer in paying any of the same. All payments by the Issuer under this Clause 12 (*Fees and Expenses*) or Clause 13.4 (*Indemnity in favour of the Agents*) shall be made free and clear of, and without setoff, counterclaim, withholding or deduction for, any taxes, duties, assessments or governmental charges of whatsoever nature unless compelled by law, in which case the Issuer will gross-up such payments to the Agents.

## 13 TERMS OF APPOINTMENT

### 13.1 Rights and powers

Each Agent may, in connection with its services hereunder:

- (a) except as ordered by a court of competent jurisdiction or otherwise required by law and regardless of any notice of ownership, trust or any other interest therein, any writing on the Note Certificate relating to any Subordinated Note by any person (other than a duly executed form of transfer) or any notice of any previous loss or theft thereof, but subject to sub-clause 8.1(a) (*Payments by Paying Agents*), treat the registered Noteholders as absolute owners for all purposes and make payments thereon accordingly;
- (b) assume that the terms of the Global Note Certificate and each Individual Note Certificate as issued are correct;
- (c) rely upon the terms of any notice, certificate communication or other document believed by it to be genuine and shall be protected and shall, other than by reason of its gross negligence, wilful default or fraud, incur no liability for or in respect of action taken, omitted or suffered in reliance upon any notice, communication or other document;
- (d) subject to Clause 12.2 (*Expenses*), engage and pay for the advice or services of any lawyers or other experts whose advice or services it considers necessary and rely upon any advice so obtained (and such Agent shall be protected and shall, other than by reason of its gross negligence, wilful default or fraud, incur no liability as against the Issuer in respect of any action taken, or permitted to be taken, in accordance with such advice and in good faith); and



- (e) may, and its officers, directors, employees or controlling persons may, become the owner of, or acquire any interest in, the Subordinated Notes with the same rights that it would have if it were not appointed under this Agreement, and may engage or be interested in any financial or other transaction with the Issuer and/or any of their Affiliates and may act as freely as if it were not appointed under this Agreement.

### 13.2 **Extent of duties**

Each Agent shall only be obliged to perform the duties set out herein and no implied duties or obligations shall be read into this Agreement or the Conditions against any Agent. No Agent shall:

- (a) be under any fiduciary duty or other obligation towards or have any relationship of agency or trust for or with any person other than the Issuer;
- (b) be responsible for or liable in respect of the legality, validity or enforceability of the Subordinated Notes or any Note Certificate (other than in respect of authentication of Note Certificates by it in accordance with this Agreement) or any act or omission of any other person (including, without limitation, any other Agent);
- (c) be under any obligation to act if it reasonably believes that if it were to act it would incur expenses for which it would not be reimbursed and it shall bear no liability for not acting on the basis of such reasonable belief;
- (d) be required to take any action which it determines to be contrary to any Applicable Law, regulation or fiscal requirement, or the rules, operating procedures or market practice of any other market or clearing system;
- (e) be responsible for monitoring compliance by any other party or taking any steps to ascertain whether any relevant event under this Agreement or the Conditions shall have occurred and shall have no liability to any person for any loss arising from any breach by that party or any such event; or
- (f) be liable to any person for any matter or thing done or omitted in any way in connection with this Agreement or the Conditions save in relation to its own gross negligence, wilful default or fraud.

### 13.3 **Freedom to transact**

Each Agent may purchase, hold and dispose of Subordinated Notes and may enter into any transaction (including, without limitation, any depository, trust or agency transaction) with any Noteholders or with any other person in the same manner as if it had not been appointed as the agent of the Issuer in relation to the Subordinated Notes.

### 13.4 **Indemnity in favour of the Agents**

The Issuer will indemnify each Agent against any loss, liability, cost, claim, action, demand or expense (including, but not limited to, all costs, charges and expenses paid or incurred in disputing or defending any of the foregoing) which it may directly incur or which may be made against it as a result of or in connection with its appointment or the exercise of its functions, except such as may result from its wilful default, gross negligence or fraud or that of its directors, officers or employees. The indemnity contained in this Clause 13.4 (*Indemnity in favour of the Agents*) shall survive any cessation of any appointment of an Agent under this Agreement pursuant to Clause 14 (*Changes in Agents*) or any termination of this Agreement. Any claim by an Agent under this indemnity shall be accompanied by duly documented evidence supporting such claim.

### 13.5 **Liability for losses**

- (a) Notwithstanding anything else in this Agreement, no Agent nor any of its directors, officers, employees or agents shall be liable to the Issuer or any other person for any:
  - (i) loss of profit;
  - (ii) loss of revenue;

- (iii) loss of anticipated savings;
- (iv) loss of contract or opportunity;
- (v) loss of goodwill or reputation; or
- (vi) indirect, special, or consequential loss or damage of whatever nature including any loss of a type described in sub clauses (i) to (v) (inclusive) above which could be regarded as indirect or consequential,

arising from any representation, any breach of implied term or any duty at common law or under any statute or express term of this Agreement, and whether such liability is asserted on the basis of contract, tort (including negligence) or otherwise and whether or not reasonably foreseeable or actually contemplated by the parties.

## 14 CHANGES IN AGENTS

### 14.1 Resignation

Any Agent may (without reason) resign its appointment upon not less than 30 days' notice to the Issuer (with a copy, in the case of an Agent other than the Fiscal Agent, to the Fiscal Agent); *provided, however, that*:

- (a) if such resignation would otherwise take effect less than 30 days before or after the Maturity Date or other date for redemption of the Subordinated Notes or any interest payment date in relation to the Subordinated Notes, it shall not take effect until the thirtieth day following such date; and
- (b) in the case of the Fiscal Agent, such resignation shall not take effect until a successor has been duly appointed consistently with Clause 14.4 (*Additional and successor agents*) or Clause 14.5 (*Paying Agents may appoint successors*) and notice of such appointment has been given to the Noteholders.

### 14.2 Revocation

The Issuer may revoke its appointment of any Agent by not less than 30 days' notice to such Agent (with a copy, in the case of an Agent other than the Fiscal Agent, to the Fiscal Agent); *provided, however, that*, in the case of the Fiscal Agent, such revocation shall not take effect until a successor has been duly appointed consistently with Clause 14.4 (*Additional and successor agents*) or Clause 14.5 (*Paying Agents may appoint successors*) and notice of such appointment has been given to the Noteholders.

### 14.3 Automatic termination

The appointment of any Agent shall terminate forthwith if (a) such Agent becomes incapable of acting, (b) a secured party takes possession, or a receiver, manager or other similar officer is appointed, of the whole or any part of the undertaking, assets and revenues of such Agent, (c) such Agent admits in writing its insolvency or inability to pay its debts as they fall due, (d) an administrator or liquidator of such Agent or the whole or any part of the undertaking, assets and revenues of such Agent is appointed (or application for any such appointment is made), (e) such Agent takes any action for a readjustment or deferment of any of its obligations or makes a general assignment or an arrangement or composition with or for the benefit of its creditors or declares a moratorium in respect of any of its indebtedness, (f) an order is made or an effective resolution is passed for the winding-up of such Agent or (g) any event occurs which has an analogous effect to any of the foregoing. If the appointment of the Fiscal Agent is terminated in accordance with the preceding sentence, the Issuer shall forthwith appoint a successor in accordance with Clause 14.4 (*Additional and successor agents*).

### 14.4 Additional and successor agents

The Issuer may appoint a successor registrar or fiscal agent, and additional or successor transfer agent or paying agents, and shall forthwith give notice of any such appointment to the continuing Agents and the Noteholders, whereupon the Issuer, the continuing Agents and the additional or successor registrar, transfer agent, fiscal agent or paying agent shall acquire and become subject to

the same rights and obligations between themselves as if they had entered into an agreement in the form mutatis mutandis of this Agreement.

**14.5 Paying Agents may appoint successors**

If the Fiscal Agent gives notice of its resignation in accordance with Clause 14.1 (*Resignation*) and by the tenth day before the expiry of such notice a successor has not been duly appointed in accordance with Clause 14.4 (*Additional and successor agents*), the Fiscal Agent may itself, following such consultation with and at the expense of the Issuer, appoint on behalf of the Issuer as its successor any reputable and experienced financial institution and give notice of such appointment to the Issuer, the remaining Agents and the Noteholders, whereupon the Issuer, the remaining Agents and such successor shall acquire and become subject to the same rights and obligations between themselves as if they had entered into an agreement in the form mutatis mutandis of this Agreement.

**14.6 Release**

Upon any resignation or revocation taking effect under Clause 14.1 (*Resignation*) or Clause 14.2 (*Revocation*) or any termination taking effect under Clause 14.3 (*Automatic termination*), the relevant Agent shall:

- (a) be released and discharged from its obligations under this Agreement (save that it shall remain entitled to the benefit of and subject to Clause 12.3 (*Taxes*), Clause 13 (*Terms of Appointment*) and Clause 14 (*Changes in Agents*));
- (b) in the case of the Fiscal Agent, deliver to the Issuer and to its successor a copy, certified as true and up-to-date by an officer or authorised signatory of the Fiscal Agent, of the records maintained by it in accordance with Clause 5.1 (*Maintenance of the Register*);
- (c) in the case of the Agent Bank, deliver to the Issuer and to its successor a copy, certified as true and up-to-date by an officer or authorised signatory of the Agent Bank, of the records maintained by it in accordance with Clause 9 (*Duties of the Agent Bank*); and
- (d) as soon as reasonably practicable (upon payment to it of any amount due to it in accordance with Clause 12 (*Fees and Expenses*)) transfer all moneys and papers (including any unissued Note Certificates held by it hereunder and any documents held by it pursuant to Clause 11.6 (*Documents available for inspection*)) to its successor and, upon appropriate notice, provide reasonable assistance to its successor for the discharge of its duties and responsibilities hereunder.

**14.7 Merger**

- (a) Any legal entity (i) into which any Agent may be merged or converted or any legal entity with which such Agent may be consolidated, (ii) to which the business of such Agent is transferred, (iii) with which such Agent agrees to transfer its respective rights and obligations hereunder or (iv) which results from any merger, conversion, consolidation or transfer to which such Agent shall be a party shall, to the extent permitted by Applicable Law, be the successor Agent under this Agreement without any further formality, and after such effective date all references in this Agreement to such Agent shall be deemed to be references to such corporation and, by virtue of a transfer by novation, such successor shall acquire and become subject to the same rights and obligations under this Agreement as the relevant Agent as if the successor had entered into this Agreement on the Issue Date (as defined in the Conditions). Notice of any such merger, conversion, consolidation or transfer shall forthwith be given by the relevant Agent to the Issuer.
- (b) The Issuer shall on request enter into any document or agreement necessary to give legal effect to the assignment or transfer including in the case of a novation, a deed of novation in a form agreed with such Agent.

**14.8 Changes in Specified Offices**

If any Agent decides to change its Specified Office, it shall give notice to the Issuer (with a copy to the other Agents) of the address of the new Specified Office stating the date on which such change is to take effect, which date shall be not less than 30 days after the date of such notice. The Issuer shall at its own expense not less than 14 days prior to the date on which such change is to take effect



(unless the appointment of the relevant Agent is to terminate pursuant to any of the foregoing provisions of this Clause 14 (*Changes in Agents*) on or prior to the date of such change) give notice thereof to the Noteholders.

15 **NOTICES**

15.1 **Addresses for notices**

All notices and communications hereunder shall be made in writing (by letter or email) and shall be sent as follows:

- (a) if to the Issuer, to it at:

Group ARK Insurance Limited  
Clarendon House,  
2 Church Street,  
Hamilton HM11, Bermuda

Attention: Angus Ayliffe  
Tel: [REDACTED]  
Email: [REDACTED]

with a copy to:

Willkie Farr & Gallagher (UK) LLP  
Citypoint, 1 Ropemaker Street,  
London EC2Y 9 AW, United Kingdom  
Attention: Andrew Tromans  
Tel: [REDACTED]  
Email: [REDACTED]

- (b) if to the Fiscal Agent, to it at:

The Bank of New York Mellon, London Branch  
One Canada Square  
London, E14 5AL  
United Kingdom

Attention: Conventional Debt EMEA – Team 4  
Email: [REDACTED]

- (c) if to the Registrar, to it at:

The Bank of New York Mellon SA/NV, Dublin Branch  
Riverside Two  
Sir John Rogerson's Quay  
Grand Canal Dock  
Dublin 2, Ireland

Attention: Structured Products Services  
Email: [REDACTED]

or, in any case, to such other address or email address or for the attention of such other person or department as the addressee has by prior notice to the sender specified for the purpose.

15.2 **Effectiveness**

- (a) Every notice or communication sent in accordance with Clause 15.1 (*Addresses for notices*) shall be effective, if sent by letter or email, upon receipt by the addressee, *provided, however, that* any such notice or communication which would otherwise take effect after 4.00 p.m. on any particular day shall not take effect until 10.00 a.m. on the immediately succeeding business day in the place of the addressee.

- (b) In no event shall any of the Agents be liable for any losses arising from any of the Agents receiving or transmitting any data to the Issuer (or any Authorised Person) or acting upon any notice, instruction or other communication via any Electronic Means. None of the Agents shall have a duty or obligation to verify or confirm that the person who sent such instructions or directions is, in fact, a person authorised to give instructions or directions on behalf of the Issuer (or any Authorised Person). The Issuer agrees that the security procedures, if any, to be followed in connection with a transmission of any such notice, instructions or other communications provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances.

### 15.3 Notices to Noteholders

Any notice required to be given to Noteholders under this Agreement and/or the Conditions, or any notice delivered by the Issuer to the Fiscal Agent, shall be given in accordance with the Conditions; *provided* that so long as any Subordinated Notes are represented by the Global Note Certificate, notices to be given to the Noteholders shall be delivered by the Fiscal Agent to the Noteholders electronically through the Clearing Systems.

### 15.4 Notices in English

All notices and other communications hereunder shall be made in the English language or shall be accompanied by a certified English translation thereof. Any certified English translation delivered hereunder shall be certified a true and accurate translation by a professionally qualified translator or by some other person competent to do so.

## 16 LAW AND JURISDICTION

### 16.1 Governing law

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

### 16.2 English courts

The courts of England have exclusive jurisdiction to settle any dispute (a "**Dispute**"), arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) or the consequences of its nullity.

### 16.3 Appropriate forum

The parties agree that the courts of England are the most appropriate and convenient courts to settle any Dispute and, accordingly, that they will not argue to the contrary.

### 16.4 Service of process

The Issuer agrees that the documents which start any Dispute and any other documents required to be served in relation to those Dispute may be served on it by being delivered to Ark Syndicate Management Limited, 30 Fenchurch Ave, London EC3M 5AD, United Kingdom, or to such other person with an address in England or Wales and/or at such other address in England or Wales as the Issuer may specify by notice in writing to the Agents. Nothing in this paragraph shall affect the right of any Agent to serve process in any other manner permitted by law.

### 16.5 Contractual Recognition of Bail-in Powers

Notwithstanding and to the exclusion of any other term of this Agreement or any other agreements, arrangements, or understanding between the Registrar and the Issuer, the Issuer acknowledges and agrees that a BRRD Liability arising under this Agreement may be subject to the exercise of Bail-in Powers by the Relevant Resolution Authority, and acknowledges, accepts, and agrees to be bound by:

- (a) the effect of the exercise of Bail-in Powers by the Relevant Resolution Authority in relation to any BRRD Liability of the Registrar to the Issuer under this agreement, that (without limitation) may include and result in any of the following, or some combination thereof:

- (i) the reduction of all, or a portion, of the BRRD Liability or outstanding amounts due thereon;
  - (ii) the conversion of all, or a portion, of the BRRD Liability into shares, other securities or other obligations of the Registrar or another person, and the issue to or conferral on the Issuer of such shares, securities or obligations;
  - (iii) the cancellation of the BRRD Liability; and
  - (iv) the amendment or alteration of any interest, if applicable, thereon, the maturity or the dates on which any payments are due, including by suspending payment for a temporary period; and
- (b) the variation of the terms of this Agreement, as deemed necessary by the Relevant Resolution Authority, to give effect to the exercise of Bail-in Powers by the Relevant Resolution Authority.

In this Clause 16.5:

**"Bail-in Legislation"** means in relation to a member state of the European Economic Area which has implemented, or which at any time implements, the BRRD, the relevant implementing law, regulation, rule or requirement as described in the EU Bail-in Legislation Schedule from time to time;

**"Bail-in Powers"** means any Write-down and Conversion Powers as defined in the EU Bail-in Legislation Schedule, in relation to the relevant Bail-in Legislation;

**"BRRD"** means Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms;

**"BRRD Liability"** means a liability in respect of which the relevant Write-down and Conversion Powers in the applicable Bail-in Legislation may be exercised;

**"EU Bail-in Legislation Schedule"** means the document described as such, then in effect, and published by the Loan Market Association (or any successor person) from time to time at <http://www.lma.eu.com/pages.aspx?p=499>; and

**"Relevant Resolution Authority"** means the resolution authority with the ability to exercise any Bail-in Powers in relation to the Registrar.

## 17 **FORCE MAJEURE**

Notwithstanding anything in this Agreement to the contrary, the Agents shall not be responsible or liable for any delay or failure to perform under this Agreement or for any losses resulting, in whole or in part, from or caused by any event beyond the reasonable control of the Agents, including without limitation: work stoppages, acts of war, terrorism, acts of God, epidemics, governmental actions (including but not limited to nationalisation, expropriation or sanctions imposed at national or international level), exchange or currency controls or restrictions, devaluations or fluctuations, interruption, loss or malfunction of utilities, communications or any computer (software or hardware) services and in no event shall the Agents be obliged to substitute another currency for a currency whose transferability, convertibility or availability has been affected, limited, prohibited or prevented by such law, regulation or event.

## 18 **SANCTIONS**

18.1 The Issuer covenants and represents that neither they nor any of their affiliates, subsidiaries, directors or officers are the target or subject of any sanctions enforced by the US Government, (including, without limitation, the Office of Foreign Assets Control of the US Department of the Treasury or the US Department of State), the United Nations Security Council, the European Union, Her Majesty's Treasury or other relevant sanctions authority (collectively **"Sanctions"**).

18.2 The Issuer covenants and represents that neither they nor any of their affiliates, subsidiaries, directors or officers will use any repayments/reimbursements made pursuant to this Agreement, (i) to fund or facilitate any activities of or business with any person who, at the time of such funding or facilitation, is the subject or target of Sanctions, (ii) to fund or facilitate any activities of or business

with any country or territory that is the subject of Sanctions, or (iii) in any other manner that will result in a violation of Sanctions by any person.

19 **RIGHTS OF THIRD PARTIES**

A person who is not a party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this shall not affect any right or remedy which exists or is available apart from such Act.

20 **MODIFICATION**

This Agreement may not be amended without the consent of the Majority Noteholders pursuant to Condition 14 (*Modification and Waiver*) unless for the purpose of curing any ambiguity or of curing, correcting or supplementing any manifest error or any other defective provision contained in this Agreement and any such amendment to this Agreement shall not, in the sole opinion of the Issuer, be materially prejudicial to the interest of the Noteholders.

21 **CONFIDENTIALITY**

21.1 Each Agent and the Issuer undertake to respect and protect the confidentiality of all information acquired as a result of or pursuant to this Agreement and will not, without the other Party's prior written consent, disclose any such information to a third party, unless it is required to do so by any Applicable Law or regulation or is specifically authorised to do so hereunder or by any separate agreement, especially where the provision of such information is the object or Party of the service to be provided by such Agent.

21.2 In order to provide its services to the Issuer and to satisfy legal obligations it is subject to, each Agent will process (in particular, without being limited to, by collecting, recording, organizing, storing, adapting or altering, retrieving, consulting, using, disclosing by transmission, disseminating or otherwise making available to third parties) data relating to the Issuer (including, without being limited to the Issuer's name, address, occupation, nationality, corporate form, etc.). The Issuer may freely refuse to provide such Agent with this information and thus prevent such Agent from using these data-processing systems. However, such a refusal will be an obstacle preventing the start or continuation of business relations between the Issuer and such Agent. Such Agent will only ask for the information needed to fulfil its obligations.

21.3 The Issuer expressly authorizes the transfer of data to third parties or to the head office of each Agent (such as to a sub-custodian or any other person providing services to such Agent) if such transmission is required to allow such Agent to provide its services to the Issuer or to satisfy legal obligations it or such third party is subject to. The Issuer expressly authorizes such transfer, including, to the extent relevant, any transfer to third parties established outside the European Union.

22 **COUNTERPARTS**

22.1 This Agreement may be executed in any number of counterparts, and by the parties on separate counterparts, but shall not be effective until each party has executed at least one counterpart.

22.2 Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

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

Executed by **GROUP ARK INSURANCE LIMITED** as Issuer  
acting by:

\_\_\_\_\_  
DocuSigned by:  
  
F57354B425C7447...  
\_\_\_\_\_  
Angus Ayliffe

Executed by **THE BANK OF NEW YORK MELLON, LONDON BRANCH** as Fiscal Agent,  
Transfer Agent and Agent Bank  
acting by:

\_\_\_\_\_  
DocuSigned by:  
  
70826A1806E846C...  
\_\_\_\_\_  
Michael Lee

Executed by **THE BANK OF NEW YORK MELLON SA/NV, DUBLIN BRANCH** as Registrar  
acting by:

\_\_\_\_\_  
DocuSigned by:  
  
70826A1806E846C...  
\_\_\_\_\_  
Michael Lee

## SCHEDULE 1

### FORM OF GLOBAL NOTE CERTIFICATE

THE SUBORDINATED NOTES REPRESENTED HEREBY HAVE NOT BEEN, AND WILL NOT BE, REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES OR ANY OTHER JURISDICTION, AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN A TRANSACTION NOT SUBJECT TO, OR PURSUANT TO AN EXEMPTION FROM, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS.

ISIN: XS2376117649

### GROUP ARK INSURANCE LIMITED

*(an insurance company incorporated under the laws of Bermuda)*

US\$47,000,000

Floating Rate Tier 2 Subordinated Notes due 2041

### GLOBAL NOTE CERTIFICATE

- 1. Introduction:** This Global Note is issued in respect of the US\$47,000,000 Floating Rate Tier 2 Subordinated Notes due 2041 (the "**Subordinated Notes**") of Group Ark Insurance Limited (the "**Issuer**"). The Subordinated Notes are constituted by a deed of covenant dated on or about the date hereof (as amended or supplemented from time to time, the "**Deed of Covenant**") entered into by the Issuer and are the subject of a paying agency agreement dated on or about the date hereof (as amended or supplemented from time to time, the "**Paying Agency Agreement**") and made between the Issuer, The Bank of New York Mellon SA/NV, Dublin Branch as registrar (the "**Registrar**", which expression includes any successor registrar appointed from time to time in connection with the Subordinated Notes), The Bank of New York Mellon, London Branch as fiscal agent, and the other paying agents and the transfer agents named therein.
- 2. References to Conditions:** Any reference herein to the "**Conditions**" is to the terms and conditions of the Subordinated Notes attached hereto and any reference to a numbered "**Condition**" is to the correspondingly numbered provision thereof.
- 3. Registered holder:** This is to certify that:

*The Bank of New York Depository (Nominees) Limited*

as the nominee of the Common Depository on behalf of Euroclear Bank S.A. / N.V. ("**Euroclear**") and Clearstream Banking, SA ("**Clearstream, Luxembourg**"), is the person registered in the register maintained by the Registrar in relation to the Subordinated Notes (the "**Register**") as the duly registered holder (the "**Holder**") of US\$47,000,000 in aggregate principal amount of Subordinated Notes or such other principal amount as may from time to time be entered in the Register in accordance with the Paying Agency Agreement and this Global Note Certificate.
- 4. Promise to pay:** The Issuer, for value received, hereby promises to pay such principal sum to the Holder on 16 September 2041 or on such earlier date or dates as the same may become payable in accordance with the Conditions, and to pay interest on such principal sum in arrears on the dates and at the rates specified in the Conditions, together with any additional amounts payable in accordance with the Conditions, all subject to and in accordance with the Conditions.
- 5. Subordination:** Notwithstanding paragraph 4 (*Promise to pay*), in the event of the winding-up of the Issuer, the claims of the Noteholders will rank subordinate to claims of all Senior Creditors (in the manner set out in Condition 2(a) (*Status and Subordination*)) and no payment shall be made in respect thereof hereunder unless all the claims of the Senior Creditors have been satisfied in full prior to such payment.
- 6. Exchange for Individual Note Certificates:** This Global Note Certificate will be exchanged in whole (but not in part) for duly authenticated and completed individual note certificates ("**Individual Note**")



**Certificates**" in substantially the form (subject to completion) set out in Schedule 2 (*Form of Individual Note Certificate*) to the Paying Agency Agreement if any of the following events occurs:

- (a) Euroclear or Clearstream, Luxembourg is closed for business for a continuous period of 14 days (other than by reason of legal holidays) or announces an intention permanently to cease business; or
- (b) any of the circumstances described in Condition 11 (*Default and remedies on default*) occurs.

The Issuer shall notify the Holder of the occurrence of any of the events specified in and (b) as soon as practicable thereafter.

**7. Failure to deliver Individual Note Certificates or to pay: If**

- (a) Individual Note Certificates have not been issued and delivered by 5.00 p.m. (London time) on the thirtieth day after the date on which the same are due to be issued and delivered in accordance with paragraph 8 (*Delivery of Individual Note Certificates*) below; or
- (b) any of the Subordinated Notes evidenced by this Global Note Certificate has become due and payable in accordance with the Conditions or the date for final redemption of the Subordinated Notes has occurred and, in either case, payment in full of the amount of principal falling due with all accrued interest thereon has not been made to the Holder on the due date for payment in accordance with the terms of this Global Note Certificate,

then this Global Note Certificate (including the obligation to deliver Individual Note Certificates) will become void at 5.00 pm (London time) on such thirtieth day (in the case of (a)) or at 5.00 pm (London time) on such due date (in the case of (b)) and the Holder will have no further rights hereunder, but without prejudice to the rights which the Holder or others may have under the Deed of Covenant.

8. **Delivery of Individual Note Certificates:** Whenever this Global Note Certificate is to be exchanged for Individual Note Certificates, such Individual Note Certificates shall be issued in an aggregate principal amount equal to the principal amount of this Global Note Certificate within five business days of the delivery, by or on behalf of the Holder, Euroclear and/or Clearstream, Luxembourg, to the Registrar of such information as is required to complete and deliver such Individual Note Certificates (including, without limitation, the names and addresses of the persons in whose names the Individual Note Certificates are to be registered and the principal amount of each such person's holding) against the surrender of this Global Note Certificate at the Specified Office (as defined in the Conditions) of the Registrar. Such exchange shall be effected in accordance with the provisions of the Paying Agency Agreement and the regulations concerning the transfer and registration of Subordinated Notes scheduled thereto and, in particular, shall be effected without charge to any Noteholder, but against such indemnity as the Registrar may require in respect of any tax or other duty of whatsoever nature which may be levied or imposed in connection with such exchange. In this paragraph, "**business day**" means a day on which commercial banks are open for business (including dealings in foreign currencies) in the city in which the Registrar has its Specified Office.
9. **Conditions apply:** Save as otherwise provided herein, the Holder of this Global Note Certificate shall have the benefit of, and be subject to, the Conditions and, for the purposes of this Global Note Certificate, any reference in the Conditions to "**Note Certificate**" or "**Note Certificates**" shall, except where the context otherwise requires, be construed so as to include this Global Note Certificate.
10. **Notices:** Notwithstanding Condition 15 (*Notices*), so long as this Global Note Certificate is held on behalf of Euroclear, Clearstream, Luxembourg or any other clearing system (an "**Alternative Clearing System**"), notices to Noteholders represented by this Global Note Certificate may be given by delivery of the relevant notice to Euroclear, Clearstream, Luxembourg or (as the case may be) such Alternative Clearing System.
11. **Determination of entitlement:** This Global Note Certificate is evidence of entitlement only and is not a document of title. Entitlements are determined by the Register and only the Holder is entitled to payment in respect of this Global Note Certificate.
12. **Authentication:** This Global Note Certificate shall not be valid for any purpose until it has been authenticated for and on behalf of The Bank of New York Mellon SA/NV, Dublin Branch as registrar.
13. **Governing law:** This Global Note Certificate and any non-contractual obligations arising out of or in connection with it are governed by English law.

**AS WITNESS** the manual or facsimile signature of a duly authorised person for and on behalf of the Issuer.

**GROUP ARK INSURANCE LIMITED**

By:.....Angus Ayliffe

*(duly authorised)*

**ISSUED** on August 2021

**AUTHENTICATED** for and on behalf of **THE BANK OF NEW YORK MELLON SA/ NV DUBLIN BRANCH** as Registrar without recourse, warranty or liability

By:.....

*(duly authorised)*



FORM OF TRANSFER

FOR VALUE RECEIVED \_\_\_\_\_, being the registered holder of this Global Note Certificate, hereby transfers to \_\_\_\_\_

\_\_\_\_\_ of \_\_\_\_\_

[currency] \_\_\_\_\_ in principal amount of the US\$47,000,000 Floating Rate Tier 2 Subordinated Notes due 2041 (the "Subordinated Notes") of Group Ark Insurance Limited (the "Issuer") and irrevocably requests and authorises The Bank of New York Mellon SA/NV, Dublin Branch in its capacity as registrar in relation to the Subordinated Notes (or any successor to The Bank of New York Mellon SA/NV, Dublin Branch, in its capacity as such) to effect the relevant transfer by means of appropriate entries in the register kept by it.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
(duly authorised)

Notes

The name of the person by or on whose behalf this form of transfer is signed must correspond with the name of the registered holder as it appears on the face of this Global Note Certificate.

- (a) A representative of such registered holder should state the capacity in which he signs, e.g. executor.
- (b) The signature of the person effecting a transfer shall conform to any list of duly authorised specimen signatures supplied by the registered holder or be certified by a recognised bank, notary public or in such other manner as the Registrar may require.
- (c) Any transfer of Subordinated Notes shall be in an amount equal to US\$200,000 or an integral multiple of \$1,000 in excess thereof.

**TERMS AND CONDITIONS**

*[Terms and Conditions to be inserted]*

**FISCAL AGENT, AGENT BANK AND TRANSFER AGENT**

**The Bank of New York Mellon, London Branch**

One Canada Square

London, E14 5AL

United Kingdom

AND

**REGISTRAR**

**The Bank of New York Mellon SA/NV, Dublin Branch**

Riverside Two,

Sir John Rogerson's Quay,

Grand Canal Dock,

Dublin 2, Ireland

**SCHEDULE 2**

**FORM OF INDIVIDUAL NOTE CERTIFICATE**

THE SUBORDINATED NOTES HAVE NOT BEEN, AND WILL NOT BE, REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES OR ANY OTHER JURISDICTION, AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN A TRANSACTION NOT SUBJECT TO, OR PURSUANT TO AN EXEMPTION FROM, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS.

Serial Number: .....

**GROUP ARK INSURANCE LIMITED**

*(an insurance company incorporated under the laws of Bermuda)*

**US\$47,000,000**

**Floating Rate Tier 2 Subordinated Notes due 2041**

This Note Certificate is issued in respect of the US\$47,000,000 Floating Rate Tier 2 Subordinated Notes due 2041 (the "**Subordinated Notes**") of Group Ark Insurance Limited (the "**Issuer**"). The Subordinated Notes are constituted by a deed of covenant dated on or about the date hereof (as amended or supplemented from time to time, the "**Deed of Covenant**") entered into by the Issuer and are the subject of a paying agency agreement dated on or about the date hereof (as amended or supplemented from time to time, the "**Paying Agency Agreement**") and made between the Issuer, The Bank of New York Mellon SA/NV, Dublin Branch as registrar (the "**Registrar**", which expression includes any successor registrar appointed from time to time in connection with the **Subordinated Notes**), The Bank of New York Mellon, London Branch as fiscal agent and the other paying agents and the transfer agents named therein.

Any reference herein to the "**Conditions**" is to the terms and conditions of the Subordinated Notes endorsed hereon and any reference to a numbered "**Condition**" is to the correspondingly numbered provision thereof.

This is to certify that:

.....  
of .....  
.....

is the person registered in the register maintained by the Registrar in relation to the Subordinated Notes (the "**Register**") as the duly registered holder or, if more than one person is so registered, the first-named of such persons (the "**Noteholder**") of:

US\$[.....]  
( ..... **[CURRENCY IN WORDS]**)

in aggregate principal amount of the Subordinated Notes.

The Issuer, for value received, hereby promises to pay such principal sum to the Noteholder on [•] [2041] or on such earlier date or dates as the same may become payable in accordance with the Conditions, and to pay interest on such principal sum in arrears on the dates and at the rates specified in the Conditions, together with any additional amounts payable in accordance with the Conditions, all subject to and in accordance with the Conditions.

This Note Certificate is evidence of entitlement only and is not a document of title. Entitlements are determined by the Register and only the Noteholder is entitled to payment in respect of this Note Certificate.

This Note Certificate shall not be valid for any purpose until it has been authenticated for and on behalf of The Bank of New York Mellon SA/NV, Dublin Branch as registrar.

**AS WITNESS** the manual or facsimile signature of a duly authorised person for and on behalf of the Issuer.

**GROUP ARK INSURANCE LIMITED**

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

*(duly authorised)*

**ISSUED** as of [*issue date*]

**AUTHENTICATED** for and on behalf of

**THE BANK OF NEW YORK MELLON SA/NV,**

**DUBLIN BRANCH**

as Registrar without recourse, warranty or liability

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

*(duly authorised)*

**FORM OF TRANSFER**

FOR VALUE RECEIVED \_\_\_\_\_, being the registered holder of this Note Certificate, hereby transfers to of \_\_\_\_\_

\_\_\_\_\_

US\$ \_\_\_\_\_ in principal amount of the US\$47,000,000 Floating Rate Tier 2 Subordinated Notes due 2041 (the "**Notes**") of Group Ark Insurance Limited (the "**Issuer**") and irrevocably requests and authorises The Bank of New York Mellon SA/NV, Dublin Branch in its capacity as registrar in relation to the Subordinated Notes (or any successor to The Bank of New York Mellon SA/NV, Dublin Branch in its capacity as such) to effect the relevant transfer by means of appropriate entries in the register kept by it.

Dated: \_\_\_\_\_

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

*(duly authorised)*

**Notes**

The name of the person by or on whose behalf this form of transfer is signed must correspond with the name of the registered holder as it appears on the face of this Note Certificate.

- (a) A representative of such registered holder should state the capacity in which he signs, e.g. executor.
- (b) The signature of the person effecting a transfer shall conform to any list of duly authorised specimen signatures supplied by the registered holder or be certified by a recognised bank, notary public or in such other manner as the Registrar may require.
- (d) Any transfer of Notes shall be in an amount equal to US\$200,000 or any integral multiple of \$1,000 in excess thereof thereof.

*[Attached to each Note Certificate:]*

*[Terms and Conditions]*

*[At the foot of the Terms and Conditions:]*

**FISCAL AGENT, AGENT BANK AND TRANSFER AGENT**

**The Bank of New York Mellon, London Branch**

One Canada Square

London, E14 5AL

United Kingdom

AND

**REGISTRAR**

**The Bank of New York Mellon SA/NV, Dublin Branch**

Riverside Two,

Sir John Rogerson's Quay,

Grand Canal Dock,

Dublin 2, Ireland

### SCHEDULE 3

#### TERMS AND CONDITIONS

*The following (subject to amendment, and other than the words in italics) is the text of the terms and conditions of the Subordinated Notes which will appear on the reverse of each of the definitive certificates evidencing the Subordinated Notes. The wording appearing in italics below is included for disclosure purposes only and does not form part of the terms and conditions of the Subordinated Notes.*

The US\$47,000,000 Floating Rate Tier 2 Subordinated Notes due 2041 (ISIN: XS2376117649) (the "**Subordinated Notes**") of Group Ark Insurance Limited, an insurance company limited by shares incorporated under the laws of Bermuda (the "**Issuer**"), are constituted by a deed of covenant dated on or about 6 August 2021 (as amended or supplemented from time to time, the "**Deed of Covenant**") entered into by the Issuer and an agency agreement dated on or about 11 August 2021 (as amended or supplemented from time to time, the "**Paying Agency Agreement**") between the Issuer, The Bank of New York Mellon SA/NV, Dublin Branch as registrar (the "**Registrar**", which expression includes any successor registrar appointed from time to time in connection with the Subordinated Notes) and The Bank of New York Mellon, London Branch as fiscal agent (the "**Fiscal Agent**", which expression includes any successor or additional fiscal agent appointed from time to time in connection with the Subordinated Notes), the paying agents named therein (together with the Fiscal Agent, the "**Paying Agents**", which expression includes any successor or additional paying agents appointed from time to time in connection with the Subordinated Notes), the transfer agents named therein (the "**Transfer Agents**", which expression includes any successor or additional transfer agents appointed from time to time in connection with the Subordinated Notes) and The Bank of New York Mellon, London Branch as agent bank (the "**Agent Bank**", which expression includes any successor agent bank appointed from time to time in connection with the Subordinated Notes). The Fiscal Agent, Paying Agents, Transfer Agents and Agent Bank are together the "**Agents**". Certain provisions of these Conditions are summaries of the Paying Agency Agreement and the Deed of Covenant and are subject to their detailed provisions. The Noteholders (as defined below) are bound by, and are deemed to have notice of, all the provisions of the Deed of Covenant and the Paying Agency Agreement applicable to them. Copies of the Deed of Covenant and the Paying Agency Agreement are available for inspection by Noteholders during normal business hours at the Specified Offices (as defined in the Paying Agency Agreement) of each of the Agents. However, if the Agent is not able to make available for inspection at its Specified Office such documents by events beyond its reasonable control, the Agent may provide such documents to a Noteholder electronically, subject to such Noteholder being able to provide evidence satisfactory to the Issuer and the Agent as to its holding and identity.

#### 1 FORM AND DENOMINATION

The Subordinated Notes are in registered form in the denominations of US\$200,000 and integral multiples of \$1,000 in excess thereof (each, an "**Authorised Denomination**"). On or about 11 August 2021 (the "**Issue Date**"), the Subordinated Notes will initially be represented by a global certificate (the "**Global Certificate**") registered in the name of a nominee for, and deposited with, the common depositary for Euroclear Bank S.A. / N.V. ("**Euroclear**") and Clearstream Banking, SA ("**Clearstream, Luxembourg**").

Except in the limited circumstances described in the Global Certificate, owners of interests in Subordinated Notes represented by the Global Certificate will not be entitled to receive definitive certificates in respect of their individual holdings of Subordinated Notes. The Subordinated Notes are not issuable in bearer form. So long as the Subordinated Notes are represented by the Global Certificate and the rules of Euroclear and Clearstream, Luxembourg so permit, transfers of interests in the Subordinated Notes through the relevant clearing systems shall be in principal amounts of at least US\$200,000 and integral multiples of \$1,000 in excess thereof.

#### 2 STATUS OF THE SUBORDINATED NOTES

- (a) **Status and Subordination:** The Subordinated Notes constitute direct, unconditional, unsecured and subordinated obligations of the Issuer which will at all times rank (including in the event of a Winding-Up):
- (i) junior and subordinate to present or future claims of Senior Creditors;
  - (ii) *pari passu* in right of repayment:
    - (A) without preference among themselves;



- (B) with all subordinated obligations of the Issuer (excluding the obligations of the Issuer in respect of Junior Securities (as defined below)) which constitute, and all claims relating to a guarantee or other like or similar undertaking or arrangement given or undertaken by the Issuer in respect of any obligations of any other person which constitute, or (in either case) would but for any applicable limitation on the amount of such capital constitute, Tier 2 Capital (excluding the obligations of such person to holders of Junior Securities), and all obligations which rank, or are expressed to rank, *pari passu* therewith ("**Parity Securities**"), in each case both as regards the right to receive periodic payments and the right to receive repayment of capital on a Winding-Up of the Issuer; and
- (iii) senior to and in priority to the claims of holders of:
  - (A) all classes of share capital (including preferred shares) of the Issuer,
  - (B) any subordinated obligations of the Issuer expressed to rank junior to the Subordinated Notes;
  - (C) all undated subordinated notes of the Issuer,(the "**Junior Securities**"),

in each case both as regards the right to receive periodic payments and the right to receive repayment of capital on a Winding-Up of the Issuer;

and accordingly all claims in respect of the Subordinated Notes in a Winding-Up shall be conditional upon all claims in respect of all Senior Creditors which have been admitted in the Winding-Up first having been satisfied (or provided for) in full, such that amounts will become payable in the Winding-Up in respect of the Subordinated Notes only if any to the extent that the same can be paid and there shall remain thereafter sufficient assets to satisfy in full all claims so admitted in respect of all Senior Creditors.

No security or collateral is, or will be, given to secure the payment obligations under the Subordinated Notes and any security or collateral that may have been or may in the future be given in connection with other indebtedness of the Issuer shall not secure the payment obligations under the Subordinated Notes.

- (b) **Additional Subordination under Relevant Rules:** By purchasing the Subordinated Notes, each Noteholder is deemed to agree and acknowledge that the Subordinated Notes will be subordinated to the claims of all Senior Creditors on the terms and to the minimum extent necessary under the Relevant Rules as in effect from time to time so as to permit the Subordinated Notes to qualify as Tier 2 Capital.
- (c) **Set-off.** By acceptance of the Subordinated Notes and subject to applicable law, each Noteholder will be deemed to have waived any right of set-off or counterclaim that such Noteholder might otherwise have against the Issuer in respect of or arising under the Subordinated Notes whether prior to or in any Winding-Up of the Issuer. Notwithstanding the preceding sentence, if any obligations owed by any Noteholder to the Issuer are discharged by set-off of amounts in respect of or arising under the Subordinated Notes, such Noteholder will immediately, unless prohibited by applicable law, pay an amount equal to the amount of such discharge to the Issuer or, if applicable, the bankruptcy receiver or liquidator of the Issuer and, until such time as payment is made, will hold a sum equal to such amount on trust for the Issuer or, if applicable, the bankruptcy receiver or liquidator in the Issuer's Winding-Up. Accordingly, such discharge will be deemed not to have taken place.
- (d) **No Insolvency.** The Subordinated Notes do not contain any terms or conditions designed to accelerate or induce the Issuer's insolvency or effect similar proceedings.
- (e) **Solvency Condition:** Without prejudice to Condition 2(a) (*Status and Subordination*) above, all payments under or arising from the Subordinated Notes shall be conditional upon the Issuer being solvent at the time for payment by the Issuer, and no amount shall be payable under or arising from the Subordinated Notes unless and until such time as the Issuer could make such payment and still be solvent immediately thereafter (the "**Solvency Condition**").

For the purposes of this Condition 2(e) (*Solvency Condition*), the Issuer will be solvent if (i) it is able to pay its debts owed to creditors other than Junior Creditors as they fall due and (ii) its Assets exceed its Liabilities. Should the Issuer consider itself not solvent for the purpose of this Condition 2(e) (*Solvency Condition*), it will have to produce a certificate as to the insolvency of the Issuer signed by two Authorised Signatories or, if there is a Winding-Up or administration of the Issuer, by two directors or authorised signatories of, the liquidator or, as the case may be, the administrator of the Issuer shall be treated and accepted by the Issuer, the Noteholders and all other interested parties as correct and sufficient evidence thereof and (in the absence of manifest error or bad faith) shall be binding on all such persons.

### 3 REGISTER, TITLE AND TRANSFERS

- (a) **Register:** The Registrar will maintain a register (the "**Register**") in respect of the Subordinated Notes in accordance with the provisions of the Paying Agency Agreement. The Register shall at all times be held outside of the United Kingdom. In these Conditions, the holder of a Subordinated Note means the person in whose name such Subordinated Note is for the time being registered in the Register (or, in the case of a joint holding, the first named thereof) and "**Noteholder**" shall be construed accordingly. A certificate (each, a "**Note Certificate**") will be issued to each Noteholder in respect of its registered holding. Each Note Certificate will be numbered serially with an identifying number which will be recorded in the Register.
- (b) **Title:** The Noteholder shall (except as otherwise required by law) be treated as the absolute owner of such Subordinated Note for all purposes (whether or not it is overdue and regardless of any notice of ownership, trust or any other interest therein, any writing on the Note Certificate relating thereto (other than the endorsed form of transfer) or any notice of any previous loss or theft of such Note Certificate) and no person shall be liable for so treating such Noteholder. No person shall have any right to enforce any term or condition of the Subordinated Notes under the Contracts (Rights of Third Parties) Act 1999 (of England and Wales) or under the Contracts (Rights of Third Parties) Act 2016 (of Bermuda) but this shall not affect any right or remedy which exists or is available apart from such Acts.
- (c) **Transfers:** Notwithstanding any other provisions of the Conditions, the Subordinated Notes (or any beneficial interest therein) may not be offered, sold, transferred or otherwise disposed other than in a transaction not subject to, or pursuant to an exemption from, the registration requirements of the Securities Act and applicable State securities laws. Subject to the preceding sentence and paragraphs (f) (*Closed periods*) and (g) (*Regulations concerning transfers and registration*) below, a Subordinated Note may be transferred upon surrender of the relevant Note Certificate, with the endorsed form of transfer duly completed, at the Specified Office of the Registrar or any Transfer Agent, together with such evidence as the Registrar or (as the case may be) such Transfer Agent may reasonably require to prove the title of the transferor and the authority of the individuals who have executed the form of transfer; *provided, however, that* a Subordinated Note may not be transferred unless: (i) the principal amount of Subordinated Notes transferred and (where not all of the Subordinated Notes held by a Noteholder are being transferred) the principal amount of the balance of Subordinated Notes not transferred are Authorised Denominations; and (ii) the transferee of such Subordinated Note is a Qualified Investor. Where not all the Subordinated Notes represented by the surrendered Note Certificate are the subject of the transfer, a new Note Certificate in respect of the balance of the Subordinated Notes will be issued to the transferor.

Transfers of interests in the Subordinated Notes evidenced by the Global Certificate will be effected in accordance with the rules of Euroclear and Clearstream, Luxembourg.

- (d) **Registration and delivery of Note Certificates:** Within five business days of the surrender of a Note Certificate in accordance with paragraph (c) (*Transfers*) above, the Registrar will register the transfer in question and deliver a new Note Certificate of a like principal amount to the Subordinated Notes transferred to each relevant Noteholder at its Specified Office or (as the case may be) the Specified Office of any Transfer Agent or (at the request and risk of any such relevant Noteholder) by uninsured first class mail (airmail if overseas) to the address specified for the purpose by such relevant Noteholder. In this paragraph, "**business day**" means a day on which commercial banks are open for general business (including dealings in foreign currencies) in the city where the Registrar or (as the case may be) the relevant Transfer Agent has its Specified Office.
- (e) **No charge:** The transfer of a Subordinated Note will be effected without charge by or on behalf of the Issuer, the Registrar or any Transfer Agent but against such indemnity as the Registrar

or (as the case may be) such Transfer Agent may require in respect of any tax or other duty of whatsoever nature which may be levied or imposed in connection with such transfer.

- (f) **Closed periods:** Noteholders may not require transfers to be registered during the period of 15 days ending on the due date for any payment of principal or interest in respect of the Subordinated Notes.
- (g) **Regulations concerning transfers and registration:** All transfers of Subordinated Notes and entries on the Register are subject to the detailed regulations concerning the transfer of Subordinated Notes scheduled to the Paying Agency Agreement. The regulations may be changed by the Issuer with the prior written approval of the Registrar. A copy of the current regulations will be mailed (free of charge) by the Registrar to any Noteholder who requests in writing a copy of such regulations.

#### 4 INTEREST

- (a) **Interest:** The Subordinated Notes bear interest from the Issue Date. Subject to Condition 2(e) (*Solvency Condition*) and Condition 5 (*Deferral of Interest*), interest shall be payable on 15 March, 15 June, 15 September and 15 December in each year (each, an "**Interest Payment Date**") in accordance with Condition 8 (*Payments*); *provided, however, that* if any Interest Payment Date would otherwise fall on a date which is not a Business Day, it will be postponed to the next Business Day unless it would thereby fall into the next calendar month, in which case it will be brought forward to the preceding Business Day; *provided, further, that* the first Interest Payment Date shall be the earliest date falling on 15 March, 15 June, 15 September and 15 December following the Issue Date (the "**First Interest Payment Date**"). Each period beginning on (and including) the Issue Date or any Interest Payment Date and ending on (but excluding) the next Interest Payment Date is herein called an "**Interest Period**".
- (b) **Interest Accrual:** Each Subordinated Note will cease to bear interest from the due date for redemption (which due date shall, in the case of deferral of a redemption date in accordance with Condition 6(b) (*Deferral of redemption date*), be the latest date to which redemption of the Subordinated Notes is so deferred) unless, upon due presentation, payment of principal is improperly withheld or refused, in which case it will continue to bear interest in accordance with this Condition 4 (*Interest*) (both before and after judgment) until whichever is the earlier of (a) the day on which all sums due in respect of such Subordinated Note up to that day are received by or on behalf of the relevant Noteholder and (b) the day which is seven days after the Fiscal Agent has notified the Noteholders that it has received all sums due in respect of the Subordinated Notes up to such seventh day (except to the extent that there is any subsequent default in payment).
- (c) **Rate of Interest:** The rate of interest applicable to the Subordinated Notes (the "**Rate of Interest**") shall be the sum for such Interest Period of the Margin and of the Reference Rate and it will be determined by the Agent Bank on the following basis, where, subject to the Benchmark Transition Provisions (as defined below), the Reference Rate is the LIBOR and "LIBOR" will be determined by the Calculation Agent in accordance with the following provisions:
  - (i) with respect to any Interest Determination Date, LIBOR will be the rate for deposits in United States dollars having a maturity of three months commencing on the first day of the applicable Interest Period that appears on Reuters Screen LIBOR01 Page as of 11:00 a.m., London time, on that Interest Determination Date. If no rate appears, then LIBOR, in respect of that Interest Determination Date, will be determined in accordance with the provisions described in (ii) below; and
  - (ii) with respect to an Interest Determination Date on which no rate appears on Reuters Screen LIBOR01 Page, as specified in (i) above, the Calculation Agent will request the principal London offices of each of four major reference banks in the London interbank market, as selected by the Issuer, to provide the Calculation Agent with its offered quotation for deposits in United States dollars for the period of three months, commencing on the first day of the applicable Interest Period, to prime banks in the London interbank market at approximately 11:00 a.m., London time, on that Interest Determination Date and in a principal amount that is representative for a single transaction in United States dollars in that market at that time. If at least two quotations are provided, then LIBOR on that Interest Determination Date will be the arithmetic mean of those quotations. If fewer than two quotations are provided, then LIBOR on

the Interest Determination Date will be the arithmetic mean of the rates quoted at approximately 11:00 a.m., in The City of New York, on the Interest Determination Date by three major banks in The City of New York selected by the Issuer for loans in U.S. Dollar to leading banks in the United States of America, having a three-month maturity and in a principal amount that is representative for a single transaction in U.S. Dollar in that market at that time; *provided* that if the banks selected by the Issuer are not providing quotations in the manner described by this sentence, LIBOR will be the same as the rate determined for the immediately preceding Interest Determination Date;

*provided*, if LIBOR shall be less than zero, LIBOR shall be deemed zero for purposes of this Subordinated Note and the Paying Agency Agreement.

**"London Business Day"** means any day on which dealings in U.S. Dollar are transacted on the London interbank market.

**"Reuters Screen LIBOR01 Page"** means the display designated on page "LIBOR01" on Reuters (or such other page as may replace the LIBOR01 page on that service or any successor service for the purpose of displaying London interbank offered rates for U.S. Dollar deposits of major banks).

Notwithstanding the paragraphs (i) and (ii) above, if the Benchmark Determination Person or its designee determines on or prior to the relevant Interest Determination Date that a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to the then-current Benchmark, then the provisions set forth below under the heading "*Effect of Benchmark Transition Event*" (the "**benchmark transition provisions**") will thereafter apply to all determinations, calculations and quotations made or obtained for the purposes of calculating the rate and amount of interest payable on the Subordinated Notes during a relevant Interest Period. In accordance with the benchmark transition provisions, after a Benchmark Transition Event and its related Benchmark Replacement Date have occurred, the amount of interest that will be payable for each Interest Period on the Subordinated Notes will be a rate per annum equal to the sum of the Benchmark Replacement and the Margin.

However, if the Benchmark Determination Person or its designee determines that a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to the then-current Benchmark, but for any reason the Benchmark Replacement has not been determined as of the relevant Interest Determination Date, the interest rate for the applicable Interest Period will be equal to the interest rate on the last Interest Determination Date for the Subordinated Notes.

All percentages resulting from any calculation of any interest rate for the Subordinated Notes will be rounded, if necessary, to the nearest one hundred thousandth of a percentage point, with five one-millionths of a percentage point being rounded upwards (e.g., 8.986865% (or 0.08986865) being rounded to 8.98687% (or 0.0898687)) and all dollar amounts used in or resulting from such calculations will be rounded to the nearest cent (with one-half cent being rounded upwards).

From the Issue Date, the Issuer will, upon the request of any Noteholder, provide the interest rate then in effect with respect to the Subordinated Notes and, if it has been determined, the interest rate to be in effect for the next Interest Period. The Benchmark Determination Person (as defined below) shall calculate the interest rate in accordance with the foregoing and shall notify the Issuer (if the Issuer is not the Benchmark Determination Person) and the Paying Agent of such interest rate. All calculations of the Calculation Agent or of the Benchmark Determination Person or its designee, in the absence of manifest error, shall be conclusive for all purposes and binding on the Issuer and Noteholders and the Paying Agent shall have the duty to verify determinations of interest rates made by the Calculation Agent or by the Benchmark Determination Person or its designee.

#### ***Effect of Benchmark Transition Event***

If on or prior to the relevant Interest Determination Date for any Interest Period with respect to the Subordinated Notes, the Benchmark Determination Person shall have determined that a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any determination of the Benchmark on any date, the Benchmark Replacement shall replace the then-current Benchmark for all purposes relating to the Subordinated Notes in respect of such determination on such date and all determinations on all subsequent dates, and the Benchmark Determination Person shall give notice thereof either to the Issuer (if the



Issuer is not the Benchmark Determination Person), which notice the Issuer shall promptly provide to the Calculation Agent, or to the Calculation Agent (if the Issuer is the Benchmark Determination Person), as applicable, as soon as practicable thereafter. If such notice is given, the Benchmark Determination Person shall determine the Interest Rate with respect to the Subordinated Notes until such notice has been withdrawn as a *per annum* rate equal to, in the Benchmark Determination Person's sole discretion, the Benchmark Replacement (subject to any Benchmark Replacement Conforming Changes) *plus* the Margin. In addition, the Benchmark Determination Person will endeavor to provide either the Issuer (if the Issuer is not the Benchmark Determination Person) or the Calculation Agent (if the Issuer is the Benchmark Determination Person), as applicable, with notice promptly after any such determination is made. In connection with the implementation of a Benchmark Replacement, the Benchmark Determination Person shall have the right to make Benchmark Replacement Conforming Changes from time to time.

The Calculation Agent shall have no liability for any determination, decision, election or calculation made by the Benchmark Determination Person or its designee in connection with a Benchmark Transition Event or a Benchmark Replacement rate or any adjustments or conforming changes thereto. In connection with the foregoing, the Calculation Agent will be entitled to conclusively rely on any determinations made by the Benchmark Determination Person or its designee.

**"Benchmark"** shall mean, initially, LIBOR; provided, that if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to LIBOR or the then-current Benchmark, then "Benchmark" shall mean the applicable Benchmark Replacement.

**"Benchmark Determination Person"** shall mean, on any date, (i) the holders of a majority in aggregate principal amount of the Outstanding Subordinated Notes on such date or (ii) the Issuer, if 30 calendar days after a request by the Issuer to the Noteholders to make any determination related to the Benchmark Replacement and the holders of a majority in aggregate principal amount of the Outstanding Subordinated Notes have, for any reason, failed to make the requested determination on or before such date.

**"Benchmark Replacement"** shall mean the Interpolated Benchmark; *provided*, that if the Benchmark Determination Person cannot determine the Interpolated Benchmark as of the Benchmark Replacement Date, then "Benchmark Replacement" shall mean the first alternative set forth in the order below that can be determined by the Benchmark Determination Person as of the Benchmark Replacement Date:

- (i) the sum of: (a) Term SOFR and (b) the Benchmark Replacement Adjustment;
- (ii) the sum of: (a) Compounded SOFR and (b) the Benchmark Replacement Adjustment;
- (iii) the sum of: (a) the alternate rate of interest that has been selected or recommended by the Relevant Governmental Body as the replacement for the then-current Benchmark for the applicable Corresponding Tenor and (b) the Benchmark Replacement Adjustment;
- (iv) the sum of: (a) the ISDA Fallback Rate and (b) the Benchmark Replacement Adjustment; or
- (v) the sum of: (a) the alternate rate of interest that has been selected by the Benchmark Determination Person or its designee as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to any industry-accepted rate of interest as a replacement for the then-current Benchmark for U.S. Dollar denominated floating rate notes at such time and (b) the Benchmark Replacement Adjustment;

*provided, however, that* any such Benchmark Replacement, which would otherwise be negative, shall instead be zero.

**"Benchmark Replacement Adjustment"** shall mean the first alternative set forth in the order below that can be determined by the Benchmark Determination Person or its designee as of the Benchmark Replacement Date:

- (i) 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 or recommended by the Relevant Governmental Body for the applicable Unadjusted Benchmark Replacement;
- (ii) if the applicable Unadjusted Benchmark Replacement is equivalent to the ISDA Fallback Rate, then the ISDA Fallback Adjustment; or
- (iii) the spread adjustment (which may be a positive or negative value or zero) that has been selected by the Benchmark Determination Person or its designee giving due consideration to any industry-accepted spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of the then-current Benchmark with the applicable Unadjusted Benchmark Replacement for U.S. Dollar denominated floating rate notes at such time.

**"Benchmark Replacement Conforming Changes"** shall mean, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "Interest Period", timing and frequency of determining rates and making payments of interest, changes to the definition of "Corresponding Tenor" solely when such tenor is longer than the Interest Period and other administrative matters) that the Benchmark Determination Person or its designee reasonably determines may be appropriate to reflect the adoption of such Benchmark Replacement in a manner substantially consistent with market practice (or, if the Benchmark Determination Person or its designee reasonably determines that adoption of any portion of such market practice is not administratively feasible or if the Benchmark Determination Person or its designee reasonably determines that no market practice for use of the Benchmark Replacement exists, in such other manner as the Benchmark Determination Person or its designee determines is reasonably necessary and applied to other similarly situated companies under similar notes held by the Noteholders).

**"Benchmark Replacement Date"** shall mean the earliest to occur of the following events with respect to the then-current Benchmark:

- (i) in the case of clause (i) or (ii) 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 the administrator of the Benchmark permanently or indefinitely ceases to provide the Benchmark; or
- (ii) in the case of clause (iii) of the definition of "Benchmark Transition Event," the date of the public statement or publication of information referenced therein.

For the avoidance of doubt, if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination.

**"Benchmark Transition Event"** shall mean the occurrence of one or more of the following events with respect to the then-current Benchmark:

- (i) a public statement or publication of information by or on behalf of the administrator of the Benchmark announcing that such administrator has ceased or will cease to provide the Benchmark, permanently or indefinitely; *provided*, that, at the time of such statement or publication, there is no successor administrator that will continue to provide the Benchmark;
- (ii) a public statement or publication of information by the regulatory supervisor for the administrator of the Benchmark, the central bank for the currency of the Benchmark, an insolvency official with jurisdiction over the administrator for the Benchmark, a resolution authority with jurisdiction over the administrator for the Benchmark or a court or an entity with similar insolvency or resolution authority over the administrator for the Benchmark, which states that the administrator of the Benchmark has ceased or will cease to provide the Benchmark permanently or indefinitely; *provided* that, at the time of such statement or publication, there is no successor administrator that will continue to provide the Benchmark; or

- (iii) a public statement or publication of information by the regulatory supervisor for the administrator of the Benchmark announcing that the Benchmark is no longer representative.

**"Compounded SOFR"** shall mean the compounded average of SOFRs for the applicable Corresponding Tenor, with the rate, or methodology for this rate, and conventions for this rate (which will be compounded in arrears with a lookback and/or suspension period as a mechanism to determine the interest amount payable prior to the end of each Interest Period) being established by the Benchmark Determination Person in accordance with:

- (i) the rate, or methodology for this rate, and conventions for this rate selected or recommended by the Relevant Governmental Body for determining compounded SOFR; *provided that*:
- (ii) if, and to the extent that, the Benchmark Determination Person or its designee reasonably determines that Compounded SOFR cannot be determined in accordance with clause (i) above, then the rate, or methodology for this rate, and conventions for this rate that have been reasonably selected by the Benchmark Determination Person or its designee giving due consideration to any industry-accepted market practice for U.S. Dollar denominated floating rate notes at such time.

**"Corresponding Tenor"** shall mean, with respect to a Benchmark Replacement, a tenor (including overnight) having approximately the same length (disregarding business day adjustment) as the applicable tenor for the then-current Benchmark.

**"Interest Determination Date"** means the second business day preceding the applicable Interest Payment Date.

**"Interpolated Benchmark"** shall mean, with respect to the Benchmark, the rate determined for the Corresponding Tenor by interpolating on a linear basis between: (1) the Benchmark for the longest period (for which the Benchmark is available) that is shorter than the Corresponding Tenor and (2) the Benchmark for the shortest period (for which the Benchmark is available) that is longer than the Corresponding Tenor.

**"ISDA Definitions"** means the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time.

**"ISDA Fallback Adjustment"** shall mean the spread adjustment, (which may be a positive or negative value or zero) that would apply for derivatives transactions referencing the ISDA Definitions to be determined upon the occurrence of an index cessation event with respect to the Benchmark for the applicable tenor.

**"ISDA Fallback Rate"** shall mean the rate that would apply for derivatives transactions referencing the ISDA Definitions to be effective upon the occurrence of an index cessation date with respect to the Benchmark for the applicable tenor excluding the applicable ISDA Fallback Adjustment.

**"Reference Time"** shall mean, with respect to any determination of the Benchmark: (1) if the Benchmark is LIBOR, 11:00 a.m. (London time) on the day that is two London banking days preceding the date of such determination, and (2) if the Benchmark is not LIBOR, the time determined by the Benchmark Determination Person or its designee in accordance with the Benchmark Replacement Conforming Changes.

**"Relevant Governmental Body"** shall mean the Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York or any successor thereto.

**"SOFR"** shall mean, with respect to any date of determination, the secured overnight financing rate published for such day by the Federal Reserve Bank of New York, as the

administrator of the benchmark (or a successor administrator) on the website of the NY Federal Reserve at <http://www.newyorkfed.org>, or any successor source.

"**Term SOFR**" shall mean the forward-looking term rate for the applicable Corresponding Tenor based on SOFR that has been selected or recommended by the Relevant Governmental Body.

"**Unadjusted Benchmark Replacement**" shall mean the Benchmark Replacement excluding the Benchmark Replacement Adjustment.

- (d) **Calculation of Interest Amount:** The Agent Bank will, as soon as practicable after the Interest Determination Date in relation to each Interest Period, calculate the amount of interest (the "**Interest Amount**") payable in respect of each Subordinated Note for such Interest Period. The Interest Amount will be calculated by applying the Rate of Interest for such Interest Period to the Calculation Amount, multiplying the product by the actual number of days in such Interest Period divided by 360, rounding the resulting figure to the nearest cent (half a cent being rounded upwards) and multiplying such rounded figure by a fraction equal to the Authorised Denomination of such Subordinated Note divided by the Calculation Amount.
- (e) **Publication:** The Agent Bank will cause each Rate of Interest and Interest Amount determined by it, together with the relevant Interest Payment Date, to be notified to the other Agents and any quotation system (if any) as soon as practicable after such determination but in any event not later than the first day of the relevant Interest Period. Notice thereof shall also promptly be given to the Noteholders. The Agent Bank will be entitled to recalculate any Interest Amount (on the basis of the foregoing provisions) without notice in the event of an extension or shortening of the relevant Interest Period. If the Calculation Amount is less than the Authorised Denomination, the Agent Bank shall not be obliged to publish each Interest Amount but instead may publish only the Calculation Amount and the Interest Amount in respect of a Subordinated Note having the minimum Authorised Denomination.
- (f) **Notifications etc.:** All notifications, opinions, determinations, certificates, calculations, quotations and decisions given, expressed, made or obtained for the purposes of this Condition by the Agent Bank will (in the absence of wilful default, fraud or manifest error) be binding on the Issuer, the Agents and the Noteholders and (subject as aforesaid) no liability to any such person will attach to the Agent Bank in connection with the exercise or non-exercise by it of its powers, duties and discretions for such purposes.
- (g) **Calculation Amount:** Interest shall be calculated per US\$1000 in principal amount of the Subordinated Notes (the "**Calculation Amount**").

## 5 DEFERRAL OF INTEREST

- (a) **Regulatory Deficiency Deferral of Interest:**
  - (i) Subject to Condition 5(a)(ii), payment of interest on the Subordinated Notes by the Issuer will be mandatorily deferred on each Regulatory Deficiency Interest Deferral Date.
  - (ii) Any deferral under Condition 5(a)(i) shall be of all (and not less than all) of the Interest Amount accrued on the Subordinated Notes and due and payable as of such Regulatory Deficiency Interest Deferral Date.
  - (iii) The Issuer shall notify the Noteholders and the Fiscal Agent of any Regulatory Deficiency Interest Deferral Date in accordance with Condition 5(e) (*Notice of Deferral*). A certificate signed by two Authorised Signatories confirming that:
    - (A) a Regulatory Deficiency Interest Deferral Event has occurred and is continuing, or would occur if payment of interest on the Subordinated Notes were to be made; or
    - (B) a Regulatory Deficiency Interest Deferral Event has ceased to occur and/or payment of interest on the Subordinated Notes would not result in a Regulatory Deficiency Interest Deferral Event occurring,



shall be treated and accepted by the Issuer, the Noteholders and all other interested parties as correct and sufficient evidence thereof, and (in the absence of manifest error or bad faith) shall be binding on all such persons.

- (b) **No default:** Notwithstanding any other provision in these Conditions the deferral by the Issuer of any payment of interest in accordance with Condition 2(e) (*Solvency Condition*) or Condition 5(a) (*Regulatory Deficiency Deferral of Interest*) will not constitute a default by the Issuer and will not give Noteholders any right to accelerate repayment of the Subordinated Notes or take any enforcement action under the Subordinated Notes.
- (c) **Arrears of Interest and Additional Interest Amounts:** Any interest on the Subordinated Notes not paid on an Interest Payment Date as a result of the obligation of the Issuer to defer such payment of interest pursuant to Condition 5(a) (*Regulatory Deficiency Deferral of Interest*) or due to the operation of the Solvency Condition contained in Condition 2(e) (*Solvency Condition*) shall (without double counting), to the extent and so long as the same remains unpaid, constitute "**Arrears of Interest**".

Each amount of Arrears of Interest shall bear interest (as if it constituted the principal of the Subordinated Notes) at the Rate of Interest from time to time applicable to the Subordinated Notes (an "**Additional Interest Amount**"). Any Additional Interest Amounts which are not paid on the Interest Payment Date at the end of the applicable Interest Period shall become Arrears of Interest and bear interest accordingly.

- (d) **Payment of Arrears of Interest and Additional Interest Amounts:** Any Arrears of Interest and Additional Interest Amounts may (subject to Condition 2(e) (*Solvency Condition*) and, to the extent required, the satisfaction of the Regulatory Clearance Condition) be paid by the Issuer in whole or in part at any time upon the expiry of not less than 14 days' notice to such effect given by the Issuer to the Fiscal Agent and the Noteholders in accordance with Condition 15 (*Notices*) and in any event will become due and payable by the Issuer in whole (and not in part) upon the earliest of the following dates:
- (i) the next Interest Payment Date which is not a Regulatory Deficiency Interest Deferral Date;
  - (ii) the date on which the Issuer pays any dividend or other distribution on any shares in its capital;
  - (iii) the date on which the Issuer makes a payment of interest on, or redeems purchases, cancels, reduces or acquires, any Junior Securities or Parity Securities (save where the Issuer is not able to defer, pass or eliminate the relevant payment or other obligation in accordance with the terms of the relevant Junior Securities or Parity Securities);
  - (iv) the date on which the Winding-Up of the Issuer occurs; or
  - (v) the date fixed for any redemption of the Subordinated Notes pursuant to Condition 6 (*Redemption, Purchase and Cancellation*) (subject to any deferral of such redemption date pursuant to Condition 6(b) (*Deferral of redemption date*)) or Condition 11 (*Default and remedies on default*).
- (e) **Notice of Deferral:** The Issuer shall notify the Fiscal Agent and the Noteholders in writing in accordance with Condition 15 (*Notices*) not less than 5 Business Days prior to the relevant Interest Payment Date:
- (i) in the case of a deferral due to the operation of the Solvency Condition contained in Condition 2(e) (*Solvency Condition*), specifying that interest will not be paid because of the operation of such Solvency Condition; or
  - (ii) in the case of Condition 5(a) (*Regulatory Deficiency Deferral of Interest*), specifying that interest will not be paid because a Regulatory Deficiency Interest Deferral Event has occurred and is continuing or would occur if payment of interest was made on such Interest Payment Date,

*provided, however, that if the Issuer becomes aware of the operation of the Solvency Condition or a Regulatory Deficiency Interest Deferral Event occurs, less than 5 Business Days prior to an Interest Payment Date the Issuer shall give notice of the interest deferral in accordance*

with Condition 15 (*Notices*) as soon as reasonably practicable following its becoming aware of, or the occurrence of, such event.

## 6 REDEMPTION, PURCHASE AND CANCELLATION

(a) **Scheduled redemption:** Subject to Conditions 2(e) (*Solvency Condition*), 6(b) (*Deferral of redemption date*) and 6(i) (*Preconditions to redemption and purchases*), unless previously redeemed, or purchased and cancelled, the Subordinated Notes will be redeemed at their principal amount on the Maturity Date together with any Arrears of Interest (together with all corresponding Additional Interest Amounts) and any other accrued and unpaid interest to (but excluding) the Maturity Date in accordance with the terms of Condition 8 (*Payments*).

(b) **Deferral of redemption date:**

(i) Subject to Condition **Error! Reference source not found.**, no Subordinated Notes shall be redeemed:

(A) on or after the Maturity Date pursuant to Condition 6(a) (*Scheduled redemption*); or

(B) prior to the Maturity Date pursuant to Condition 6(c) (*Redemption for tax reasons*) or Condition 6(d) (*Redemption upon the occurrence of a Capital Event*) or Condition 6(e) (*Redemption at the option of the Issuer*);

if Condition 2(e) (*Solvency Condition*) is not satisfied or if a Regulatory Deficiency Redemption Deferral Event has occurred and is continuing or would occur if redemption is made pursuant to this Condition 6 (*Redemption, Purchase and Cancellation*).

(ii) Deferral under Condition 6(b)(i) (*Deferral of redemption date*) shall be limited to the proportion of the amounts due and payable which would cause a Regulatory Deficiency Redemption Deferral Event to occur and be continuing. In the event that a partial payment is made pursuant to this Condition 6(b)(ii), any partial payments shall be applied pro rata in respect of the Subordinated Notes.

(iii) The Issuer shall notify the Fiscal Agent and the Noteholders in accordance with Condition 15 (*Notices*) no later than 5 Business Days prior to any date set for redemption of the Subordinated Notes if such redemption is to be deferred in accordance with this Condition 6(b) (*Deferral of redemption date*) provided, however, that if the Issuer becomes aware of the operation of the Solvency Condition or a Regulatory Deficiency Interest Deferral Event occurs less than 5 Business Days prior to an Interest Payment Date, the Issuer shall give notice of the interest deferral in accordance with Condition 15 (*Notices*) as soon as reasonably practicable following its becoming aware of, or the occurrence of, such event.

(iv) If redemption of the Subordinated Notes does not occur on the Maturity Date, or, if applicable, the date specified in the notice of redemption by the Issuer under Condition 6(c) (*Redemption for tax reasons*) or Condition 6(d) (*Redemption upon the occurrence of a Capital Event*), as a result of Condition 6(b)(i) (*Deferral of redemption date*), the Issuer shall (subject to satisfaction of the Regulatory Clearance Condition and, in the case of (A) and (B) below only, Condition 2(e) (*Solvency Condition*)) redeem such Subordinated Notes at their principal amount together with any Arrears of Interest (together with all corresponding Additional Interest Amounts) and any other accrued and unpaid interest upon the earliest of:

(A) (in case of a failure to redeem the Subordinated Notes due to the operation of Condition 6(b)(i) (*Deferral of redemption date*) only) the date falling 10 Business Days after the date the Regulatory Deficiency Redemption Deferral Event has ceased (unless on such 10<sup>th</sup> Business Day a further Regulatory Deficiency Redemption Deferral Event has occurred and is continuing or redemption of the Subordinated Notes on such date would result in a Regulatory Deficiency Redemption Deferral Event occurring, in which case the provisions of Condition 6(b)(i) (*Deferral of redemption date*) and this Condition 6(b)(iv) will apply mutatis mutandis to determine the due date for redemption of the Subordinated Notes); or

- (B) the date falling 10 Business Days after the BMA has agreed to the repayment or redemption of the Subordinated Notes; or
- (C) the date on which a Winding-Up occurs.

If Condition 6(b)(i) (*Deferral of redemption date*) does not apply, but redemption of the Subordinated Notes does not occur on the Maturity Date or, if applicable, the date specified in the notice of redemption by the Issuer under Condition 6(c) (*Redemption for tax reasons*) or Condition 6(d) (*Redemption upon the occurrence of a Capital Event*), as a result of the Solvency Condition not being satisfied at such time and immediately after such payment, the Issuer shall (subject to the satisfaction of the Regulatory Clearance Condition), redeem such Subordinated Notes at their principal amount together with any Arrears of Interest (together with all corresponding Additional Interest Amounts) and any other accrued and unpaid interest on the date falling 10 Business Days immediately following the day that (i) the issuer is solvent for the purposes of Condition 2(e) (*Solvency Condition*) and (ii) redemption of the Subordinated Notes would not result in the Issuer ceasing to be solvent for the purposes of Condition 2(e) (*Solvency Condition*); provided that if on such Business Day specified for redemption a Regulatory Deficiency Redemption Deferral Event has occurred and is continuing, or would occur if the Subordinated Notes were to be redeemed, or if the Solvency Condition would not be satisfied on such date and immediately after the redemption, then the Subordinated Notes shall not be redeemed on such date and Condition 2(e) (*Solvency Condition*) and Condition 6(b)(i) (*Deferral of redemption date*) will apply mutatis mutandis to determine the date of redemption of the Subordinated Notes.

- (v) A certificate signed by two Authorised Signatories confirming that (A) a Regulatory Deficiency Redemption Deferral Event has occurred and is continuing, or would occur if redemption of the Subordinated Notes were to be made or (B) a Regulatory Deficiency Redemption Deferral Event has ceased to occur and/or redemption of the Subordinated Notes would not result in a Regulatory Deficiency Redemption Deferral Event occurring, shall be treated and accepted by the Issuer, the Noteholders and all other interested parties as correct and sufficient evidence thereof and (in the absence of manifest error or bad faith) shall be binding on all such persons.
  - (vi) Notwithstanding any other provision in these Conditions, the deferral of redemption of the Subordinated Notes in accordance with Condition 2(e) (*Solvency Condition*) or this Condition 6(b) (*Deferral of redemption date*) will not constitute a default by the Issuer and will not give Noteholders any right to accelerate the Subordinated Notes or take any enforcement action under the Subordinated Notes.
- (c) **Redemption for tax reasons:** Subject to Condition 2(e) (*Solvency Condition*), Condition 6(b)(i) (*Deferral of redemption date*) and Condition 6(i) (*Preconditions to redemption and purchase*) below, the Subordinated Notes may be redeemed at the option of the Issuer in whole, but not in part, on any Interest Payment Date after the fifth (5<sup>th</sup>) anniversary of the Issue Date (unless such redemption or purchase is (i) to be financed out of the proceeds of an issuance of securities that qualify as either Tier 2 Capital or Tier 1 Capital and (ii) has been approved by the BMA, in which case the Subordinated Notes may be redeemed at the Issuer's option prior to such fifth (5<sup>th</sup>) anniversary), on giving not less than 15 nor more than 60 days' notice to the Noteholders (which notice shall be irrevocable) at their outstanding principal amounts (together with any Arrears of Interest, Additional Interest Amounts and any other accrued but unpaid interest to (but excluding) the date fixed for redemption), if:
- (A) immediately before the giving of such notice, the Issuer receives an opinion of external counsel in Bermuda experienced in such matters that the Issuer:
    - (1) has or will become obliged to pay additional amounts as described under Condition 9 (*Taxation*); or
    - (2) would not be entitled to claim a deduction in computing taxation liabilities (and provided such taxation liabilities exist) in Bermuda in respect of any payment of interest to be made on the next Interest Payment Date or the value of such deduction to the Issuer would be reduced;

- (B) in each case as a result of any change in, or amendment to, the laws or regulations of Bermuda or any authority therein or thereof having power to tax, or any change in the application or official interpretation of such laws or regulations, including a decision of any court or tribunal, which change or amendment becomes effective on or after the Issue Date; and
- (C) such obligation or loss of entitlement, as the case may be, cannot be avoided by the Issuer taking reasonable measures available to it,

(any such early redemption events (A), (B) and (C) under this Condition 6(c) (*Redemption for tax reasons*), a "**Tax Event**");

*provided* that (in the case of (A)(2) above) no such notice of redemption shall be given earlier than 90 days prior to the earliest date on which the Issuer would not be entitled to claim a deduction in computing taxation liabilities (and provided such taxation liabilities exist) in Bermuda in respect of any payment of interest to be made on the next Interest Payment Date or the value of such deduction to the Issuer would be reduced were a payment in respect of the Subordinated Notes then due.

- (d) **Redemption upon the occurrence of a Capital Event:** Subject to Condition 2(e) (*Solvency Condition*), Condition 6(b) (*Deferral of redemption date*) and Condition 6(i) (*Preconditions to redemption and purchase*) below, if a Capital Event occurs, the Subordinated Notes may be redeemed at the option of the Issuer in whole, but not in part, on any Interest Payment Date after the fifth (5<sup>th</sup>) anniversary of the Issue Date (unless such redemption or purchase is (i) to be financed out of the proceeds of an issuance of securities that qualify as either Tier 2 Capital or Tier 1 Capital and (ii) has been approved by the BMA, in which case the Subordinated Notes may be redeemed at the Issuer's option prior to such fifth (5<sup>th</sup>) anniversary), at their outstanding principal amounts (together with any Arrears of Interest, Additional Interest Amounts and any other accrued but unpaid interest to (but excluding) the date fixed for redemption); *provided* that the Issuer provides not less than 15 days' nor more than 60 days' prior notice to the Fiscal Agent and the Noteholders in accordance with Condition 15 (*Notices*) (such notice being irrevocable) specifying the date fixed for such redemption.
- (e) **Redemption at the option of the Issuer:** Subject to Condition 2(e) (*Solvency Condition*) and Condition 6(i) (*Preconditions to redemption and purchase*) below, the Subordinated Notes may be redeemed on the First Call Date or on any Interest Payment Date thereafter, at the option of the Issuer, in whole or in part, at their outstanding principal amounts (together with any Arrears of Interest, Additional Interest Amounts and any other accrued but unpaid interest to (but excluding) the date fixed for redemption); *provided* that the Issuer provides not less than 15 days' nor more than 60 days' prior notice to the Fiscal Agent and the Noteholders in accordance with Condition 15 (*Notices*) specifying the date fixed for such redemption. Subject to Conditions 8(a) and 8(b), upon the expiry of such notice, the Issuer shall redeem the Subordinated Notes. Any such notice of redemption may, in the Issuer's sole discretion, be subject to one or more conditions precedent, including, but not limited to, the completion of an equity offering, financing or other corporate transaction. Additionally, if such redemption or notice is subject to the satisfaction of one or more conditions precedent, such notice shall state that, in the Issuer's sole discretion, the redemption date may be postponed by up to 60 days following the notice of redemption, and such notice may be rescinded in the event that any or all such conditions shall not have been satisfied by the redemption date (including as it may be postponed). The Issuer shall notify the Fiscal Agent, the Lead Arranger and the Noteholders at least two Business Days prior to the redemption date if any such redemption has been rescinded or delayed. For the avoidance of doubt, in the event of any such postponement of the redemption date, any calculation of or determination concerning the redemption price that depends on the redemption date (including the amount of accrued and unpaid interest on the relevant Subordinated Notes to, but excluding, the redemption date) shall be made by reference to the redemption as so postponed.
- (f) **No other redemption:** The Issuer shall not be entitled to redeem the Subordinated Notes otherwise than as provided in Condition 6(a) (*Scheduled redemption*), Condition 6(b) (*Deferral of redemption date*), Condition 6(c) (*Redemption for tax reasons*), Condition 6(d) (*Redemption upon the occurrence of a Capital Event*) and Condition 6(e) (*Redemption at the option of the Issuer*).
- (g) **Purchase:** Subject to Condition 2(e) (*Solvency Condition*) and Condition 6(i) (*Preconditions to redemption and purchases*), the Issuer may at any time purchase Subordinated Notes in

the open market or otherwise and at any price. All Subordinated Notes purchased by or on behalf of the Issuer may be held, reissued, resold or, at the option of the Issuer and the relevant purchaser, surrendered for cancellation to the Fiscal Agent.

- (h) **Cancellation:** All Subordinated Notes redeemed by the Issuer pursuant to this Condition 6, and all Subordinated Notes purchased and surrendered for cancellation pursuant to Condition 6(g) (*Purchase*), will forthwith be cancelled. Any such Subordinated Notes so surrendered for cancellation may not be reissued or resold and the obligations of the Issuer in respect of any such Subordinated Notes shall be discharged.
- (i) **Preconditions to redemption and purchases:**
  - (i) Prior to the publication of any notice of redemption or any purchase of the Subordinated Notes, the Issuer will be required to have complied with the Regulatory Clearance Condition and be in continued compliance with both the Enhanced Capital Requirement and with the Relevant Rules.
  - (ii) The Issuer shall not redeem any Subordinated Notes or purchase any Subordinated Notes (i) unless at the time of such redemption or purchase it is in compliance with both the Enhanced Capital Requirement and with the Relevant Rules, (ii) where such redemption or purchase would cause a breach of the Enhanced Capital Requirement, and (iii) prior to the fifth anniversary of the Issue Date, unless such redemption or purchase is to be financed out of the proceeds of an issuance of securities that qualify as either Tier 2 Capital or Tier 1 Capital.
  - (iii) A certificate signed by two Authorised Signatories confirming such compliance shall be treated and accepted by the Issuer, the Noteholders and all other interested parties as correct and sufficient evidence thereof and (in the absence of manifest error or bad faith) shall be binding on all such persons.

## 7 VARIATION AND SUBSTITUTION

If a Capital Event or a Tax Event occurs, the Issuer may, at its sole option, as an alternative to redemption of the Subordinated Notes, at any time, without the consent of any Noteholder, vary any term or condition of the Subordinated Notes or substitute all (but not less than all) of the Subordinated Notes for other notes, so that the varied Subordinated Notes or the substituted notes, as the case may be, constitute Qualifying Equivalent Securities.

The principal amount of the Qualifying Equivalent Securities to be received by Noteholders in substitution shall be equal to the principal amount of the Subordinated Notes.

Any variation or substitution of the Subordinated Notes is subject to no more than 60 nor less than 30 calendar days' prior notice by the Issuer to the Fiscal Agent, the Lead Arranger and the Noteholders (which notice shall be irrevocable and shall specify the date fixed for such variation or substitution) in accordance with the notice provisions governing the Subordinated Notes and to:

- (a) the Issuer being in compliance with the Relevant Rules on the date of such variation or substitution (after giving effect to such variation or substitution), and such variation or substitution not resulting directly or indirectly in a breach of the Relevant Rules;
- (b) in respect of substitution only, all payments of interest, including Arrears of Interest, and any other amount payable under the Subordinated Notes that, in each case, has accrued to Noteholders and has not been paid, being satisfied in full on or prior to the date of such variation or substitution; and
- (c) immediately after the substitution or variation, the Issuer not triggering its right to redeem the Subordinated Notes pursuant to provisions of Conditions 6(c) and 6(d).

The Issuer shall deliver to the Fiscal Agent on the date fixed for any such variation or substitution (i) a certificate signed by two Authorised Signatories stating that the provisions of this Condition 7 have been complied with and (ii) a legal opinion from an Independent Adviser standing to the effect that the varied Subordinated Notes or the substituted Subordinated Notes constitute Qualifying Equivalent Securities.



8      **PAYMENTS**

- (a) **Principal:** Payments of principal shall be made by transfer to a dollar-denominated account maintained by the payee and notified to the Issuer and (in the case of redemption) upon surrender (or, in the case of part payment only, endorsement) of the relevant Note Certificates at the Specified Office of any Paying Agent.
- (b) **Interest:** Payments of interest (including, without limitation, Arrears of Interest and Additional Interest Amounts) shall be made by transfer to a dollar-denominated account maintained by the payee and notified to the Issuer and (in the case of interest (including, without limitation, Arrears of Interest and Additional Interest Amounts) payable on redemption) upon surrender (or, in the case of part payment only, endorsement) of the relevant Note Certificates at the Specified Office of any Paying Agent.
- (c) **Payments subject to fiscal laws:** Payments will be subject in all cases to any fiscal or other laws and regulations applicable thereto in the place of payment, but without prejudice to the provisions of Condition 9 (*Taxation*). No commissions or expenses shall be charged to the Noteholders in respect of such payments.
- (d) **Payments on business days:** If the due date for payment of any amount in respect of any Subordinated Note is not a business day in the place of presentation (following any modification in accordance with Condition 4(a) (*Interest*)), the Noteholder shall not be entitled to payment in such place of the amount due until the next succeeding business day in such place and shall not be entitled to any further interest or other payment in respect of any such delay. In this Condition 8(d), "business day" means, in respect of any place of presentation, any day on which banks are open for presentation and for dealings in foreign currencies in such place of presentation and, in the case of payment by transfer to a dollar-denominated account as referred to above, on which dealings in foreign currencies may be carried on both in London and in such place of presentation.
- (e) **Partial payments:** If the Fiscal Agent makes a partial payment in respect of any Subordinated Note presented to it for payment, such Paying Agent will endorse thereon a statement indicating the amount and the date of such payment.
- (f) **No commissions:** No commissions or expenses shall be charged to the Noteholders in respect of any payments made in accordance with this Condition 8.
- (g) **Record date:** Each payment in respect of a Subordinated Note will be made to the person shown as the Noteholder in the Register at the opening of business in the place of the Registrar's Specified Office on the Clearing System Business Day immediately preceding the due date for such payment.
- (h) **Agents:** The names of the initial Paying Agents and their initial specified offices are set out at the end of these Conditions. The Issuer reserves the right at any time to vary or terminate the appointment of any Paying Agent or Agent Bank and to appoint a successor fiscal agent or agent bank and additional or other paying agents, *provided, however, that* the Issuer will at all times maintain a fiscal agent and agent bank.

Notice of any termination or appointment and of any changes in specified offices of any of the Paying Agents or their Specified Offices will be given to the Noteholders promptly by the Issuer in accordance with Condition 15 (*Notices*).

In acting under the Paying Agency Agreement and in connection with the Subordinated Notes, the Paying Agents and the Agent Bank act solely as agents of the Issuer and do not assume any obligations towards or relationship of agency or trust for or with any of the Noteholders.

So long as the Subordinated Notes are represented by the Global Certificate, each payment in respect of the Global Certificate will be made to the person shown as the holder of such Global Certificate in the Register at the close of business (of the relevant clearing system) on the Clearing System Business Day before the due date for such payments, where "**Clearing System Business Day**" means a weekday (Monday to Friday, inclusive) except 25 December and 1 January.

## 9 TAXATION

All payments of principal and interest in respect of the Subordinated Notes by or on behalf of the Issuer shall be made free and clear of, and without withholding or deduction for or on account of, any present or future taxes, duties, assessments or governmental charges of whatever nature imposed, levied, collected, withheld or assessed by or on behalf of Bermuda or any political subdivision thereof or any authority therein or thereof having power to tax, unless the withholding or deduction of such taxes, duties, assessments or governmental charges is required by law. In that event the Issuer shall pay such additional amounts as will result in receipt by the Noteholders after such withholding or deduction of such amounts as would have been received by them had no such withholding or deduction been required, except that no such additional amounts shall be payable in respect of any Subordinated Note:

- (a) held by a Noteholder which is liable to such taxes, duties, assessments or governmental charges in respect of such Subordinated Note by reason of its having some connection with Bermuda other than the mere holding of the Subordinated Note;
- (b) where the present or future taxes, duties or governmental charges of whatever nature imposed, levied, collected, withheld or assessed are so imposed, levied, collected or withheld outside Bermuda on the income or gains of the relevant Noteholder; or
- (c) where (in the case of a payment of principal or interest on redemption) the relevant Note Certificate is surrendered for payment more than 30 days after the Relevant Date except to the extent that the relevant Noteholder would have been entitled to such additional amounts if it had surrendered the relevant Note Certificate on the last day of such period of 30 days.

In these Conditions, "**Relevant Date**" means whichever is the later of (1) the date on which the payment in question first becomes due and (2) if the full amount payable has not been received by the Fiscal Agent on or prior to such due date, the date on which (the full amount having been so received) notice to that effect has been given to the Noteholders.

Any reference in these Conditions to principal or interest shall be deemed to include any additional amounts in respect of principal or interest (as the case may be) which may be payable under this Condition 9.

If the Issuer becomes subject at any time to any taxing jurisdiction other than the Bermuda references in these Conditions to Bermuda shall be construed as references to Bermuda and/or such other jurisdiction.

The Issuer has been issued a tax assurance certificate by the Minister of Finance of Bermuda pursuant to section 2 of the Exempted Undertakings Tax Protection Act 1996 (the "**Tax Assurance**") which states that in the event of there being enacted in Bermuda any legislation imposing tax computed on profits or income or computed on any capital asset, gain or appreciation, or any tax in the nature of estate duty or inheritance tax, then the imposition of any tax described therein shall not be applicable to the Issuer or to any of its operations or the shares, debentures or other obligations of the Issuer, provided that such assurance will not prevent the application of any such tax or duty to persons ordinarily resident in Bermuda or prevent any tax payable in accordance with the provisions of the Land Tax Act 1967 or otherwise payable in relation to the land leased to the Issuer. The Tax Assurance shall be in effect until 31 March 2035. The Issuer will not be required under the law of Bermuda to make any deduction or withholding on account of tax from any payment it may make under the Subordinated Notes.

## 10 PRESCRIPTION

Claims against the Issuer for payment in respect of the Subordinated Notes shall be prescribed and become void unless made within 10 years (in the case of principal) or five years (in the case of interest including, without limitation, Arrears of Interest and Additional Interest Amounts) from the appropriate Relevant Date in respect of them.

## 11 DEFAULT AND REMEDIES ON DEFAULT

- (a) **Payment default:** If the Issuer fails to meet any of its payment obligations on the date that such payment obligations were due under the Subordinated Notes and such payment obligations are not met within 30 days of the date that such payment obligations were due, any Noteholder may, at its own discretion and without further notice, institute proceedings in



order to recover the amounts due from the Issuer to such Noteholder, *provided, however, that* a Noteholder may not petition the Winding-Up of the Issuer or institute any other proceedings seeking the same equivalent relief in respect of the Issuer. For the avoidance of doubt, no amount shall be due from the Issuer in circumstances where payment of such amount is deferred in accordance with Condition 2(e) (*Solvency Condition*), Condition 5(a) (*Regulatory Deficiency Deferral of Interest*) or Condition 6(b) (*Deferral of redemption date*).

- (b) **Winding-Up:** Upon the Winding-Up of the Issuer (or other equivalent proceedings), the Subordinated Notes shall automatically become due and payable at their outstanding principal amount together with interest (including Arrears of Interest and Additional Interest Amounts) (if any) accrued to such date and the claim in respect thereof will be subject to the subordination provided for in Condition 2. In addition, any other amounts in respect of the Subordinated Notes (including any damages awarded for breach of any obligations under these Conditions in respect of which the Solvency Condition was not satisfied on the date upon which the same would otherwise have become due and payable ("**Solvency Claims**") will be payable by the Issuer in a Winding-Up or administration of the Issuer, and the claim in respect thereof will be subject to the subordination provided for in Condition 2. A Solvency Claim shall not bear interest.
- (c) **Enforcement:** Without prejudice to Condition 11(a) above, any Noteholder may institute such proceedings or take such steps or actions against the Issuer as it may think fit to enforce any obligation, term, condition or provision binding on the Issuer under the Subordinated Notes or the Deed of Covenant, including the obligation to issue and deliver Individual Note Certificates in the circumstances and timeframe set out in the Global Note Certificate and Paying Agency Agreement, *provided, however, that* a Noteholder may not at any time file for the Winding-Up of the Issuer and *provided, further, that* in no event shall the Issuer, by virtue of the institution of any such proceedings or the taking of such steps or actions, be obliged to pay any sum or sums (in cash or otherwise) sooner than the same would otherwise have been payable by it.
- (d) **Extent of Noteholders' remedy:** No remedy against the Issuer, other than as referred to in this Condition 11, shall be available to the Noteholders, whether for the recovery of amounts owing in respect of the Subordinated Notes or in respect of any breach by the Issuer of any of its other obligations under or in respect of the Subordinated Notes.

## 12 UNDERTAKINGS OF THE ISSUER

The undertakings in this Condition 12 remain in force from the Issue Date for so long as any Subordinated Note is outstanding.

- (a) The Issuer undertakes to supply to the Noteholders:
  - (i) no later than 60 calendar days following the end of the preceding financial quarter, the Issuer's and its Group's quarterly unaudited income statement and balance sheet, in each case prepared in accordance with GAAP; and
  - (ii) no later than 120 calendar days following the end of the fiscal year, the Issuer's and its Group's consolidated annual financial statements prepared in accordance with GAAP.
- (b) The Issuer undertakes not to directly or indirectly:
  - (i) declare or pay any dividend on or in respect of its Capital Stock, or purchase, redeem, retire or otherwise acquire for value any of its Capital Stock; or
  - (ii) make any payment or other distribution on any of its securities that rank junior to or *pari passu* with the Subordinated Notes,

(all such payments and other actions under (i) and (ii), a "**Restricted Payment**"), unless, at the time of, and after giving effect to, such Restricted Payment: (A) the Issuer is not and will not be in breach of the Relevant Rules, the Enhanced Capital Requirement or any of the Conditions; and (B) no Regulatory Deficiency Deferral Event is existing at the time of (nor will start to exist immediately after and as a consequence of) the Restricted Payment.
- (c) The Issuer undertakes not to materially change the nature of its business to any business that it would not be able to carry out as a Bermuda-licensed insurance and reinsurance company.

- (d) Subject to compliance with all applicable laws and regulations, the Issuer agrees to promptly notify in accordance with Condition 15 (*Notices*) the Lead Arranger and/or the Noteholders of any regulatory filings or other requirements that the Issuer becomes aware of that the Issuer, the Lead Arranger and/or the Noteholders may be required to respond to as a result of the entry into of the Subscription Deed, the issuance of the Subordinated Notes, or any actions taken by or anticipated to be taken by the Issuer in connection therewith.
- (e) The Issuer undertakes to maintain its corporate existence and continue to be duly organised and validly existing under the laws of Bermuda.
- (f) The Issuer undertakes to comply in all material respects with all applicable laws and orders to which it may be subject.

13 **REPLACEMENT OF NOTE CERTIFICATES**

If any Note Certificate is lost, stolen, mutilated, defaced or destroyed, it may be replaced at the Specified Office of the Registrar, subject to all applicable laws, upon payment by the claimant of the expenses incurred in connection with such replacement and on such terms as to evidence, security, indemnity and otherwise as the Issuer may reasonably require. Mutilated or defaced Note Certificates must be surrendered before replacements will be issued.

14 **MODIFICATION AND WAIVER**

Subject to and in accordance with Condition 4(c) (*Rate of Interest*) and Condition 7 (*Variation and Substitution*), none of the Subordinated Notes, these Conditions, the Deed of Covenant or the Paying Agency Agreement may be amended without the consent of the Majority Noteholders, *provided* that the Paying Agency Agreement may be amended without the consent of such Noteholders for the purpose of curing any ambiguity or of curing, correcting or supplementing any manifest or proven error or any other defective provision contained therein and any such amendment to the Paying Agency Agreement shall not, in the sole opinion of the Issuer, be materially prejudicial to the interests of the Noteholders.

15 **NOTICES**

Notices to the Noteholders shall be valid if delivered to the Specified Office of the Fiscal Agent (who shall deliver them to the Noteholders) in accordance with the terms of the Paying Agency Agreement and [REDACTED] as Lead Arranger at the following address: [REDACTED], and by email to [REDACTED], or any other address as notified from time to time by the relevant party.

16 **GOVERNING LAW**

The Subordinated Notes and any non-contractual obligations arising out of or in connection with the Subordinated Notes are governed by, and shall be construed in accordance with, English law, except that the subordination provisions of the Subordinated Notes set out in Condition 2(a) (*Status and Subordination*) will be governed by and construed in accordance with the laws of Bermuda.

17 **JURISDICTION**

The courts of England have exclusive jurisdiction to settle any dispute (a "**Dispute**") arising out of or in connection with the Subordinated Notes (including a dispute regarding any non-contractual obligation arising out of or in connection with the Subordinated Notes). The Issuer agrees that the courts of England are the most appropriate and convenient courts to settle any Dispute and, accordingly, that it will not argue to the contrary.

18 **DEFINED TERMS**

In these Conditions:

"**Additional Interest Amount**" has the meaning given in Condition 5(c) (*Arrears of Interest and Additional Interest Amounts*);

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

**"Arrears of Interest"** has the meaning given in Condition 5(c) (*Arrears of Interest and Additional Interest Amounts*);

**"Assets"** means the unconsolidated gross assets of the Issuer as shown in the latest published audited balance sheet of the Issuer, but adjusted for contingencies and subsequent events;

**"Authorised Signatory"** means any Director or other person authorised to bind the Issuer;

**"BMA"** means the Bermuda Monetary Authority (or any successor which carries on the role of regulator of financial services companies generally in Bermuda);

**"Business Day"** means a day on which commercial banks and foreign exchange markets settle payments and are open for general business (including dealings in foreign exchange and foreign currency deposits) in New York, London, Hamilton (Bermuda); *provided, however, that*, for the purpose of Condition 8(d) (*Payments on business days*), "business day" shall have the meaning given in Condition 8(d), and *provided, further, that*, for the purpose of Condition 3(d) (*Registration and delivery of Note Certificates*), "business day" shall have the meaning given in Condition 3(d);

**"Calculation Amount"** has the meaning given in Condition 4(g) (*Calculation Amount*);

**"Capital Event"** means, at any time on or after the Issue Date, a change in the regulatory classification of the Subordinated Notes that results or would be likely to result in the exclusion of the Subordinated Notes in whole or, to the extent not prohibited by the Relevant Rules, in part, from the Issuer's Tier 2 Capital other than where such exclusion is only as a result of any applicable limitation on the amount of such capital;

**"Capital Stock"** means any and all shares (whether voting or non-voting, and including preferred shares) in the equity of such person or entity;

**"Clearing System Business Day"** means a weekday (Monday to Friday, inclusive) except 25 December and 1 January;

**"Clearstream, Luxembourg"** means Clearstream Banking, SA;

**"Directors"** means the members of the board of directors of the Issuer from time to time;

**"Dispute"** has the meaning given in Condition 17 (*Jurisdiction*);

**"Enhanced Capital Requirement"** means the "enhanced capital requirement" as defined in the Relevant Rules, applicable to the Issuer;

**"Euroclear"** means Euroclear Bank S.A. / N.V.;

**"First Call Date"** means the Interest Payment Date falling on or immediately after the tenth anniversary of the Issue Date;

**"First Interest Payment Date"** has the meaning given in Condition 4(a) (*Interest*);

**"GAAP"** means the generally accepted accounting principles in the United Kingdom or the United States, or such other generally accepted accounting principles as may be applicable to the Issuer and/or its parent company from time to time;

**"Group"** means Ark Insurance Holdings Limited (or its successor) and its consolidated subsidiaries;

**"Holding Company"** means, in relation to a person, any other person in respect of which it is a Subsidiary;

**"Independent Adviser"** means an independent financial institution of international repute or an independent financial adviser with appropriate expertise appointed by the Issuer;

**"Insurance Act"** means the Bermuda Insurance Act 1978 and related regulations, as amended from time to time;

**"Interest Amount"** has the meaning given to it in Condition 4(d) (*Calculation of Interest Amount*);

"**Interest Determination Date**" has the meaning given to it in Condition 4(c) (*Rate of Interest*);

"**Interest Payment Date**" has the meaning given in Condition 4(a) (*Interest*);

"**Interest Period**" means a period from (and including) one Interest Payment Date (or in the case of the first Interest Period only, the Issue Date) up to (but excluding) the next following Interest Payment Date;

"**Issue Date**" has the meaning given in Condition 1 (*Form and Denomination*);

"**Junior Creditors**" means creditors of the Issuer who are not Senior Creditors;

"**Junior Securities**" has the meaning given to it in Condition 2(a) (*Status and Subordination*);

"**Lead Arranger**" means [REDACTED];

"**Liabilities**" means the unconsolidated gross liabilities of the Issuer, as shown in the latest published audited balance sheet of the Issuer, but adjusted for contingent liabilities and for subsequent events, all in such manner as the Directors may determine;

"**Majority Noteholder**" means a Noteholder or Noteholders holding in aggregate: (a) in the case of Condition 12 (*Undertakings of the Issuer*), 75 per cent. or more of the Principal Amount Outstanding of the Subordinated Notes; and (b) in all other cases, 100 per cent. of the Principal Amount Outstanding of the Subordinated Notes. For the avoidance of doubt, Subordinated Notes held indirectly or directly by Affiliates of the Issuer shall not be included for the purposes of this definition;

"**Margin**" means:

- (a) for the period that begins (and includes) the Issue Date and ends on (but excludes) the Step-Up Date: 5,75% *per annum*;
- (b) for the period that begins (and includes) the Step-Up Date and ends on (but excludes) the Maturity Date: 6,75% *per annum*; and
- (c) for the period that begins (and includes) the Maturity Date: 7,75% *per annum*;

"**Maturity Date**" means the Interest Payment Date falling on or immediately after the twentieth anniversary of the Issue Date;

"**Noteholder**" means any person that holds an interest in the Subordinated Notes;

"**Parity Securities**" has the meaning given to it in Condition 2(a) (*Status and Subordination*);

"**Principal Amount Outstanding of the Subordinated Notes**" means the original principal amount of the Subordinated Notes outstanding under Condition 6(a) (*Scheduled Redemption*);

"**Qualified Investor**" means a person:

- (a) who either (i) is a non-US Person (as such term is defined in Regulation S of the Securities Act of 1933, as amended (the "Securities Act") outside of the United States who is acquiring the Subordinated Notes in an offshore transaction in accordance with Regulation S; or (ii) is in the United States and is an "**Accredited Investor**" as defined in Regulation D of the Securities Act;
- (b) who is a "qualified investor" as defined in Article 2(e) of Regulation (EU) 2017/1129;
- (c) who is a "Qualified Participant" as defined in section 9(2) of the Bermuda Investment Funds Act 2006;
- (d) to whom the offering of Subordinated Notes could lawfully be communicated by virtue of section 21(1) of the Financial Services and Markets Act 2000;
- (e) who is a "well-informed investor" as defined by the Luxembourg law of 13 February 2007 on specialised investment funds;



- (f) who is a "Professional Client" or an "Eligible Counterparty" as defined by the Markets in Financial Instruments Directive, as amended;
- (g) who is a "qualified Investor" as defined by the Swiss Federal Collective Investment Schemes Act; or
- (h) in any other jurisdiction who would satisfy the requirements of any of paragraphs (a) to (g) above if they were subject to the securities laws of such jurisdictions;

**"Qualifying Equivalent Securities"** means securities which have terms not materially less favourable to the Noteholders, as reasonably determined by the Issuer in consultation with an Independent Adviser, consulting firm or comparable expert, in each case being independent and of international standing on the subject, and which:

- (a) satisfy the criteria for the eligibility for inclusion of the proceeds of the Subordinated Notes as Tier 2 Capital under the Relevant Rules;
- (b) contain terms providing for the same interest rate and interest payment dates as apply to the Subordinated Notes;
- (c) rank senior to, or have the same ranking as, the Subordinated Notes;
- (d) preserve all obligations as to repayment of the Subordinated Notes, including (without limitation) as to timing of such repayment (including preserving the same Maturity Date);
- (e) do not contain terms providing for loss absorption through principal write-down or conversion into ordinary shares; and
- (f) preserve any rights to any accrued and unpaid interest, and any existing rights to other amounts payable under the Subordinated Notes which have accrued to Noteholders and not been paid;

**"Rate of Interest"** has the meaning given to it in Condition 4(c) (*Rate of Interest*);

**"Reference Rate"** has the meaning given to it in Condition 4(c) (*Rate of Interest*);

**"Regulatory Clearance Condition"** means, in respect of any proposed act on the part of the Issuer, the Issuer having notified the BMA, and obtained the consent or non-objection of the BMA, in relation to such act (in any case only if and to the extent required by the BMA and/or pursuant to the Relevant Rules);

**"Regulatory Deficiency Deferral Event"** means a Regulatory Deficiency Interest Deferral Event or a Regulatory Deficiency Redemption Deferral Event;

**"Regulatory Deficiency Interest Deferral Date"** means each Interest Payment Date in respect of which a Regulatory Deficiency Interest Deferral Event has occurred and is continuing or would occur if payment of the full amount of interest otherwise due was made on such Interest Payment Date;

**"Regulatory Deficiency Interest Deferral Event"** means: (a) any event which causes the Enhanced Capital Requirement to be breached and such breach is an event which, under the Relevant Rules, would require the Issuer to defer a payment of interest in respect of the Subordinated Notes in order for the Subordinated Notes to constitute Tier 2 Capital (for the avoidance of doubt, a breach of one or several of the Issuer's subsidiaries capital requirements that would not trigger a breach of the Enhanced Capital Requirement will not be considered as a Regulatory Deficiency Interest Deferral Event); or (b) the BMA has otherwise provided written notice to the Issuer prohibiting the Issuer from making payments under the Subordinated Notes;

**"Regulatory Deficiency Redemption Deferral Event"** means any event which causes the Enhanced Capital Requirement to be breached and such breach is an event which, under the Relevant Rules, would require the Issuer to defer or suspend a scheduled repayment or redemption of the Subordinated Notes in order for the Subordinated Notes to constitute Tier 2 Capital. For the avoidance of doubt, any event which (i) causes the capital requirement of one or several of the Issuer's subsidiaries to be breached but (ii) that would not cause the Enhanced Capital Requirement to be breached and (iii) that would not constitute an event which, under the Relevant Rules, would

require the Issuer to defer or suspend a scheduled repayment or redemption of the Subordinated Notes in order for the Subordinated Notes to constitute Tier 2 Capital, will not be considered as a Regulatory Deficiency Redemption Deferral Event;

**"Relevant Date"** has the meaning given in Condition 9 (*Taxation*);

**"Relevant Rules"** means the Insurance Act, and the rules and regulations promulgated thereunder, and any other legislation, rules or regulations of Bermuda or of the BMA from time to time relating to the characteristics, features or criteria of own funds or capital resources and which are, at such time, applicable to the Issuer;

**"Senior Creditors"** means:

- (a) any policyholders and policy beneficiaries of the Issuer and its Subsidiaries (and, for the avoidance of doubt, the claims of Senior Creditors who are policyholders and/or policy beneficiaries shall include all amounts to which any such policyholder or policy beneficiary (as applicable) would be entitled in its capacity as such under any applicable legislation or rules relating to the Winding-Up of insurance companies to reflect any right to receive, or expectation of receiving, policyholder or policy beneficiary benefits which such policyholder or policy beneficiary (as applicable) may have);
- (b) creditors of the Issuer (other than policyholders) who are unsubordinated creditors of the Issuer including, without limitation, tax authorities and holders of senior guarantees issued by the Issuer;
- (c) any senior or subordinated secured creditors of the Issuer; and
- (d) any other creditors to whose claims the Subordinated Notes must be subordinated under the Relevant Rules so as to permit the Subordinated Notes to qualify as Tier 2 Capital;

**"Step-Up Date"** means the Interest Payment Date falling on or immediately after the tenth anniversary of the Issue Date;

**"Subsidiary"** means any person (referred to as the "first person") in respect of which another person:

- (a) has the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:
  - (i) cast, or control the casting of, more than 50 per cent. of the maximum number of votes that might be cast at a general meeting of the first person;
  - (ii) appoint or remove all, or the majority, of the Directors or other equivalent officers of the first person; orgive directions with respect to the operating and financial policies of the first person with which the Directors or other equivalent officers of the first person are obliged to comply; or
- (b) holds beneficially more than 50 per cent. of the issued share capital of the first person (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital);

**"Tier 1 Capital"** means capital which is treated as a constituent of Tier 1 under the Relevant Rules;

**"Tier 2 Capital"** means capital which is treated as a constituent of Tier 2 under the Relevant Rules;

**"Winding-Up"** means at any time when: (i) an order is made, or an effective resolution is passed, for the winding-up, dissolution or liquidation of the Issuer or any other analogous procedures in any jurisdiction (except, in any such case, a solvent winding-up solely for the purpose of a reconstruction, amalgamation or substitution of the Issuer, the terms of which have previously been approved by the Noteholders); or (ii) a provisional liquidator, receiver, administrator or similar officer is appointed in respect of the Issuer and has given notice that it intends to declare a dividend; and

**"US\$" and "U.S. Dollar"** mean the lawful currency of the United States of America.

#### SCHEDULE 4

##### REGULATIONS CONCERNING TRANSFERS AND REGISTRATION OF SUBORDINATED NOTES

1. The Subordinated Notes are in the denomination of US\$200,000. Subordinated Notes may only be held in holdings in the aggregate principal amount of US\$200,000 and integral multiples of \$1,000 in excess thereof (each, an "**Authorised Holding**").
2. Notwithstanding any other provisions of the Conditions or this Schedule 4, the Subordinated Notes (or any beneficial interest therein) may only be transferred in a transaction not subject to, or pursuant to an exemption from, the registration requirements of the Securities Act and applicable State securities laws.
3. Subject to paragraph 2 above and paragraph 5 and paragraph 10 below, Subordinated Notes may be transferred by execution of the relevant form of transfer under the hand of the transferor or, where the transferor is a corporation, under its common seal or under the hand of two of its officers duly authorised in writing. Where the form of transfer is executed by an attorney or, in the case of a corporation, under seal or under the hand of two of its officers duly authorised in writing, a copy of the relevant power of attorney certified by a financial institution in good standing or a notary public or in such other manner as the Registrar may require or, as the case may be, copies certified in the manner aforesaid of the documents authorising such officers to sign and witness the affixing of the seal must be delivered with the form of transfer. In this Schedule, "**transferor**" shall, where the context permits or requires, include joint transferors and shall be construed accordingly.
4. The Note Certificate, if any, issued in respect of the Subordinated Notes to be transferred must be surrendered for registration, together with the form of transfer (including any certification as to compliance with restrictions on transfer included in such form of transfer) endorsed thereon, duly completed and executed, at the Specified Office of the Registrar or any Transfer Agent, and together with such evidence as the Registrar or (as the case may be) the relevant Transfer Agent may reasonably require to prove the title of the transferor and the authority of the persons who have executed the form of transfer. The signature of the person effecting a transfer of a Subordinated Note shall conform to any list of duly authorised specimen signatures supplied by such Noteholder or be certified by a financial institution in good standing, notary public or in such other manner as the Registrar or such Transfer Agent may require.
5. No Noteholder may require the transfer of a Subordinated Note to be registered during the period of 15 calendar days ending on the due date for any payment of principal or interest in respect of such Subordinated Note.
6. Unless otherwise required by it and agreed by the Issuer and the Registrar, the Noteholder shall be entitled to receive only one Note Certificate in respect of its holding.
7. The joint Noteholders shall be entitled to one Note Certificate only in respect of their joint holding which shall, except where they otherwise direct, be delivered to the joint Noteholder whose name appears first in the Register in respect of the joint holding.
8. Where there is more than one transferee (to hold other than as joint Noteholders), separate forms of transfer (obtainable from the Specified Office of the Registrar or any Transfer Agent) must be completed in respect of each new holding.
9. A Noteholder may transfer all or part only of his holding of Subordinated Notes; *provided* that both the principal amount of Subordinated Notes transferred and the principal amount of the balance not transferred are an Authorised Holding. Where a Noteholder has transferred part only of his holding of Subordinated Notes, a new Note Certificate in respect of the balance of such holding will be delivered to him.
10. The Issuer, the Transfer Agents and the Registrar shall, save in the case of the issue of replacement Subordinated Notes pursuant to the Conditions, make no charge to the Noteholders for the registration of any holding of Subordinated Notes or any transfer thereof or for the issue of any Subordinated Notes or for the delivery thereof at the Specified Office of any Transfer Agent or the Registrar or by uninsured post to the address specified by the Noteholder, but such registration, transfer, issue or delivery shall be effected against such indemnity from the Noteholder or the transferee thereof as the Registrar or the relevant Transfer Agent may require in respect of any tax or other duty of whatever nature which may be levied or imposed in connection with such registration, transfer, issue or delivery.



11. Provided a transfer of a Subordinated Note is duly made in accordance with all applicable requirements and restrictions upon transfer and the Subordinated Note(s) transferred are presented to a Transfer Agent and/or the Registrar in accordance with the Agency Agreement and these Regulations, and subject to unforeseen circumstances beyond the control of such Transfer Agent or the Registrar arising, such Transfer Agent or the Registrar will, within five business days of the request for transfer being duly made, deliver at its Specified Office to the transferee or despatch by uninsured post (at the request and risk of the transferee) to such address as the transferee entitled to the Subordinated Notes in relation to which such Note Certificate is issued may have specified, a Note Certificate in respect of which entries have been made in the Register, all formalities complied with and the name of the transferee completed on the Note Certificate by or on behalf of the Registrar; and, for the purposes of this paragraph, "**business day**" means a day on which commercial banks are open for business (including dealings in foreign currencies) in the cities in which the Registrar and (if applicable) the relevant Transfer Agent have their respective Specified Offices.

**SCHEDULE 5**

**SPECIFIED OFFICES OF THE AGENTS**

Specified Office and Contact Details of the Fiscal Agent, Transfer Agent and Agent Bank:

**The Bank of New York Mellon, London Branch**

One Canada Square  
London E14 5AL  
United Kingdom

Phone Number: [REDACTED]

Email: [REDACTED]

Specified Office and Contact Details of the Registrar:

**The Bank of New York Mellon SA/NV, Dublin Branch**

Riverside Two  
Sir John Rogerson's Quay  
Grand Canal Dock  
Dublin 2, Ireland

Email: [REDACTED]



**EXECUTION VERSION**

DATED

8 SEPTEMBER 2021

**Certain identified information has been omitted because it is both (i) not material and (ii) the type that the registrant treats as private or confidential.**

**(1) GROUP ARK INSURANCE LIMITED  
AS ISSUER**

**(2) THE BANK OF NEW YORK MELLON, LONDON  
BRANCH AS FISCAL AGENT, TRANSFER AGENT  
AND AGENT BANK**

**(3) THE BANK OF NEW YORK MELLON SA/NV,  
DUBLIN BRANCH AS REGISTRAR**

**PAYING AGENCY AGREEMENT**

**RELATING TO US\$ 70,000,000 FLOATING RATE TIER 2  
SUBORDINATED NOTES DUE 2041**

**WILLKIE FARR & GALLAGHER** (UK) LLP

CityPoint, 1 Ropemaker Street  
London, EC2Y 9AW

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## CONTENTS

### CLAUSE

1	DEFINITIONS AND INTERPRETATION .....	1
2	APPOINTMENT OF AGENTS.....	4
3	THE SUBORDINATED NOTES.....	4
4	EXCHANGES OF GLOBAL NOTE CERTIFICATE FOR INDIVIDUAL NOTE CERTIFICATES.....	5
5	TRANSFERS OF SUBORDINATED NOTES.....	5
6	REPLACEMENT OF NOTE CERTIFICATES .....	6
7	PAYMENTS TO THE FISCAL AGENT .....	6
8	PAYMENTS TO NOTEHOLDERS.....	7
9	DUTIES OF THE AGENT BANK.....	10
10	COVENANTS BY THE ISSUER .....	11
11	MISCELLANEOUS DUTIES OF THE AGENTS .....	12
12	FEES AND EXPENSES.....	13
13	TERMS OF APPOINTMENT .....	14
14	CHANGES IN AGENTS.....	16
15	NOTICES.....	18
16	LAW AND JURISDICTION.....	19
17	FORCE MAJEURE .....	21
18	SANCTIONS .....	21
19	RIGHTS OF THIRD PARTIES.....	21
20	MODIFICATION .....	22
21	CONFIDENTIALITY.....	22
22	COUNTERPARTS .....	22

### SCHEDULE

SCHEDULE 1 FORM OF GLOBAL NOTE CERTIFICATE.....	19
SCHEDULE 2 FORM OF INDIVIDUAL NOTE CERTIFICATE .....	24
SCHEDULE 3 TERMS AND CONDITIONS .....	28
SCHEDULE 4 REGULATIONS CONCERNING TRANSFERS AND REGISTRATION OF SUBORDINATED NOTES.....	60
SCHEDULE 5 SPECIFIED OFFICES OF THE AGENTS .....	63

THIS PAYING AGENCY AGREEMENT dated

8 SEPTEMBER 2021

BETWEEN:

- (1) GROUP ARK INSURANCE LIMITED, a Bermuda exempted insurance company (Registration No. 39617) limited by shares, with its registered office at, Clarendon House, 2 Church Street, Hamilton HM11, Bermuda, in its capacity as Issuer (the "Issuer");
- (2) THE BANK OF NEW YORK MELLON, LONDON BRANCH, whose registered office is at One Canada Square, London, E14 5AL, United Kingdom in its capacity as fiscal agent, transfer agent and agent bank (in such capacities, the "Fiscal Agent", the "Transfer Agent", the "Agent Bank" and, together with any other person(s) appointed from time to time as paying agents under the terms of this Agreement, the "Paying Agents"); and
- (3) THE BANK OF NEW YORK MELLON SA/NV, DUBLIN BRANCH, whose registered office is at Riverside Two, Sir John Rogerson's Quay, Grand Canal Dock, Dublin 2, Ireland in its capacity as registrar, (in such capacity, the "Registrar").

RECITALS

- (A) The Issuer has authorised the creation and issue of US\$70,000,000 in aggregate principal amount of Floating Rate Tier 2 Subordinated Notes due 2041 (the "Subordinated Notes").
- (B) The Subordinated Notes will be constituted by a deed of covenant dated on or about the date hereof (as amended or supplemented from time to time, the "Deed of Covenant") entered into by the Issuer.
- (C) The Subordinated Notes will be in registered form in the denominations of US\$200,000. The Subordinated Notes will be represented by a registered global certificate (the "Global Note Certificate"), which will be exchangeable for individual note certificates (the "Individual Note Certificates" and, together with the Global Note Certificate, the "Note Certificates") in the circumstances specified therein.
- (D) The Issuer, the Registrar, the Transfer Agent and the Paying Agents (collectively, the "Parties") wish to record certain arrangements which they have made in relation to the Subordinated Notes.

IT IS AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, the following expressions shall have the following meanings:

"Agents" means the Fiscal Agent, the Paying Agents, the Registrar, the Transfer Agent and the Agent Bank, and "Agent" means any one of them;

"Agreement" means this paying agency agreement between the Issuer and the Agents;

"Applicable Law" shall be deemed to include (i) any rule or practice of any Authority by which any Party is bound or with which it is accustomed to comply; (ii) any agreement between any Authorities; and (iii) any agreement between any Authority and any Party that is customarily entered into by institutions of a similar nature;

"Authority" means any competent regulatory, prosecuting, Tax or governmental authority in any jurisdiction;



“Business Day” means a day on which commercial banks and foreign exchange markets settle payments and are open for general business (including dealings in foreign exchange and foreign currency deposits) in New York, London and Hamilton (Bermuda);

“Business Hours” means, in respect of a Business Day for the provisions of Clause 9 (Duties of the Agent Bank), between 10 a.m. and 4 p.m. Local Time;

“Clearing Systems” means Euroclear and Clearstream, Luxembourg;

“Clearstream, Luxembourg” means Clearstream Banking, S.A.;

“Code” means the U.S. Internal Revenue Code of 1986, as amended;

“Common Depository” means a common depository acting for Euroclear and Clearstream, Luxembourg;

“Conditions” means the terms and conditions of the Subordinated Notes (in the form set out in Schedule 3 (Terms and Conditions) hereto and as modified from time to time in accordance with their terms and any references to a numbered “Condition” is to the correspondingly numbered provision thereof);

“Electronic Means” means the following communication methods: (i) non-secure methods of transmission or communication such as e-mail and facsimile transmission and (ii) secure electronic transmission containing applicable authorisation codes, passwords and/or authentication keys issued by any of the Agents or another method or system specified by any of the Agents as available for use in connection with its services hereunder;

“Euroclear” means Euroclear Bank S.A. / N.V.;

“FATCA Withholding” means any withholding or deduction required pursuant to an agreement described in Section 1471(b) of the Code or otherwise imposed pursuant to Sections 1471 through 1474 of the Code, any regulations or agreements thereunder, any official interpretations thereof, or any law implementing an intergovernmental approach thereto;

“Fiscal Agent”, “Paying Agents”, “Registrar”, “Transfer Agent” and “Agent Bank” include any successors thereto appointed from time to time in accordance with Clause 14 (Changes in Agents) and “Paying Agent” means any one of the Paying Agents;

“Local Time” means the time in the city in which the Fiscal Agent has its Specified Office;

“Noteholder” means any person that holds an interest in the Subordinated Note;

“Regulations” means the regulations concerning the transfer of Subordinated Notes as the same may from time to time be promulgated by the Issuer and approved by the Registrar (the initial such regulations being set out in Schedule 4 (Regulations concerning transfers and registration of Subordinated Notes));

“Specified Office” means the premises of any Paying Agent, the Registrar or Transfer Agent, in each case as set out in Schedule 5 (Specified Offices of the Agents);

“Tax” means any present or future taxes, duties, assessments or governmental charges of whatever nature imposed, levied, collected, withheld or assessed by or on behalf of any Authority having power to tax; and

“US\$” and “U.S. Dollar” mean the lawful currency of the United States of America.



## 1.2 Meaning of outstanding

For the purposes of this Agreement and the Conditions (but without prejudice to its status for any other purpose), a Subordinated Note shall be considered to be “outstanding” unless one or more of the following events has occurred:

- (a) it has been redeemed in full or purchased under Condition 6 (Redemption, Purchase and Cancellation) and, in either case, has been cancelled in accordance with Condition 6 (Redemption, Purchase and Cancellation); or
- (b) the due date for its redemption in full has occurred and all sums due in respect of such Subordinated Note (including all accrued interest) have been received by the Fiscal Agent and remain available for payment against presentation and surrender of the relevant Note Certificate,

provided, however, that, for the purposes of ascertaining the right to attend and vote at any meeting of Noteholders, those Subordinated Notes (if any) which are for the time being held by any person (including but not limited to the Issuer) for the benefit of the Issuer shall (unless and until ceasing to be so held) be deemed not to remain outstanding.

## 1.3 Clauses and Schedules

Any reference in this Agreement to a Clause or a Schedule is, unless otherwise stated, a reference to a clause hereof or a schedule hereto.

## 1.4 Principal and interest

In this Agreement, any reference to principal or interest includes any additional amounts payable in relation thereto under the Conditions.

## 1.5 Terms defined in the Conditions

Capitalised terms and expressions used but not defined herein have the respective meanings given to them in the Conditions.

## 1.6 Statutes

Any reference in this Agreement to a statute, any provision thereof or to any statutory instrument, order or regulation made thereunder shall be construed as a reference to such statute, provision, statutory instrument, order or regulation as the same may have been, or may from time to time be, amended or re-enacted.

## 1.7 Headings

Headings and sub-headings are for ease of reference only and shall not affect the construction of this Agreement.

## 1.8 Miscellaneous

- (a) A reference to a person in this Agreement includes its successors, transferees and assignees save that, with respect to the Paying Agents, the terms of Clause 11 (Miscellaneous Duties of the Agents) shall apply.
- (b) Word importing the singular shall include the plural and vice-versa.

## 2 APPOINTMENT OF AGENTS

Upon and subject to the terms of this Agreement and the Conditions, the Issuer hereby appoints each Agent as its agent in respect of the Subordinated Notes at its respective Specified Office, and each Agent hereby accepts such appointment. Each Agent shall perform the duties required of it by this Agreement and the Conditions. The duties and obligations of each Agent hereunder shall be several and not joint.

## 3 THE SUBORDINATED NOTES

### 3.1 Global Note Certificate

The Global Note Certificate shall:

- (a) be in substantially the form set out in Schedule 1 (Form of Global Note Certificate ); and
- (b) be executed manually, in facsimile or by electronic or digital signature by or on behalf of the Issuer and authenticated manually or by electronic or digital signature on behalf of the Registrar.

### 3.2 Individual Note Certificates

Each Individual Note Certificate shall:

- (a) be in substantially the form set out in Schedule 2 (Form of Individual Note Certificate);
- (b) have a unique serial number printed thereon; and
- (c) be executed manually, in facsimile or by electronic or digital signature by or on behalf of the Issuer and authenticated manually or by electronic or digital signature on behalf of the Registrar.

### 3.3 Signatures

Any signature on a Note Certificate shall be that of a person who is at the time of the creation and issue of the Subordinated Notes an authorised signatory for such purpose of the Issuer notwithstanding that such person has for any reason (including death) ceased to be such an authorised signatory at the time at which such Note Certificate is delivered.

### 3.4 Availability of Individual Note Certificates

The Issuer shall arrange for the duly signed unauthenticated Global Note Certificate to be made available to or to the order of the Fiscal Agent not later than one day prior to the Issue Date. If the Issuer is required to deliver Individual Note Certificates pursuant to the terms of the Global Note Certificate, the Issuer shall promptly arrange for a stock of Individual Note Certificates (unauthenticated and with the names of the registered Noteholders left blank but executed on behalf of the Issuer and otherwise complete) to be made available to the Registrar and the Fiscal Agent and not later than 14 days before the date upon which the Global Note Certificate is to be exchanged for Individual Note Certificates. The Issuer shall also arrange for such Global Note Certificates and Individual Note Certificates as are required to enable the Registrar to perform its obligations under Clause 4 (Exchanges of Global Note Certificate for Individual Note Certificates), Clause 5 (Transfers of Subordinated Notes) and Clause 6 (Replacement of Note Certificates) to be made available to or to the order of the Registrar and the Fiscal Agent from time to time. In the event that Individual Notes Certificates are issued and an Agent informs the Issuer that it is unable to



perform its obligations under this Agreement, the Issuer shall forthwith appoint another agent in accordance with Clause 14.4 (Additional and successor agents) which is able to perform such obligations.

### 3.5 Authority to authenticate

Each of the Registrar and the Fiscal Agent is authorised by the Issuer to authenticate the Global Note Certificate and the Individual Note Certificate by the signature of any of its officers or any other person duly authorised for the purpose by the Registrar, the Fiscal Agent or (as the case may be) such Paying Agent.

### 3.6 Duties of the Registrar

The Registrar and the Fiscal Agent shall hold in safekeeping all unauthenticated Global Note Certificates and Individual Note Certificates delivered to it in accordance with Clause 3.4 (Availability of Individual Note Certificates) and shall ensure that they are authenticated and delivered only in accordance with the terms hereof and of the Global Note Certificate (if applicable) and of the Conditions.

## 4 EXCHANGES OF GLOBAL NOTE CERTIFICATE FOR INDIVIDUAL NOTE CERTIFICATES

If the Global Note Certificate becomes exchangeable for Individual Note Certificates in accordance with its terms, the Registrar shall authenticate and deliver to each person designated by a Clearing System an Individual Note Certificate in accordance with the terms of this Agreement and the Global Note Certificate.

## 5 TRANSFERS OF SUBORDINATED NOTES

### 5.1 Maintenance of the Register

The Registrar shall maintain in relation to the Subordinated Notes a register (the "Register"), which shall be kept outside of the United Kingdom and at its Specified Office in accordance with the Conditions and be made available by the Registrar to the Issuer and the other Agents for inspection and for the taking of copies or extracts therefrom at all reasonable times. The Register shall show the aggregate principal amount, serial numbers and dates of issue of Note Certificates, the names and addresses of the initial Noteholders thereof and the dates of all transfers to, and the names and addresses of, all subsequent Noteholders thereof, all cancellations of Note Certificates and all replacements of Note Certificates.

### 5.2 Registration of transfers in the Register

The Registrar shall receive requests for the transfer of Subordinated Notes in accordance with the Conditions and the Regulations and shall make the necessary entries in the Register.

### 5.3 Transfer Agent to receive requests for transfers of Subordinated Notes

The Transfer Agent shall receive requests for the transfer of Subordinated Notes in accordance with the Conditions and the Regulations and assist, if required in the issue of new Note Certificates to give effect to such transfers and, in particular, upon any such request being duly made, shall promptly notify the Registrar of:

- (a) the aggregate principal amount of the Subordinated Notes to be transferred;
- (b) the name(s) and addresses to be entered on the Register of the holder(s) of the new Note Certificate(s) to be issued in order to give effect to such transfer; and

- (c) the place and manner of delivery of the new Note Certificate(s) to be delivered in respect of such transfer,

and shall forward the Note Certificate(s) relating to the Subordinated Notes to be transferred (with the relevant form(s) of transfer duly completed) to the Registrar with such notification.

## 6 REPLACEMENT OF NOTE CERTIFICATES

### 6.1 Delivery of replacements

Subject to receipt of replacement Global Note Certificates and/or Individual Note Certificates (as the case may be), the Fiscal Agent shall, upon and in accordance with the instructions of the Issuer (which instructions may, without limitation, include terms as to the payment of expenses and as to evidence, security and indemnity), complete, authenticate and deliver a Global Note Certificate or Individual Note Certificate which the Issuer has determined to issue as a replacement for any Global Note Certificate or Individual Note Certificate which has been mutilated or defaced or which has been or is alleged to have been destroyed, stolen or lost; provided, however, that the Fiscal Agent shall not deliver any Global Note Certificate or Individual Note Certificate as a replacement for any Global Note Certificate or Individual Note Certificate which has been mutilated or defaced otherwise than against surrender of the same and shall not issue any replacement Global Note Certificate or Individual Note Certificate until the applicant has furnished the Fiscal Agent with such evidence and indemnity as the Issuer and/or the Fiscal Agent may reasonably require and has paid such costs and expenses as may be incurred in connection with such replacement.

### 6.2 Replacements to be numbered

Each replacement Global Note Certificate or Individual Note Certificate delivered under this Agreement shall bear a unique serial number.

### 6.3 Cancellation and destruction

The Fiscal Agent shall cancel and destroy each mutilated or defaced Global Note Certificate or Individual Note Certificate surrendered to it in respect of which a replacement has been delivered.

### 6.4 Notification

The Fiscal Agent shall notify the Issuer and each other Agent of the delivery by it of any replacement Global Note Certificate or Individual Note Certificate specifying the serial number thereof and the serial number (if any and if known) of the Global Note Certificate or Individual Note Certificate which it replaces and confirming (if such is the case) that the Global Note Certificate or Individual Note Certificate which it replaces has been cancelled and destroyed in accordance with Clause 6.3 (Cancellation and destruction).

## 7 PAYMENTS TO THE FISCAL AGENT

### 7.1 Issuer to pay Fiscal Agent

Subject to Conditions 5 (Deferral of Interest) and 6 (Redemption, Purchase and Cancellation), the Issuer shall, one Business Day before each date on which any payment in respect of the Subordinated Notes becomes due, transfer to the Fiscal Agent before 10.00 a.m. (local time in the relevant principal financial centre of the country of the relevant currency) such amount as may be required for the purposes of such payment.



## 7.2 Manner and time of payment

Each amount payable under Clause 7.1 (Issuer to pay Fiscal Agent) shall be paid unconditionally by credit transfer in U.S. Dollar and in immediately available freely transferable, cleared funds not later than 10.00 a.m. (local time in the relevant principal financial centre of the country of the relevant currency) on the relevant day to such account with such bank as the Fiscal Agent may from time to time notify to the Issuer for such purpose. The Issuer shall, on the second Business Day before the due date of each payment by it under Clause 7.1 (Issuer to pay Fiscal Agent), procure that the bank effecting payment for it confirms by authenticated SWIFT message to the Fiscal Agent the payment instructions relating to such payment.

## 7.3 Failure to confirm payment instructions

If the Fiscal Agent has not, by 12.00 noon (local time in the relevant principal financial centre of the country of the relevant currency) on the second Business Day before the due date of any payment to it under Clause 7.1 (Issuer to pay Fiscal Agent), received confirmation of the relevant payment instructions referred to in Clause 7.2 (Manner and time of payment), it shall forthwith notify the Issuer and each other Paying Agent. If the Fiscal Agent subsequently receives confirmation of such payment instructions, it shall forthwith notify the Issuer and each other Paying Agent.

## 7.4 Exclusion of liens and interest

Each of the Agents shall be entitled to deal with each amount paid to them under this Clause 7 (Payments to the Fiscal Agent) in the same manner as other amounts paid to them as bankers by their customers; provided, however, that:

- (a) they shall not exercise against the Issuer any lien, right of set-off or similar claim in respect thereof;
- (b) they shall not be liable to any person for interest thereon; and
- (c) they shall not be required to segregate any money, except as required by law.

## 7.5 Application by Fiscal Agent

The Fiscal Agent shall apply each amount paid to it hereunder in accordance with Clause 8 (Payments to Noteholders) and shall not be obliged to repay any such amount unless the claim for the relevant payment becomes void in accordance with Applicable Law, in which event it shall refund at the written request of the Issuer such portion of such amount as relates to such payment by paying the same by credit transfer in U.S. Dollar to such account as the Issuer has by notice to the Fiscal Agent specified for the purpose.

## 8 PAYMENTS TO NOTEHOLDERS

### 8.1 Payments by Paying Agents

Each Paying Agent acting through its Specified Office shall make payments of principal and interest in respect of the Subordinated Notes in accordance with the Conditions and, so long as the Subordinated Notes are evidenced by the Global Note Certificate, the terms thereof, provided, however, that:

- (a) if any Global Note Certificate or Individual Note Certificate is presented or surrendered for payment to any Paying Agent and such Paying Agent has delivered a replacement therefor or has been notified that the same has been replaced, such Paying

Agent shall as soon as reasonably practicable notify the Issuer of such presentation or surrender and shall not make payment against the same until it is so instructed by the Issuer and has received the amount to be so paid;

- (b) a Paying Agent shall not be obliged (but shall be entitled) to make payments of principal or interest in respect of the Subordinated Notes, if:
  - (i) in the case of the Fiscal Agent, it has not received the full amount of any payment due to it under Clause 7.1 (Issuer to pay Fiscal Agent); or
  - (ii) in the case of any other Paying Agent, it is not able to establish that the Fiscal Agent has received (whether or not at the due time) the full amount of any payment due to it under Clause 7.1 (Issuer to pay Fiscal Agent); and
- (c) each Paying Agent shall cancel each Note Certificate against presentation and surrender of which it has made full payment and shall deliver each Note Certificate so cancelled by it to, or to the order of, the Registrar.

#### 8.2 Exclusion of liens and commissions

No Paying Agent shall exercise any lien, right of set-off or similar claim against any person to whom it makes any payment under Clause 8.1 (Payments by Paying Agents) in respect thereof, nor shall any commission or expense be charged by it to any such person in respect thereof.

#### 8.3 Reimbursement by Fiscal Agent

If a Paying Agent other than the Fiscal Agent makes any payment in accordance with Clause 8.1 (Payments by Paying Agents):

- (a) it shall notify the Fiscal Agent of the amount so paid by it and the serial number and principal amount of each Note Certificate in relation to which payment of principal or interest was made; and
- (b) subject to and to the extent of compliance by the Issuer with Clause 7.1 (Issuer to pay Fiscal Agent) (whether or not at the due time), the Fiscal Agent shall pay to such Paying Agent out of the funds received by it under Clause 7.1 (Issuer to pay Fiscal Agent), by credit transfer in U.S. Dollar and in immediately available freely transferable, cleared funds to such account with such bank as such Paying Agent has by notice to the Fiscal Agent specified for the purpose, an amount equal to the amount so paid by such Paying Agent.

#### 8.4 Appropriation by Fiscal Agent

If the Fiscal Agent makes any payment in accordance with Clause 8.1 (Payments by Paying Agents), it shall be entitled to appropriate for its own account out of the funds received by it under Clause 7.1 (Issuer to pay Fiscal Agent) an amount equal to the amount so paid by it.

#### 8.5 Reimbursement by Issuer

Subject to sub-clauses 8.1(a) and 8.1(b) (Payments by Paying Agents), if a Paying Agent makes a payment in respect of Subordinated Notes on or after the due date for such payment under the Conditions at a time at which the Fiscal Agent has not received the full amount of the relevant payment due to it under Clause 7.1 (Issuer to pay Fiscal Agent) and the Fiscal Agent is not able out of funds received by it under Clause 7.1 (Issuer to pay Fiscal Agent) to reimburse such Paying Agent therefor (whether by payment under Clause 8.3



(Reimbursement by Fiscal Agent) or appropriation under Clause 8.4 (Appropriation by Fiscal Agent)), the Issuer shall from time to time on demand pay to the Fiscal Agent for account of such Paying Agent:

- (a) the amount so paid out by such Paying Agent and not so reimbursed to it; and
- (b) interest on such amount from the date on which it is paid out to the date of reimbursement at a percentage rate per annum equal to the cost to the Paying Agent of funding the amount paid out, as certified by the Paying Agent and expressed as a percentage rate per annum,

provided, however, that any payment made under sub-clause 8.5(a) (Reimbursement by Issuer) shall satisfy pro tanto the obligations of the Issuer under Clause 7.1 (Issuer to pay Fiscal Agent).

#### 8.6 Partial payments

If at any time and for any reason a Paying Agent makes a partial payment in respect of the Global Note Certificate or any Individual Note Certificate presented for payment to it, such Paying Agent shall enface thereon a statement indicating the amount and date of such payment. In addition, if, on any due date for payment, less than the full amount of any principal or interest is paid in respect of the Subordinated Notes, the Registrar will note on the Register a memorandum of the amount and date of any payment then made and, if the Global Note Certificate or any Individual Note Certificate is presented for payment in accordance with the Conditions and no payment is then made, the date of presentation of the Global Note Certificate or (as the case may be) such Individual Note Certificate.

#### 8.7 Notice of any withholding or deduction

- (a) Each Party shall, within ten Business Days of a written request by another Party, supply to that other Party such forms, documentation and other information relating to it, its operations, or the Subordinated Notes as that other Party reasonably requests for the purposes of that other Party's compliance with Applicable Law and shall notify the relevant other Party reasonably promptly in the event that it becomes aware that any of the forms, documentation or other information provided by such Party is (or becomes) inaccurate in any material respect; provided, however, that no Party shall be required to provide any forms, documentation or other information pursuant to this sub-clause; to the extent that: (i) any such form, documentation or other information (or the information required to be provided on such form or documentation) is not reasonably available to such Party and cannot be obtained by such Party using reasonable efforts; or (ii) doing so would or might in the reasonable opinion of such Party constitute a breach of any: (a) Applicable Law; (b) fiduciary duty; or (c) duty of confidentiality;
- (b) The Issuer shall notify each Agent in the event that it determines that any payment to be made by an Agent under the Subordinated Notes is a payment which could be subject to FATCA Withholding if such payment were made to a recipient that is generally unable to receive payments free from FATCA Withholding, and the extent to which the relevant payment is so treated; provided, however, that the Issuer's obligation under this sub-clause 8.7 shall apply only to the extent that such payments are so treated by virtue of characteristics of the Issuer, the Subordinated Notes, or both;
- (c) Notwithstanding any other provision of this Agreement, each Agent shall be entitled to make a deduction or withholding from any payment which it makes under the Subordinated Notes for or on account of any Tax, if and only to the extent so required



by Applicable Law, in which event the Agent shall make such payment after such deduction or withholding has been made and shall:

- (i) where permitted by the Applicable Law, account to the relevant Authority within the time allowed for the amount so deducted or withheld; or
  - (ii) return to the Issuer the amount so deducted or withheld reasonably promptly, and within such time as to allow the Issuer to account to the relevant Authority for such amount within the time allowed, after making such payment, in which case, the Issuer shall so account to the relevant Authority for such amount. For the avoidance of doubt, FATCA Withholding is a deduction or withholding which is deemed to be required by Applicable Law for the purposes of this sub-clause 8.7;
- (d) In the event that any Agent determines that any deduction or withholding for or on account of any Tax will be required by Applicable Law in connection with any payment due to any of the Agents on the Subordinated Notes, then that Agent shall notify the Issuer on making such determination; and
- (e) In the event that the Issuer determines in its sole discretion that any deduction or withholding for or on account of any Tax will be required by Applicable Law in connection with any payment due to any of the Agents on any Subordinated Notes, then the Issuer will be entitled to redirect or reorganise any such payment in any way that it sees fit in order that the payment may be made without such deduction or withholding, provided, however, that any such redirected or re-organised payment is made through a recognised institution of international standing and otherwise made in accordance with this Agreement. The Issuer will promptly notify the Agents of any such redirection or reorganisation. For the avoidance of doubt, FATCA Withholding is a deduction or withholding which is deemed to be required by Applicable Law for the purposes of this sub-clause 8.7.

## 9 DUTIES OF THE AGENT BANK

The Agent Bank agrees to comply with the provisions of Condition 4 (Interest) and this Agreement. In particular, the Agent Bank shall:

- (a) determine the Rate of Interest (as defined in the Conditions) applicable to the Subordinated Notes in accordance with the Conditions;
- (b) as soon as practicable after determining the Rate of Interest applicable to the Subordinated Notes for any period (but in any event not later than the first day of the applicable Interest Period (as defined in the Conditions)) pursuant to the Conditions, notify the Issuer, the Noteholders and the Paying Agents thereof in accordance with the Conditions;
- (c) publish the Rate of Interest, Interest Amount and relative Interest Payment Date in accordance with Condition 4 (Interest); and
- (d) maintain records of the quotations obtained, and all rates determined, by it and make such records available for inspection at all reasonable times by the Issuer and the Paying Agents.

## 10 COVENANTS BY THE ISSUER

The Issuer covenants with the Fiscal Agent that, so long as any of the Subordinated Notes remain outstanding, it will:

### 10.1 Notification of Redemption or Repayment

Not less than the number of days specified in the relevant Condition prior to the redemption or repayment date in respect of any Subordinated Note, give to the Fiscal Agent notice in writing of the amount of such redemption or repayment pursuant to the Conditions and duly proceed to redeem or repay such Subordinated Notes accordingly;

### 10.2 Supervisory Consent

So long as any Subordinated Note is outstanding, the Issuer will, where the Regulatory Clearance Condition is required to be satisfied before any payment is made or any other action is taken under this Agreement or the Subordinated Notes, meet such Regulatory Clearance Condition promptly before making such payment or taking such action and promptly provide a copy to the Fiscal Agent;

### 10.3 BMA Objection

So long as any Subordinated Note is outstanding, the Issuer will, having received an objection to the making of any payment or taking of any action pursuant to the Conditions from the BMA following notification thereof to the BMA pursuant to Clause 10.2 (Supervisory Consent), promptly notify the Fiscal Agent in writing thereof and, if permitted by Applicable Law, regulation or by the BMA, provide a copy thereof to the Fiscal Agent;

### 10.4 BMA Notifications

The Issuer undertakes to supply to the Fiscal Agent, in sufficient copies for all the Noteholders:

- (a) the Issuer's annual statutory returns as filed with the BMA (or any successor thereto) as Issuer's regulator (the "Regulator"), as soon as reasonably practicable and in any event no later than the date falling 20 Business Days after the date on which such filing is made;
- (b) promptly upon receipt or submission (as the case may be), copies of any approval, direction or order received by the Issuer from the Regulator from time to time or any response from the Issuer in relation to such approval, direction or order, including in connection with any capital release or any other return of surplus capital, in each case to the extent material to the interests of the Noteholders; and
- (c) promptly upon submission, copies of any reports and all other material correspondence required or requested by or provided to the Regulator from time to time;

### 10.5 Interest Deferral

So long as any Subordinated Note is outstanding, the Issuer will, where any payment of any interest pursuant to Condition 5 (Deferral of Interest) is mandatorily deferred, give notice of such mandatory deferral to the Noteholders in accordance with Conditions 5(e)(Notice of Deferral) and 16 (Notices) and to the Fiscal Agent, and, in accordance with Condition 5(a)(Regulatory Deficiency Deferral of Interest), the Issuer will deliver a certificate (on the same date that it gives such notice) signed by two Authorised Signatories (as defined in the Conditions) confirming that: (a) a Regulatory Deficiency Interest Deferral Event has



occurred and is continuing, or would occur if payment of interest on the Subordinated Notes were to be made; or (b) a Regulatory Deficiency Interest Deferral Event has ceased to occur and/or payment of interest on the Subordinated Notes would not result in a Regulatory Deficiency Interest Deferral Event occurring;

#### 10.6 Redemption Deferral

- (a) So long as any Subordinated Note is outstanding, the Issuer will, in the case of a mandatory deferral of redemption in accordance with Condition 6(b) (Deferral of redemption date) give notice of such mandatory deferral to the Noteholders and the Fiscal Agent in accordance with Conditions 6(b)(iii) (Deferral of redemption date) and 16 (Notices), provided, however, that if the Issuer becomes aware of the operation of the Solvency Condition or a Regulatory Deficiency Interest Deferral Event occurs less than 5 Business Days prior to an Interest Payment Date, the Issuer shall give notice of the interest deferral in accordance with Condition 5 (Deferral of Interest) as soon as reasonably practicable following its becoming aware of, or the occurrence of, such event;
- (b) In accordance with Condition 6(b)(v) (Deferral of redemption date), the Issuer will deliver a certificate (on the same date that it gives such notice) to the Fiscal Agent signed by two Authorised Signatories confirming that: (a) a Regulatory Deficiency Redemption Deferral Event has occurred and is continuing or would occur if redemption of the Subordinated Notes were to be made; or (b) a Regulatory Deficiency Redemption Deferral Event (as applicable) has ceased to occur and/or redemption of the Subordinated Notes would not result in such event occurring; and

#### 10.7 Occurrence of a Premium Load Event

So long as any Subordinated Note is outstanding, promptly upon becoming aware of the occurrence of any Premium Load Event, the Issuer will give notice to the Fiscal Agent and the Noteholders of its occurrence, in accordance with Conditions 12 (Undertakings of the Issuer) and 16 (Notices).

### 11 MISCELLANEOUS DUTIES OF THE AGENTS

#### 11.1 Records

Each of the Agents shall maintain records of all documents received by it in connection with its duties hereunder and shall make such records available for inspection at all reasonable times by the Issuer, and the other Agents and, in particular, the Registrar shall (a) maintain a record of all Note Certificates delivered hereunder and of their redemption, payment, cancellation, mutilation, defacement, alleged destruction, theft, loss and replacement and (b) make such records available for inspection during Business Hours by the Issuer, the other Paying Agents and each Clearing System.

#### 11.2 Information

The Issuer and the Paying Agents shall make available to the Fiscal Agent such information as is reasonably required for the maintenance of the records referred to in Clause 11.1 (Records).

#### 11.3 Cancellation

The Issuer may from time to time deliver to, or to the order of the Registrar, Note Certificates of which it or any of its subsidiaries is the holder for cancellation, whereupon the Registrar shall cancel the same and shall make the corresponding entries in the Register.

#### 11.4 Subordinated Notes in issue

As soon as practicable (and in any event within three months) after each date on which the Subordinated Notes fall due for redemption in accordance with the Conditions, the Registrar shall notify the Issuer of the serial numbers and principal amount of any Note Certificates against surrender of which payment has been made and of the serial numbers and principal amount of any Note Certificates (and the names and addresses of the Noteholders thereof) which have not yet been surrendered for payment.

#### 11.5 Forwarding of communications

Each Agent shall promptly forward to the Issuer a copy of any notice or communication addressed to the Issuer which is received by such Agent.

#### 11.6 Documents available for inspection

The Issuer shall provide to each Agent:

- (a) conformed copies of this Agreement and the Deed of Covenant; and
- (b) such other documents as contemplated in the Conditions.

Each of the Agents shall make available for inspection during Business Hours at its Specified Office the documents referred to above and, upon reasonable request, allow copies of such documents to be taken. However, if the Agent is not able to make available for inspection at its Specified Office such documents by events beyond its reasonable control, the Agent may provide such documents to a Noteholder electronically, subject to such Noteholder being able to provide evidence reasonably satisfactory to the Issuer and the Agent as to its holding and identity.

### 12 FEES AND EXPENSES

#### 12.1 Fees

The Issuer shall pay annually in advance to the Fiscal Agent and the Agents such fees as have been agreed by separate fee letter between the Issuer and the Fiscal Agent in respect of the services of the Agents hereunder (plus any applicable value added tax).

#### 12.2 Expenses

The Issuer shall reimburse each Agent for all expenses (including, without limitation, legal fees and any publication, advertising, communication, courier, postage and other out-of-pocket expenses) properly incurred (excluding those expenses already reimbursed pursuant to Clause 12.1 (Fees)) by them in connection with their services hereunder (plus any applicable value added tax).

#### 12.3 Taxes

The Issuer shall pay all stamp, registration and other taxes and duties (including any interest and penalties thereon or in connection therewith) which are payable upon or in connection with the execution and delivery of this Agreement, and the Issuer shall indemnify each Agent against any claim, demand, action, liability, damages, cost, loss or expense (including, without limitation, properly incurred legal fees and any applicable value added tax) which it incurs as a result or arising out of or in relation to any failure by the Issuer to pay or delay by the Issuer in paying any of the same. All payments by the Issuer under this Clause 12 (Fees and Expenses) or Clause 13.4 (Indemnity in favour of the Agents) shall be made free



and clear of, and without setoff, counterclaim, withholding or deduction for, any taxes, duties, assessments or governmental charges of whatsoever nature unless compelled by law, in which case the Issuer will gross-up such payments to the Agents.

13 TERMS OF APPOINTMENT

13.1 Rights and powers

Each Agent may, in connection with its services hereunder:

- (a) except as ordered by a court of competent jurisdiction or otherwise required by law and regardless of any notice of ownership, trust or any other interest therein, any writing on the Note Certificate relating to any Subordinated Note by any person (other than a duly executed form of transfer) or any notice of any previous loss or theft thereof, but subject to sub-clause 8.1(a) (Payments by Paying Agents), treat the registered Noteholders as absolute owners for all purposes and make payments thereon accordingly;
- (b) assume that the terms of the Global Note Certificate and each Individual Note Certificate as issued are correct;
- (c) rely upon the terms of any notice, certificate communication or other document believed by it to be genuine and shall be protected and shall, other than by reason of its gross negligence, wilful default or fraud, incur no liability for or in respect of action taken, omitted or suffered in reliance upon any notice, communication or other document;
- (d) subject to Clause 12.2 (Expenses), engage and pay for the advice or services of any lawyers or other experts whose advice or services it considers necessary and rely upon any advice so obtained (and such Agent shall be protected and shall, other than by reason of its gross negligence, wilful default or fraud, incur no liability as against the Issuer in respect of any action taken, or permitted to be taken, in accordance with such advice and in good faith); and
- (e) may, and its officers, directors, employees or controlling persons may, become the owner of, or acquire any interest in, the Subordinated Notes with the same rights that it would have if it were not appointed under this Agreement, and may engage or be interested in any financial or other transaction with the Issuer and/or any of their Affiliates and may act as freely as if it were not appointed under this Agreement.

13.2 Extent of duties

Each Agent shall only be obliged to perform the duties set out herein and no implied duties or obligations shall be read into this Agreement or the Conditions against any Agent. No Agent shall:

- (a) be under any fiduciary duty or other obligation towards or have any relationship of agency or trust for or with any person other than the Issuer;
- (b) be responsible for or liable in respect of the legality, validity or enforceability of the Subordinated Notes or any Note Certificate (other than in respect of authentication of Note Certificates by it in accordance with this Agreement) or any act or omission of any other person (including, without limitation, any other Agent);

- (c) be under any obligation to act if it reasonably believes that if it were to act it would incur expenses for which it would not be reimbursed and it shall bear no liability for not acting on the basis of such reasonable belief;
- (d) be required to take any action which it determines to be contrary to any Applicable Law, regulation or fiscal requirement, or the rules, operating procedures or market practice of any other market or clearing system;
- (e) be responsible for monitoring compliance by any other party or taking any steps to ascertain whether any relevant event under this Agreement or the Conditions shall have occurred and shall have no liability to any person for any loss arising from any breach by that party or any such event; or
- (f) be liable to any person for any matter or thing done or omitted in any way in connection with this Agreement or the Conditions save in relation to its own gross negligence, wilful default or fraud.

### 13.3 Freedom to transact

Each Agent may purchase, hold and dispose of Subordinated Notes and may enter into any transaction (including, without limitation, any depository, trust or agency transaction) with any Noteholders or with any other person in the same manner as if it had not been appointed as the agent of the Issuer in relation to the Subordinated Notes.

### 13.4 Indemnity in favour of the Agents

The Issuer will indemnify each Agent against any loss, liability, cost, claim, action, demand or expense (including, but not limited to, all costs, charges and expenses paid or incurred in disputing or defending any of the foregoing) which it may directly incur or which may be made against it as a result of or in connection with its appointment or the exercise of its functions, except such as may result from its wilful default, gross negligence or fraud or that of its directors, officers or employees. The indemnity contained in this Clause 13.4 (Indemnity in favour of the Agents) shall survive any cessation of any appointment of an Agent under this Agreement pursuant to Clause 14 (Changes in Agents) or any termination of this Agreement. Any claim by an Agent under this indemnity shall be accompanied by duly documented evidence supporting such claim.

### 13.5 Liability for losses

- (a) Notwithstanding anything else in this Agreement, no Agent nor any of its directors, officers, employees or agents shall be liable to the Issuer or any other person for any:
  - (i) loss of profit;
  - (ii) loss of revenue;
  - (iii) loss of anticipated savings;
  - (iv) loss of contract or opportunity;
  - (v) loss of goodwill or reputation; or
  - (vi) indirect, special, or consequential loss or damage of whatever nature including any loss of a type described in sub clauses (i) to (v) (inclusive) above which could be regarded as indirect or consequential,



arising from any representation, any breach of implied term or any duty at common law or under any statute or express term of this Agreement, and whether such liability is asserted on the basis of contract, tort (including negligence) or otherwise and whether or not reasonably foreseeable or actually contemplated by the parties.

## 14 CHANGES IN AGENTS

### 14.1 Resignation

Any Agent may (without reason) resign its appointment upon not less than 30 days' notice to the Issuer (with a copy, in the case of an Agent other than the Fiscal Agent, to the Fiscal Agent); provided, however, that:

- (a) if such resignation would otherwise take effect less than 30 days before or after the Maturity Date or other date for redemption of the Subordinated Notes or any interest payment date in relation to the Subordinated Notes, it shall not take effect until the thirtieth day following such date; and
- (b) in the case of the Fiscal Agent, such resignation shall not take effect until a successor has been duly appointed consistently with Clause 14.4 (Additional and successor agents) or Clause 14.5 (Paying Agents may appoint successors) and notice of such appointment has been given to the Noteholders.

### 14.2 Revocation

The Issuer may revoke its appointment of any Agent by not less than 30 days' notice to such Agent (with a copy, in the case of an Agent other than the Fiscal Agent, to the Fiscal Agent); provided, however, that, in the case of the Fiscal Agent, such revocation shall not take effect until a successor has been duly appointed consistently with Clause 14.4 (Additional and successor agents) or Clause 14.5 (Paying Agents may appoint successors) and notice of such appointment has been given to the Noteholders.

### 14.3 Automatic termination

The appointment of any Agent shall terminate forthwith if (a) such Agent becomes incapable of acting, (b) a secured party takes possession, or a receiver, manager or other similar officer is appointed, of the whole or any part of the undertaking, assets and revenues of such Agent, (c) such Agent admits in writing its insolvency or inability to pay its debts as they fall due, (d) an administrator or liquidator of such Agent or the whole or any part of the undertaking, assets and revenues of such Agent is appointed (or application for any such appointment is made), (e) such Agent takes any action for a readjustment or deferment of any of its obligations or makes a general assignment or an arrangement or composition with or for the benefit of its creditors or declares a moratorium in respect of any of its indebtedness, (f) an order is made or an effective resolution is passed for the winding-up of such Agent or (g) any event occurs which has an analogous effect to any of the foregoing. If the appointment of the Fiscal Agent is terminated in accordance with the preceding sentence, the Issuer shall forthwith appoint a successor in accordance with Clause 14.4 (Additional and successor agents).

### 14.4 Additional and successor agents

The Issuer may appoint a successor registrar or fiscal agent, and additional or successor transfer agent or paying agents (any such successor or additional agent shall be a reputable and experienced financial institution that complies with the eligibility requirements of the clearing systems), and shall forthwith give notice of any such appointment to the continuing Agents and the Noteholders, whereupon the Issuer, the continuing Agents and the additional



or successor registrar, transfer agent, fiscal agent or paying agent shall acquire and become subject to the same rights and obligations between themselves as if they had entered into an agreement in the form mutatis mutandis of this Agreement.

#### 14.5 Paying Agents may appoint successors

If any Agent gives notice of its resignation in accordance with Clause 14.1 (Resignation) and by the tenth day before the expiry of such notice a successor has not been duly appointed in accordance with Clause 14.4 (Additional and successor agents), such Agent may itself, following such consultation with the Issuer as is practicable in the circumstances, appoint on behalf of the Issuer as its successor any reputable and experienced financial institution that complies with the eligibility requirements of the clearing systems and give notice of such appointment to the Issuer, the remaining Agents and the Noteholders, whereupon the Issuer, the remaining Agents and such successor shall acquire and become subject to the same rights and obligations between themselves as if they had entered into an agreement in the form mutatis mutandis of this Agreement.

#### 14.6 Release

Upon any resignation or revocation taking effect under Clause 14.1 (Resignation) or Clause 14.2 (Revocation) or any termination taking effect under Clause 14.3 (Automatic termination), the relevant Agent shall:

- (a) be released and discharged from its obligations under this Agreement (save that it shall remain entitled to the benefit of and subject to Clause 12.3 (Taxes), Clause 13 (Terms of Appointment) and Clause 14 (Changes in Agents));
- (b) in the case of the Fiscal Agent, deliver to the Issuer and to its successor a copy, certified as true and up-to-date by an officer or authorised signatory of the Fiscal Agent, of the records maintained by it in accordance with Clause 5.1 (Maintenance of the Register);
- (c) in the case of the Agent Bank, deliver to the Issuer and to its successor a copy, certified as true and up-to-date by an officer or authorised signatory of the Agent Bank, of the records maintained by it in accordance with Clause 9 (Duties of the Agent Bank); and
- (d) forthwith (upon payment to it of any amount due to it in accordance with Clause 12 (Fees and Expenses)) transfer all moneys and papers (including any unissued Note Certificates held by it hereunder and any documents held by it pursuant to Clause 11.6 (Documents available for inspection)) to its successor and, upon appropriate notice, provide reasonable assistance to its successor for the discharge of its duties and responsibilities hereunder.

#### 14.7 Merger

- (a) Any legal entity (i) into which any Agent may be merged or converted or any legal entity with which such Agent may be consolidated, (ii) to which the business of such Agent is transferred, (iii) with which such Agent agrees to transfer its respective rights and obligations hereunder or (iv) which results from any merger, conversion, consolidation or transfer to which such Agent shall be a party shall, to the extent permitted by Applicable Law, be the successor Agent under this Agreement without any further formality, and after such effective date all references in this Agreement to such Agent shall be deemed to be references to such corporation and, by virtue of a transfer by novation, such successor shall acquire and become subject to the same rights and obligations under this Agreement as the relevant Agent as if the successor had entered into this Agreement on the Issue Date (as defined in the Conditions).

Notice of any such merger, conversion, consolidation or transfer shall forthwith be given by the relevant Agent to the Issuer.

- (b) The Issuer shall on request enter into any document or agreement necessary to give legal effect to the assignment or transfer including in the case of a novation, a deed of novation in a form agreed with such Agent.

#### 14.8 **Changes in Specified Offices**

If any Agent decides to change its Specified Office, it shall give notice to the Issuer (with a copy to the other Agents) of the address of the new Specified Office stating the date on which such change is to take effect, which date shall be not less than 30 days after the date of such notice. The Issuer shall at its own expense not less than 14 days prior to the date on which such change is to take effect (unless the appointment of the relevant Agent is to terminate pursuant to any of the foregoing provisions of this Clause 14 (*Changes in Agents*) on or prior to the date of such change) give notice thereof to the Noteholders.

### 15 **NOTICES**

#### 15.1 **Addresses for notices**

All notices and communications hereunder shall be made in writing (by letter or email) and shall be sent as follows:

- (a) if to the Issuer, to it at:

Group ARK Insurance Limited  
Clarendon House,  
2 Church Street,  
Hamilton HM11, Bermuda

Attention: Angus Ayliffe

Tel: [REDACTED]

Email: [REDACTED]

with a copy to:

Willkie Farr & Gallagher (UK) LLP  
Citypoint, 1 Ropemaker Street,  
London EC2Y 9 AW, United Kingdom  
Attention: Andrew Tromans  
Tel: [REDACTED]  
Email: [REDACTED]

- (b) if to the Fiscal Agent, to it at:

The Bank of New York Mellon, London Branch  
One Canada Square  
London, E14 5AL  
United Kingdom

Attention: Conventional Debt EMEA – Team 4

Email: [REDACTED]

- (c) if to the Registrar, to it at:



The Bank of New York Mellon SA/NV, Dublin Branch  
Riverside Two  
Sir John Rogerson's Quay  
Grand Canal Dock  
Dublin 2, Ireland

Attention: Structured Products Services  
Email: [REDACTED]

or, in any case, to such other address or email address or for the attention of such other person or department as the addressee has by prior notice to the sender specified for the purpose.

## 15.2 Effectiveness

- (a) Every notice or communication sent in accordance with Clause 15.1 (Addresses for notices) shall be effective, if sent by letter or email, upon receipt by the addressee, provided, however, that any such notice or communication which would otherwise take effect after 4.00 p.m. on any particular day shall not take effect until 10.00 a.m. on the immediately succeeding business day in the place of the addressee.
- (b) In no event shall any of the Agents be liable for any losses arising from any of the Agents receiving or transmitting any data to the Issuer (or any Authorised Person) or acting upon any notice, instruction or other communication via any Electronic Means. None of the Agents shall have a duty or obligation to verify or confirm that the person who sent such instructions or directions is, in fact, a person authorised to give instructions or directions on behalf of the Issuer (or any Authorised Person). The Issuer agrees that the security procedures, if any, to be followed in connection with a transmission of any such notice, instructions or other communications provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances.

## 15.3 Notices to Noteholders

Any notice required to be given to Noteholders under this Agreement and/or the Conditions, or any notice delivered by the Issuer to the Fiscal Agent, shall be given in accordance with the Conditions; provided, however, that so long as any Subordinated Notes are represented by the Global Note Certificate, notices to be given to the Noteholders shall be delivered by the Fiscal Agent to the Noteholders electronically through the Clearing Systems.

## 15.4 Notices in English

All notices and other communications hereunder shall be made in the English language or shall be accompanied by a certified English translation thereof. Any certified English translation delivered hereunder shall be certified a true and accurate translation by a professionally qualified translator or by some other person competent to do so.

## 16 LAW AND JURISDICTION

### 16.1 Governing law

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

## 16.2 English courts

The courts of England have exclusive jurisdiction to settle any dispute (a “Dispute”), arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) or the consequences of its nullity.

## 16.3 Appropriate forum

The parties agree that the courts of England are the most appropriate and convenient courts to settle any Dispute and, accordingly, that they will not argue to the contrary.

## 16.4 Service of process

The Issuer agrees that the documents which start any Dispute and any other documents required to be served in relation to those Dispute may be served on it by being delivered to Ark Syndicate Management Limited, 30 Fenchurch Ave, London EC3M 5AD, United Kingdom, or to such other person with an address in England or Wales and/or at such other address in England or Wales as the Issuer may specify by notice in writing to the Agents. Nothing in this paragraph shall affect the right of any Agent to serve process in any other manner permitted by law.

## 16.5 Contractual Recognition of Bail-in Powers

Notwithstanding and to the exclusion of any other term of this Agreement or any other agreements, arrangements, or understanding between the Registrar and the Issuer, the Issuer acknowledges and agrees that a BRRD Liability arising under this Agreement may be subject to the exercise of Bail-in Powers by the Relevant Resolution Authority, and acknowledges, accepts, and agrees to be bound by:

- (a) the effect of the exercise of Bail-in Powers by the Relevant Resolution Authority in relation to any BRRD Liability of the Registrar to the Issuer under this agreement, that (without limitation) may include and result in any of the following, or some combination thereof:
  - (i) the reduction of all, or a portion, of the BRRD Liability or outstanding amounts due thereon;
  - (ii) the conversion of all, or a portion, of the BRRD Liability into shares, other securities or other obligations of the Registrar or another person, and the issue to or conferral on the Issuer of such shares, securities or obligations;
  - (iii) the cancellation of the BRRD Liability; and
  - (iv) the amendment or alteration of any interest, if applicable, thereon, the maturity or the dates on which any payments are due, including by suspending payment for a temporary period; and
- (b) the variation of the terms of this Agreement, as deemed necessary by the Relevant Resolution Authority, to give effect to the exercise of Bail-in Powers by the Relevant Resolution Authority.

In this Clause 16.5:

“Bail-in Legislation” means in relation to a member state of the European Economic Area which has implemented, or which at any time implements, the BRRD, the relevant



implementing law, regulation, rule or requirement as described in the EU Bail-in Legislation Schedule from time to time;

“Bail-in Powers” means any Write-down and Conversion Powers as defined in the EU Bail-in Legislation Schedule, in relation to the relevant Bail-in Legislation;

“BRRD” means Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms;

“BRRD Liability” means a liability in respect of which the relevant Write-down and Conversion Powers in the applicable Bail-in Legislation may be exercised;

“EU Bail-in Legislation Schedule” means the document described as such, then in effect, and published by the Loan Market Association (or any successor person) from time to time at <http://www.lma.eu.com/pages.aspx?p=499>; and

“Relevant Resolution Authority” means the resolution authority with the ability to exercise any Bail-in Powers in relation to the Registrar.

## 17 FORCE MAJEURE

Notwithstanding anything in this Agreement to the contrary, the Agents shall not be responsible or liable for any delay or failure to perform under this Agreement or for any losses resulting, in whole or in part, from or caused by any event beyond the reasonable control of the Agents, including without limitation: work stoppages, acts of war, terrorism, acts of God, epidemics, governmental actions (including but not limited to nationalisation, expropriation or sanctions imposed at national or international level), exchange or currency controls or restrictions, devaluations or fluctuations, interruption, loss or malfunction of utilities, communications or any computer (software or hardware) services and in no event shall the Agents be obliged to substitute another currency for a currency whose transferability, convertibility or availability has been affected, limited, prohibited or prevented by such law, regulation or event.

## 18 SANCTIONS

18.1 The Issuer covenants and represents that neither they nor any of their affiliates, subsidiaries, directors or officers are the target or subject of any sanctions enforced by the US Government, (including, without limitation, the Office of Foreign Assets Control of the US Department of the Treasury or the US Department of State), the United Nations Security Council, the European Union, Her Majesty’s Treasury or other relevant sanctions authority (collectively “Sanctions”).

18.2 The Issuer covenants and represents that neither they nor any of their affiliates, subsidiaries, directors or officers will use any repayments/reimbursements made pursuant to this Agreement, (i) to fund or facilitate any activities of or business with any person who, at the time of such funding or facilitation, is the subject or target of Sanctions, (ii) to fund or facilitate any activities of or business with any country or territory that is the subject of Sanctions, or (iii) in any other manner that will result in a violation of Sanctions by any person.

## 19 RIGHTS OF THIRD PARTIES

A person who is not a party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this shall not affect any right or remedy which exists or is available apart from such Act.

20      **MODIFICATION**

This Agreement may not be amended without the consent of the Majority Noteholders pursuant to Condition 15 (Modification and Waiver) unless for the purpose of curing any ambiguity or of curing, correcting or supplementing any manifest error or any other defective provision contained in this Agreement and any such amendment to this Agreement shall not, in the sole opinion of the Issuer, be materially prejudicial to the interest of the Noteholders.

21      **CONFIDENTIALITY**

21.1    Each Agent and the Issuer undertake to respect and protect the confidentiality of all information acquired as a result of or pursuant to this Agreement and will not, without the other Party's prior written consent, disclose any such information to a third party, unless it is required to do so by any Applicable Law or regulation or is specifically authorised to do so hereunder or by any separate agreement, especially where the provision of such information is the object or Party of the service to be provided by such Agent.

21.2    In order to provide its services to the Issuer and to satisfy legal obligations it is subject to, each Agent will process (in particular, without being limited to, by collecting, recording, organizing, storing, adapting or altering, retrieving, consulting, using, disclosing by transmission, disseminating or otherwise making available to third parties) data relating to the Issuer (including, without being limited to the Issuer's name, address, occupation, nationality, corporate form, etc.). The Issuer may freely refuse to provide such Agent with this information and thus prevent such Agent from using these data-processing systems. However, such a refusal will be an obstacle preventing the start or continuation of business relations between the Issuer and such Agent. Such Agent will only ask for the information needed to fulfil its obligations.

21.3    The Issuer expressly authorizes the transfer of data to third parties or to the head office of each Agent (such as to a sub-custodian or any other person providing services to such Agent) if such transmission is required to allow such Agent to provide its services to the Issuer or to satisfy legal obligations it or such third party is subject to. The Issuer expressly authorizes such transfer, including, to the extent relevant, any transfer to third parties established outside the European Union.


22      **COUNTERPARTS**

22.1    This Agreement may be executed in any number of counterparts, and by the parties on separate counterparts, but shall not be effective until each party has executed at least one counterpart.

22.2    Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

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

Executed by **GROUP ARK INSURANCE LIMITED** as Issuer  
acting by:

DocuSigned by:  
  
05A7C74DD3194D6  
[signature of director]

Angus Ayliffe

Executed by **THE BANK OF NEW YORK MELLON, LONDON BRANCH** as Fiscal  
Agent, Transfer Agent and Agent Bank  
acting by:

 Digitally signed  
by Michael Lee  
MICHAEL LEE  
AUTHORISED SIGNATORY  
[signature]

[print name]

Executed by **THE BANK OF NEW YORK MELLON SA/NV, DUBLIN BRANCH** as  
Registrar  
acting by:

 Digitally  
signed by  
Michael Lee  
MICHAEL LEE  
AUTHORISED SIGNATORY  
[signature]

[print name]



## SCHEDULE 1

### FORM OF GLOBAL NOTE CERTIFICATE

THE SUBORDINATED NOTES REPRESENTED HEREBY HAVE NOT BEEN, AND WILL NOT BE, REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES OR ANY OTHER JURISDICTION, AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN A TRANSACTION (A) NOT SUBJECT TO, OR PURSUANT TO AN EXEMPTION FROM, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS; (B) WHICH WOULD NOT RESULT IN THE ISSUER BEING REQUIRED TO REGISTER AS AN "INVESTMENT COMPANY ACT" UNDER THE INVESTMENT COMPANY ACT OF 1940, AS AMENDED; AND (C) UNLESS THE ISSUER HAS RECEIVED AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO IT THAT SUCH TRANSACTION DOES NOT REQUIRE REGISTRATION UNDER THE SECURITIES ACT AND ALL SUCH OTHER APPLICABLE LAWS. ISIN: XS[•]

GROUP ARK INSURANCE LIMITED

(an insurance company incorporated under the laws of Bermuda)

US\$[•]

Floating Rate Tier 2 Subordinated Notes due [2041]

### GLOBAL NOTE CERTIFICATE

1. **Introduction:** This Global Note is issued in respect of the US\$ [•] Floating Rate Tier 2 Subordinated Notes due [2041] (the "Subordinated Notes") of Group Ark Insurance Limited (the "Issuer"). The Subordinated Notes are constituted by a deed of covenant dated on or about the date hereof (as amended or supplemented from time to time, the "Deed of Covenant") entered into by the Issuer and are the subject of a paying agency agreement dated on or about the date hereof (as amended or supplemented from time to time, the "Paying Agency Agreement") and made between the Issuer, The Bank of New York Mellon SA/NV, Dublin Branch as registrar (the "Registrar", which expression includes any successor registrar appointed from time to time in connection with the Subordinated Notes), The Bank of New York Mellon, London Branch as fiscal agent, and the other paying agents and the transfer agents named therein.
2. **References to Conditions:** Any reference herein to the "Conditions" is to the terms and conditions of the Subordinated Notes attached hereto and any reference to a numbered "Condition" is to the correspondingly numbered provision thereof. Words and expressions defined in the Conditions shall have the same meaning when used in this Global Note.
3. **Registered holder:** This is to certify that:

The Bank of New York Depository (Nominees) Limited

as the nominee of the Common Depository on behalf of Euroclear Bank S.A. / N.V. ("Euroclear") and Clearstream Banking, SA ("Clearstream, Luxembourg"), is the person registered in the register maintained by the Registrar in relation to the Subordinated Notes (the "Register") as the duly registered holder (the "Holder") of US\$[•] in aggregate principal amount of Subordinated Notes or such other principal amount as may from time to time be entered in the Register in accordance with the Paying Agency Agreement and this Global Note Certificate.

4. **Promise to pay:** The Issuer, for value received, hereby promises to pay such principal sum to the Holder on [●] [2041] or on such earlier date or dates as the same may become payable in accordance with the Conditions, and to pay interest on such principal sum in arrears on the dates and at the rates specified in the Conditions, together with any additional amounts payable in accordance with the Conditions, all subject to and in accordance with the Conditions.
5. **Subordination:** Notwithstanding paragraph 4 (Promise to pay), in the event of the winding-up of the Issuer, the claims of the Noteholders will rank subordinate to claims of all Senior Creditors (in the manner set out in Condition 2(a) (Status and Subordination)) and no payment shall be made in respect thereof hereunder unless all the claims of the Senior Creditors have been satisfied in full prior to such payment.
6. **Exchange for Individual Note Certificates:** This Global Note Certificate will be exchanged in whole (but not in part) for duly authenticated and completed individual note certificates (“Individual Note Certificates”) in substantially the form (subject to completion) set out in Schedule 2 (Form of Individual Note Certificate) to the Paying Agency Agreement if any of the following events occurs:
  - (a) Euroclear or Clearstream, Luxembourg is closed for business for a continuous period of 14 days (other than by reason of legal holidays) or announces an intention permanently to cease business; or
  - (b) any of the circumstances described in Condition 11 (Default and remedies on default) occurs.

The Issuer shall notify the Holder of the occurrence of any of the events specified in and (b) as soon as practicable thereafter.

7. **Failure to deliver Individual Note Certificates or to pay: If**
  - (a) Individual Note Certificates have not been issued and delivered by 5.00 p.m. (London time) on the thirtieth day after the date on which the same are due to be issued and delivered in accordance with paragraph 8 (Delivery of Individual Note Certificates) below; or
  - (b) any of the Subordinated Notes evidenced by this Global Note Certificate has become due and payable in accordance with the Conditions or the date for final redemption of the Subordinated Notes has occurred and, in either case, payment in full of the amount of principal falling due with all accrued interest thereon has not been made to the Holder on the due date for payment in accordance with the terms of this Global Note Certificate, then this Global Note Certificate (including the obligation to deliver Individual Note Certificates) will become void at 5.00 pm (London time) on such thirtieth day (in the case of (a)) or at 5.00 pm (London time) on such due date (in the case of (b)) and the Holder will have no further rights hereunder, but without prejudice to the rights which the Holder or others may have under the Deed of Covenant.
8. **Delivery of Individual Note Certificates:** Whenever this Global Note Certificate is to be exchanged for Individual Note Certificates, such Individual Note Certificates shall be issued in an aggregate principal amount equal to the principal amount of this Global Note Certificate within five business days of the delivery, by or on behalf of the Holder, Euroclear and/or Clearstream, Luxembourg, to the Registrar of such information as is required to complete and deliver such Individual Note Certificates (including, without limitation, the names and addresses of the persons in whose names the Individual Note Certificates are to be registered and the principal amount of each such person’s holding) against the surrender of this Global



Note Certificate at the Specified Office (as defined in the Conditions) of the Registrar. Such exchange shall be effected in accordance with the provisions of the Paying Agency Agreement and the regulations concerning the transfer and registration of Subordinated Notes scheduled thereto and, in particular, shall be effected without charge to any Noteholder, but against such indemnity as the Registrar may require in respect of any tax or other duty of whatsoever nature which may be levied or imposed in connection with such exchange. In this paragraph, "business day" means a day on which commercial banks are open for business (including dealings in foreign currencies) in the city in which the Registrar has its Specified Office.

9. Conditions apply: Save as otherwise provided herein, the Holder of this Global Note Certificate shall have the benefit of, and be subject to, the Conditions and, for the purposes of this Global Note Certificate, any reference in the Conditions to "Note Certificate" or "Note Certificates" shall, except where the context otherwise requires, be construed so as to include this Global Note Certificate.
10. Notices: Notwithstanding Condition 16 (Notices), so long as this Global Note Certificate is held on behalf of Euroclear, Clearstream, Luxembourg or any other clearing system (an "Alternative Clearing System"), notices to Noteholders represented by this Global Note Certificate may be given by delivery of the relevant notice to Euroclear, Clearstream, Luxembourg or (as the case may be) such Alternative Clearing System.
11. Determination of entitlement: This Global Note Certificate is evidence of entitlement only and is not a document of title. Entitlements are determined by the Register and only the Holder is entitled to payment in respect of this Global Note Certificate.
12. Authentication: This Global Note Certificate shall not be valid for any purpose until it has been authenticated for and on behalf of The Bank of New York Mellon SA/NV, Dublin Branch as registrar.
13. Governing law: This Global Note Certificate and any non-contractual obligations arising out of or in connection with it are governed by English law.

AS WITNESS the manual or facsimile signature of a duly authorised person for and on behalf of the Issuer.

GROUP ARK INSURANCE LIMITED

By:.....

(duly authorised)

ISSUED on [●] 2021

AUTHENTICATED for and on behalf of  
THE BANK OF NEW YORK MELLON  
SA/ NV DUBLIN BRANCH as Registrar  
without recourse, warranty or liability

By:.....

(duly authorised)

**FORM OF TRANSFER**

FOR VALUE RECEIVED \_\_\_\_\_, being the registered holder of this Global Note Certificate, hereby transfers to \_\_\_\_\_

\_\_\_\_\_ of

\_\_\_\_\_, [currency] \_\_\_\_\_ in principal amount of the US\$[•] Floating Rate Tier 2 Subordinated Notes due [2041] (the “**Subordinated Notes**”) of Group Ark Insurance Limited (the “**Issuer**”) and irrevocably requests and authorises The Bank of New York Mellon SA/NV, Dublin Branch in its capacity as registrar in relation to the Subordinated Notes (or any successor to The Bank of New York Mellon SA/NV, Dublin Branch, in its capacity as such) to effect the relevant transfer by means of appropriate entries in the register kept by it.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
(duly authorised)

Notes

The name of the person by or on whose behalf this form of transfer is signed must correspond with the name of the registered holder as it appears on the face of this Global Note Certificate.

- (a) A representative of such registered holder should state the capacity in which he signs, e.g. executor.
- (b) The signature of the person effecting a transfer shall conform to any list of duly authorised specimen signatures supplied by the registered holder or be certified by a recognised bank, notary public or in such other manner as the Registrar may require.
- (c) Any transfer of Subordinated Notes shall be in an amount equal to US\$200,000 or an integral multiple of \$1,000 in excess thereof.

TERMS AND CONDITIONS

[Terms and Conditions to be inserted]

FISCAL AGENT, AGENT BANK AND TRANSFER AGENT

The Bank of New York Mellon, London Branch

One Canada Square

London, E14 5AL

United Kingdom

AND

REGISTRAR

The Bank of New York Mellon SA/NV, Dublin Branch

Riverside Two,

Sir John Rogerson's Quay,

Grand Canal Dock,

Dublin 2, Ireland

**SCHEDULE 2**

**FORM OF INDIVIDUAL NOTE CERTIFICATE**

THE SUBORDINATED NOTES HAVE NOT BEEN, AND WILL NOT BE, REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES OR ANY OTHER JURISDICTION, AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN A TRANSACTION (A) NOT SUBJECT TO, OR PURSUANT TO AN EXEMPTION FROM, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS; (B) WHICH WOULD NOT RESULT IN THE ISSUER BEING REQUIRED TO REGISTER AS AN "INVESTMENT COMPANY ACT" UNDER THE INVESTMENT COMPANY ACT OF 1940, AS AMENDED; AND (C) UNLESS THE ISSUER HAS RECEIVED AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO IT THAT SUCH TRANSACTION DOES NOT REQUIRE REGISTRATION UNDER THE SECURITIES ACT AND ALL SUCH OTHER APPLICABLE LAWS. Serial Number: .....

**GROUP ARK INSURANCE LIMITED**

(an insurance company incorporated under the laws of Bermuda)

US\$ [●]

**Floating Rate Tier 2 Subordinated Notes due [2041]**

This Note Certificate is issued in respect of the US\$ [●] Floating Rate Tier 2 Subordinated Notes due [2041] (the "Subordinated Notes") of Group Ark Insurance Limited (the "Issuer"). The Subordinated Notes are constituted by a deed of covenant dated on or about the date hereof (as amended or supplemented from time to time, the "Deed of Covenant") entered into by the Issuer and are the subject of a paying agency agreement dated on or about the date hereof (as amended or supplemented from time to time, the "Paying Agency Agreement") and made between the Issuer, The Bank of New York Mellon SA/NV, Dublin Branch as registrar (the "Registrar", which expression includes any successor registrar appointed from time to time in connection with the Subordinated Notes), The Bank of New York Mellon, London Branch as fiscal agent and the other paying agents and the transfer agents named therein.

Any reference herein to the "Conditions" is to the terms and conditions of the Subordinated Notes endorsed hereon and any reference to a numbered "Condition" is to the correspondingly numbered provision thereof.

This is to certify that:

.....  
of .....  
.....

is the person registered in the register maintained by the Registrar in relation to the Subordinated Notes (the "Register") as the duly registered holder or, if more than one person is so registered, the first-named of such persons (the "Noteholder") of:

US\$[.....]  
( ..... [CURRENCY IN WORDS])



in aggregate principal amount of the Subordinated Notes.

The Issuer, for value received, hereby promises to pay such principal sum to the Noteholder on [●] [2041] or on such earlier date or dates as the same may become payable in accordance with the Conditions, and to pay interest on such principal sum in arrears on the dates and at the rates specified in the Conditions, together with any additional amounts payable in accordance with the Conditions, all subject to and in accordance with the Conditions.

This Note Certificate is evidence of entitlement only and is not a document of title. Entitlements are determined by the Register and only the Noteholder is entitled to payment in respect of this Note Certificate.

This Note Certificate shall not be valid for any purpose until it has been authenticated for and on behalf of The Bank of New York Mellon SA/NV, Dublin Branch as registrar.

AS WITNESS the manual or facsimile signature of a duly authorised person for and on behalf of the Issuer.

GROUP ARK INSURANCE LIMITED

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

(duly authorised)

ISSUED as of [issue date]

AUTHENTICATED for and on behalf of

THE BANK OF NEW YORK MELLON SA/NV,

DUBLIN BRANCH

as Registrar without recourse, warranty or liability

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

(duly authorised)



**FORM OF TRANSFER**

FOR VALUE RECEIVED \_\_\_\_\_, being the registered holder of this Note Certificate, hereby transfers to of \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

US\$\_\_\_\_\_in principal amount of the US\$[•] Floating Rate Tier 2 Subordinated Notes due [•] [2041] (the “Notes”) of Group Ark Insurance Limited (the “Issuer”) and irrevocably requests and authorises The Bank of New York Mellon SA/NV, Dublin Branch in its capacity as registrar in relation to the Subordinated Notes (or any successor to The Bank of New York Mellon SA/NV, Dublin Branch in its capacity as such) to effect the relevant transfer by means of appropriate entries in the register kept by it.

Dated: \_\_\_\_\_

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

*(duly authorised)*

**Notes**

The name of the person by or on whose behalf this form of transfer is signed must correspond with the name of the registered holder as it appears on the face of this Note Certificate.

- (a) A representative of such registered holder should state the capacity in which he signs, e.g. executor.
- (b) The signature of the person effecting a transfer shall conform to any list of duly authorised specimen signatures supplied by the registered holder or be certified by a recognised bank, notary public or in such other manner as the Registrar may require.
- (d) Any transfer of Notes shall be in an amount equal to US\$200,000 or any integral multiple of \$1,000 in excess thereof.

[Attached to each Note Certificate:]

[Terms and Conditions]

[At the foot of the Terms and Conditions:]

FISCAL AGENT, AGENT BANK AND TRANSFER AGENT

The Bank of New York Mellon, London Branch

One Canada Square

London, E14 5AL

United Kingdom

AND

REGISTRAR

The Bank of New York Mellon SA/NV, Dublin Branch

Riverside Two,

Sir John Rogerson's Quay,

Grand Canal Dock,

Dublin 2, Ireland

## SCHEDULE 3

### TERMS AND CONDITIONS

*The following (subject to amendment, and other than the words in italics) is the text of the terms and conditions of the Subordinated Notes which will appear on the reverse of each of the definitive certificates evidencing the Subordinated Notes. The wording appearing in italics below is included for disclosure purposes only and does not form part of the terms and conditions of the Subordinated Notes.*

The US\$[•] Floating Rate Tier 2 Subordinated Notes due [2041] (ISIN: XS[•]) (the “**Subordinated Notes**”) of Group Ark Insurance Limited, an insurance company limited by shares incorporated under the laws of Bermuda (the “**Issuer**”), are constituted by a deed of covenant dated [•] 2021 (as amended or supplemented from time to time, the “**Deed of Covenant**”) entered into by the Issuer and an agency agreement dated [•] 2021 (as amended or supplemented from time to time, the “**Paying Agency Agreement**”) between the Issuer, The Bank of New York Mellon SA/NV, Dublin Branch as registrar (the “**Registrar**”, which expression includes any successor registrar appointed from time to time in connection with the Subordinated Notes) and The Bank of New York Mellon, London Branch as fiscal agent (the “**Fiscal Agent**”, which expression includes any successor or additional fiscal agent appointed from time to time in connection with the Subordinated Notes), the paying agents named therein (together with the Fiscal Agent, the “**Paying Agents**”, which expression includes any successor or additional paying agents appointed from time to time in connection with the Subordinated Notes), the transfer agents named therein (the “**Transfer Agents**”, which expression includes any successor or additional transfer agents appointed from time to time in connection with the Subordinated Notes) and The Bank of New York Mellon, London Branch as agent bank (the “**Agent Bank**”, which expression includes any successor agent bank appointed from time to time in connection with the Subordinated Notes). The Fiscal Agent, Paying Agents, Transfer Agents and Agent Bank are together the “**Agents**”. Certain provisions of these Conditions are summaries of the Paying Agency Agreement and the Deed of Covenant and are subject to their detailed provisions. The Noteholders (as defined below) are bound by, and are deemed to have notice of, all the provisions of the Deed of Covenant and the Paying Agency Agreement applicable to them. Copies of the Deed of Covenant and the Paying Agency Agreement are available for inspection by Noteholders during normal business hours at the Specified Offices (as defined in the Paying Agency Agreement) of each of the Agents. However, if the Agent is not able to make available for inspection at its Specified Office such documents by events beyond its reasonable control, the Agent may provide such documents to a Noteholder electronically, subject to such Noteholder being able to provide evidence reasonably satisfactory to the Issuer and the Agent as to its holding and identity.

#### 1 FORM AND DENOMINATION

The Subordinated Notes are in registered form in the denominations of US\$200,000 and integral multiples of \$1,000 in excess thereof (each, an “**Authorised Denomination**”). On [•] 2021 (the “**Issue Date**”), the Subordinated Notes will initially be represented by a global certificate (the “**Global Certificate**”) registered in the name of a nominee for, and deposited with, the common depository for Euroclear Bank S.A. / N.V. (“**Euroclear**”) and Clearstream Banking, SA (“**Clearstream, Luxembourg**”). Except in the limited circumstances described in the Global Certificate, owners of interests in Subordinated Notes represented by the Global Certificate will not be entitled to receive definitive certificates in respect of their individual holdings of Subordinated Notes. The Subordinated Notes are not issuable in bearer form. So long as the Subordinated Notes are represented by the Global Certificate and the rules of Euroclear and Clearstream, Luxembourg so permit, transfers of interests in the Subordinated Notes through the relevant clearing systems shall be in principal amounts of at least US\$200,000 and integral multiples of \$1,000 in excess thereof.



## 2 STATUS OF THE SUBORDINATED NOTES

(a) Status and Subordination: The Subordinated Notes constitute direct, unconditional, unsecured and subordinated obligations of the Issuer which will at all times rank (including in the event of a Winding-Up):

- (i) junior and subordinate to present or future claims of Senior Creditors;
- (ii) pari passu in right of repayment:
  - (A) without preference among themselves;
  - (B) with all subordinated obligations of the Issuer (excluding the obligations of the Issuer in respect of Junior Securities (as defined below)) which constitute, and all claims relating to a guarantee or other like or similar undertaking or arrangement given or undertaken by the Issuer in respect of any obligations of any other person which constitute, or (in either case) would but for any applicable limitation on the amount of such capital constitute, Tier 2 Capital (excluding the obligations of such person to holders of Junior Securities), and all obligations which rank, or are expressed to rank, pari passu therewith (“Parity Securities”), in each case both as regards the right to receive periodic payments and the right to receive repayment of capital on a Winding-Up of the Issuer; and
- (iii) senior to and in priority to the claims of holders of:
  - (A) all classes of share capital (including preferred shares) of the Issuer,
  - (B) any subordinated obligations of the Issuer expressed to rank junior to the Subordinated Notes;
  - (C) all obligations of the Issuer which constitute, and all claims relating to a guarantee or other like or similar undertaking or arrangement given or undertaken by the Issuer in respect of any obligations of any other person which constitute, or (in either case) would, but for any applicable limitation on the amount of such capital, constitute, Tier 1 Capital and all obligations which rank, or are expressed to rank, pari passu therewith; and
  - (D) all undated subordinated notes of the Issuer,  
(the “Junior Securities”),

in each case both as regards the right to receive periodic payments and the right to receive repayment of capital on a Winding-Up of the Issuer;

and accordingly all claims in respect of the Subordinated Notes in a Winding-Up shall be conditional upon all claims in respect of all Senior Creditors which have been admitted in the Winding-Up first having been satisfied (or provided for) in full, such that amounts will become payable in the Winding-Up in respect of the Subordinated Notes only if any to the extent that the same can be paid and there shall remain thereafter sufficient assets to satisfy in full all claims so admitted in respect of all Senior Creditors.

No security or collateral is, or will be, given to secure the payment obligations under the Subordinated Notes and any security or collateral that may have been or may in

the future be given in connection with other indebtedness of the Issuer shall not secure the payment obligations under the Subordinated Notes.

- (b) **Additional Subordination under Relevant Rules:** By purchasing the Subordinated Notes, each Noteholder is deemed to agree and acknowledge that the Subordinated Notes will be subordinated to the claims of all Senior Creditors on the terms and to the minimum extent necessary under the Relevant Rules as in effect from time to time so as to permit the Subordinated Notes to qualify as Tier 2 Capital.
- (c) **Set-off:** By acceptance of the Subordinated Notes and subject to applicable law, each Noteholder will be deemed to have waived any right of set-off or counterclaim that such Noteholder might otherwise have against the Issuer in respect of or arising under the Subordinated Notes whether prior to or in any Winding-Up of the Issuer. Notwithstanding the preceding sentence, if any obligations owed by any Noteholder to the Issuer are discharged by set-off of amounts in respect of or arising under the Subordinated Notes, such Noteholder will immediately, unless prohibited by applicable law, pay an amount equal to the amount of such discharge to the Issuer or, if applicable, the bankruptcy receiver or liquidator of the Issuer and, until such time as payment is made, will hold a sum equal to such amount on trust for the Issuer or, if applicable, the bankruptcy receiver or liquidator in the Issuer's Winding-Up. Accordingly, such discharge will be deemed not to have taken place.
- (d) **No Insolvency.** The Subordinated Notes do not contain any terms or conditions designed to accelerate or induce the Issuer's insolvency or effect similar proceedings.
- (e) **Solvency Condition:** Without prejudice to Condition 2(a) (Status and Subordination) above, all payments under or arising from the Subordinated Notes shall be conditional upon the Issuer being solvent at the time for payment by the Issuer, and no amount shall be payable under or arising from the Subordinated Notes unless and until such time as the Issuer could make such payment and still be solvent immediately thereafter (the "Solvency Condition").

For the purposes of this Condition 2(e) (Solvency Condition), the Issuer will be solvent if (i) it is able to pay its debts owed to creditors other than Junior Creditors as they fall due and (ii) its Assets exceed its Liabilities. Should the Issuer consider itself not solvent for the purpose of this Condition 2(e) (Solvency Condition), it will have to produce a certificate as to the insolvency of the Issuer signed by two Authorised Signatories or, if there is a Winding-Up or administration of the Issuer, by two directors or authorised signatories of, the liquidator or, as the case may be, the administrator of the Issuer shall be treated and accepted by the Issuer, the Noteholders and all other interested parties as correct and sufficient evidence thereof and (in the absence of manifest error or bad faith) shall be binding on all such persons.

### 3 REGISTER, TITLE AND TRANSFERS

- (a) **Register:** The Registrar will maintain a register (the "Register") in respect of the Subordinated Notes in accordance with the provisions of the Paying Agency Agreement. The Register shall at all times be held outside of the United Kingdom. In these Conditions, the holder of a Subordinated Note means the person in whose name such Subordinated Note is for the time being registered in the Register (or, in the case of a joint holding, the first named thereof) and "Noteholder" shall be construed accordingly. A certificate (each, a "Note Certificate") will be issued to each Noteholder in respect of its registered holding. Each Note Certificate will be numbered serially with an identifying number which will be recorded in the Register.



- (b) **Title:** The Noteholder shall (except as otherwise required by law) be treated as the absolute owner of such Subordinated Note for all purposes (whether or not it is overdue and regardless of any notice of ownership, trust or any other interest therein, any writing on the Note Certificate relating thereto (other than the endorsed form of transfer) or any notice of any previous loss or theft of such Note Certificate) and no person shall be liable for so treating such Noteholder. No person shall have any right to enforce any term or condition of the Subordinated Notes under the Contracts (Rights of Third Parties) Act 1999 (of England and Wales) or under the Contracts (Rights of Third Parties) Act 2016 (of Bermuda) but this shall not affect any right or remedy which exists or is available apart from such Acts.
- (c) **Transfers:** Notwithstanding any other provisions of the Conditions, the Subordinated Notes (or any beneficial interest therein) may not be offered, sold, transferred or otherwise disposed other than in a transaction (a) not subject to, or pursuant to an exemption from, the registration requirements of the Securities Act and applicable State securities laws; (b) which would not result in the Issuer being required to register as an “investment company” under the Investment Company Act; and (c) unless the Issuer has received an opinion of counsel reasonably satisfactory to it that such transaction does not require registration under the Securities Act and all such other applicable laws. Subject to the preceding sentence and paragraphs (f) (Closed periods) and (g) (Regulations concerning transfers and registration) below, a Subordinated Note may be transferred upon surrender of the relevant Note Certificate, with the endorsed form of transfer duly completed, at the Specified Office of the Registrar or any Transfer Agent, together with such evidence as the Registrar or (as the case may be) such Transfer Agent may reasonably require to prove the title of the transferor and the authority of the individuals who have executed the form of transfer; provided, however, that a Subordinated Note may not be transferred unless: (i) the principal amount of Subordinated Notes transferred and (where not all of the Subordinated Notes held by a Noteholder are being transferred) the principal amount of the balance of Subordinated Notes not transferred are Authorised Denominations; and (ii) the transferee of such Subordinated Note is a Qualified Investor. Where not all the Subordinated Notes represented by the surrendered Note Certificate are the subject of the transfer, a new Note Certificate in respect of the balance of the Subordinated Notes will be issued to the transferor.

Transfers of interests in the Subordinated Notes evidenced by the Global Certificate will be effected in accordance with the rules of Euroclear and Clearstream, Luxembourg.

- (d) **Registration and delivery of Note Certificates:** Within five business days of the surrender of a Note Certificate in accordance with paragraph (c) (Transfers) above, the Registrar will register the transfer in question and deliver a new Note Certificate of a like principal amount to the Subordinated Notes transferred to each relevant Noteholder at its Specified Office or (as the case may be) the Specified Office of any Transfer Agent or (at the request and risk of any such relevant Noteholder) by uninsured first class mail (airmail if overseas) to the address specified for the purpose by such relevant Noteholder. In this paragraph, “business day” means a day on which commercial banks are open for general business (including dealings in foreign currencies) in the city where the Registrar or (as the case may be) the relevant Transfer Agent has its Specified Office.
- (e) **No charge:** The transfer of a Subordinated Note will be effected without charge by or on behalf of the Issuer, the Registrar or any Transfer Agent but against such indemnity as the Registrar or (as the case may be) such Transfer Agent may require in respect of



any tax or other duty of whatsoever nature which may be levied or imposed in connection with such transfer.

- (f) Closed periods: Noteholders may not require transfers to be registered during the period of 15 days ending on the due date for any payment of principal or interest in respect of the Subordinated Notes.
- (g) Regulations concerning transfers and registration: All transfers of Subordinated Notes and entries on the Register are subject to the detailed regulations concerning the transfer of Subordinated Notes scheduled to the Paying Agency Agreement. The regulations may be changed by the Issuer with the prior written approval of the Registrar. A copy of the current regulations will be mailed (free of charge) by the Registrar to any Noteholder who requests in writing a copy of such regulations.

#### 4 INTEREST

- (a) Interest: The Subordinated Notes bear interest from the Issue Date. Subject to Condition 2(e) (Solvency Condition) and Condition 5 (Deferral of Interest), interest shall be payable on 31 March, 30 June, 30 September and 31 December in each year (each, an "Interest Payment Date") in accordance with Condition 8 (Payments); provided, however, that if any Interest Payment Date would otherwise fall on a date which is not a Business Day, it will be postponed to the next Business Day unless it would thereby fall into the next calendar month, in which case it will be brought forward to the preceding Business Day; provided, further, that the first Interest Payment Date shall be 31 December 2021 (the "First Interest Payment Date"). Each period beginning on (and including) the Issue Date or any Interest Payment Date and ending on (but excluding) the next Interest Payment Date is herein called an "Interest Period".
- (b) Interest Accrual: Each Subordinated Note will cease to bear interest from the due date for redemption (which due date shall, in the case of deferral of a redemption date in accordance with Condition 6(b) (Deferral of redemption date), be the latest date to which redemption of the Subordinated Notes is so deferred) unless, upon due presentation, payment of principal is improperly withheld or refused, in which case it will continue to bear interest in accordance with this Condition 4 (Interest) (both before and after judgment) until whichever is the earlier of (a) the day on which all sums due in respect of such Subordinated Note up to that day are received by or on behalf of the relevant Noteholder and (b) the day which is seven days after the Fiscal Agent has notified the Noteholders that it has received all sums due in respect of the Subordinated Notes up to such seventh day (except to the extent that there is any subsequent default in payment).
- (c) Rate of Interest: The rate of interest applicable to the Subordinated Notes (the "Rate of Interest") shall be the sum for such Interest Period of the Margin and of the Reference Rate and it will be determined by the Agent Bank on the following basis, where, subject to the Benchmark Transition Provisions (as defined below) set out in Condition 4(d), the Reference Rate is LIBOR and "LIBOR" will be determined by the Agent Bank in accordance with the following provisions:
  - (i) with respect to any Interest Determination Date, subject to sub-paragraphs (ii) and (iii) below, LIBOR will be the rate for deposits in United States dollars having a maturity of three months commencing on the first day of the applicable Interest Period that appears on Reuters Screen LIBOR01 Page as of 11:00 a.m., London time, on that Interest Determination Date. If no rate appears, then

LIBOR, in respect of that Interest Determination Date, will be determined in accordance with the provisions described in (ii) below;

- (ii) subject to sub-paragraph (iii) below, with respect to any Interest Period which:
  - (A) begins on (and includes) the Issue Date and ends on (but excludes) the First Interest Payment Date; or
  - (B) begins on (and includes) the Interest Payment Date immediately preceding the Maturity Date and ends on (but excludes) the Maturity Date (which shall also be regarded as an Interest Payment Date),

the Rate of Interest shall be calculated by the Agent Bank by linear interpolation as if both periods in (A) and (B) above were Interest Periods and by reference to two Reference Rates (the "Interpolation Reference Rates", and each such rate an "Interpolation Reference Rate") which appear on the Reuters Screen LIBOR01 Page as of 11:00 a.m., London time on the relevant Interest Determination Date where:

- (C) one Interpolation Reference Rate shall be determined as if the relevant Interest Period were the period of time for which rates are available next shorter than the length of the relevant Interest Period; and
  - (D) the other Interpolation Reference Rate shall be determined as if the relevant Interest Period were the period of time for which rates are available next longer than the length of the relevant Interest Period; and
- (iii) with respect to an Interest Determination Date on which no rate appears on Reuters Screen LIBOR01 Page, as specified in (i) above, the Agent Bank will request the principal London offices of each of four major reference banks in the London interbank market, as selected by the Issuer, to provide the Agent Bank with its offered quotation for deposits in United States dollars for the period of three months, commencing on the first day of the applicable Interest Period, to prime banks in the London interbank market at approximately 11:00 a.m., London time, on that Interest Determination Date and in a principal amount that is representative for a single transaction in United States dollars in that market at that time. If at least two quotations are provided, then LIBOR on that Interest Determination Date will be the arithmetic mean of those quotations. If fewer than two quotations are provided, then LIBOR on the Interest Determination Date will be the arithmetic mean of the rates quoted at approximately 11:00 a.m., in The City of New York, on the Interest Determination Date by three major banks in The City of New York selected by the Issuer for loans in U.S. Dollar to leading banks in the United States of America, having a three-month maturity and in a principal amount that is representative for a single transaction in U.S. Dollar in that market at that time; provided, however, that if the banks selected by the Issuer are not providing quotations in the manner described by this sentence, LIBOR will be the same as the rate determined for the immediately preceding Interest Determination Date,

provided, however, that if LIBOR shall be less than 50 basis points for any Interest Determination Date (as determined in accordance with any of sub-paragraphs (i), (ii) or (iii) above, as applicable), LIBOR shall be deemed to be 50 basis points for such Interest Determination Date for the purposes of this Subordinated Note and the Paying Agency Agreement.



For the purposes of this Condition 4(c):

“London Business Day” means any day on which dealings in U.S. Dollar are transacted on the London interbank market.

“Reuters Screen LIBOR01 Page” means the display designated on page “LIBOR01” on Reuters (or such other page as may replace the LIBOR01 page on that service or any successor service for the purpose of displaying London interbank offered rates for U.S. Dollar deposits of major banks).

- (d) Benchmark Transition Provisions: Notwithstanding Condition 4(c) above, if the Benchmark Determination Person or its designee determines on or prior to the relevant Interest Determination Date that a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to the then-current Benchmark, then the provisions set forth in this Condition 4(d) (the “Benchmark Transition Provisions”) will thereafter apply to all determinations, calculations and quotations made or obtained for the purposes of calculating the rate and amount of interest payable on the Subordinated Notes during a relevant Interest Period.
- (i) In accordance with the benchmark transition provisions, after a Benchmark Transition Event and its related Benchmark Replacement Date have occurred, the amount of interest that will be payable for each Interest Period on the Subordinated Notes will be a rate per annum equal to the sum of the Benchmark Replacement and the Margin provided, however, that, if the Benchmark Determination Person or its designee determines that a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to the then-current Benchmark, but for any reason the Benchmark Replacement has not been determined as of the relevant Interest Determination Date, the interest rate for the applicable Interest Period will be equal to the interest rate on the last Interest Determination Date for the Subordinated Notes.
- (ii) If on or prior to the relevant Interest Determination Date for any Interest Period with respect to the Subordinated Notes, the Benchmark Determination Person shall have determined that a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any determination of the Benchmark on any date, the Benchmark Replacement shall replace the then-current Benchmark for all purposes relating to the Subordinated Notes in respect of such determination on such date and all determinations on all subsequent dates, and the Benchmark Determination Person shall give notice thereof either to the Issuer (if the Issuer is not the Benchmark Determination Person), which notice the Issuer shall promptly provide to the Agent Bank, or to the Agent Bank (if the Issuer is the Benchmark Determination Person), as applicable, as soon as practicable thereafter. If such notice is given, the Agent Bank shall determine the Interest Rate with respect to the Subordinated Notes until such notice has been withdrawn as a per annum rate equal to, in the Agent Bank’s sole discretion, the Benchmark Replacement (subject to any Benchmark Replacement Conforming Changes) plus the Margin. In addition, the Agent Bank will endeavor to provide the Issuer with notice promptly after any such determination is made. In connection with the implementation of a Benchmark Replacement, the Benchmark Determination Person shall have the right to make Benchmark Replacement Conforming Changes from time to time.
- (iii) All percentages resulting from any calculation of any interest rate for the Subordinated Notes will be rounded, if necessary, to the nearest one hundred thousandth of a percentage point, with five one-millionths of a percentage point

being rounded upwards (e.g., 8.986865% (or 0.08986865) being rounded to 8.98687% (or 0.0898687)) and all dollar amounts used in or resulting from such calculations will be rounded to the nearest cent (with one-half cent being rounded upwards).

(iv) For the purposes of this Condition 4(d):

“Benchmark” shall mean, initially, LIBOR; provided, however, that if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to LIBOR or the then-current Benchmark, then “Benchmark” shall mean the applicable Benchmark Replacement.

“Benchmark Determination Person” shall mean, on any date, (i) the Majority Noteholders on such date or (ii) the Issuer, if 30 calendar days after a request by the Issuer to the Noteholders to make any determination related to the Benchmark Replacement and the Majority Noteholders have, for any reason, failed to make the requested determination on or before such date. For the avoidance of doubt, the Majority Noteholders may be the Benchmark Determination Person whether or not the Issuer has sent a request to the Noteholders to make any determination related to the Benchmark Replacement.

“Benchmark Replacement” shall mean the Interpolated Benchmark; provided, however, that if the Benchmark Determination Person cannot determine the Interpolated Benchmark as of the Benchmark Replacement Date, then “Benchmark Replacement” shall mean the first alternative set forth in the order below that can be determined by the Benchmark Determination Person as of the Benchmark Replacement Date:

- (i) the sum of: (a) Term SOFR and (b) the Benchmark Replacement Adjustment;
- (ii) the sum of: (a) Compounded SOFR and (b) the Benchmark Replacement Adjustment;
- (iii) the sum of: (a) the alternate rate of interest that has been selected or recommended by the Relevant Governmental Body as the replacement for the then-current Benchmark for the applicable Corresponding Tenor and (b) the Benchmark Replacement Adjustment;
- (iv) the sum of: (a) the ISDA Fallback Rate and (b) the Benchmark Replacement Adjustment; or
- (v) the sum of: (a) the alternate rate of interest that has been selected by the Benchmark Determination Person or its designee as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to any industry-accepted rate of interest as a replacement for the then-current Benchmark for U.S. Dollar denominated floating rate notes at such time and (b) the Benchmark Replacement Adjustment;

provided, however, that any such Benchmark Replacement for any Interest Period would otherwise be less than 50 basis points, such Benchmark Replacement shall be deemed to be 50 basis points for such Interest Period.

“Benchmark Replacement Adjustment” shall mean the first alternative set forth in the order below that can be determined by the Benchmark Determination Person or its designee as of the Benchmark Replacement Date:



- (i) 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 or recommended by the Relevant Governmental Body for the applicable Unadjusted Benchmark Replacement;
- (ii) if the applicable Unadjusted Benchmark Replacement is equivalent to the ISDA Fallback Rate, then the ISDA Fallback Adjustment; or
- (iii) the spread adjustment (which may be a positive or negative value or zero) that has been selected by the Benchmark Determination Person or its designee giving due consideration to any industry-accepted spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of the then-current Benchmark with the applicable Unadjusted Benchmark Replacement for U.S. Dollar denominated floating rate notes at such time.

“Benchmark Replacement Conforming Changes” shall mean, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Interest Period”, timing and frequency of determining rates and making payments of interest, changes to the definition of “Corresponding Tenor” solely when such tenor is longer than the Interest Period and other administrative matters) that the Benchmark Determination Person or its designee reasonably determines may be appropriate to reflect the adoption of such Benchmark Replacement in a manner substantially consistent with market practice (or, if the Benchmark Determination Person or its designee reasonably determines that adoption of any portion of such market practice is not administratively feasible or if the Benchmark Determination Person or its designee reasonably determines that no market practice for use of the Benchmark Replacement exists, in such other manner as the Benchmark Determination Person or its designee determines is reasonably necessary and applied to other similarly situated companies under similar notes held by the Noteholders).

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

- (i) in the case of clause (i) or (ii) 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 the administrator of the Benchmark permanently or indefinitely ceases to provide the Benchmark; or
- (ii) in the case of clause (iii) of the definition of “Benchmark Transition Event,” the date of the public statement or publication of information referenced therein.

For the avoidance of doubt, if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination.

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

- (i) a public statement or publication of information by or on behalf of the administrator of the Benchmark announcing that such administrator has

ceased or will cease to provide the Benchmark, permanently or indefinitely; *provided, however, that* at the time of such statement or publication, there is no successor administrator that will continue to provide the Benchmark;

- (ii) a public statement or publication of information by the regulatory supervisor for the administrator of the Benchmark, the central bank for the currency of the Benchmark, an insolvency official with jurisdiction over the administrator for the Benchmark, a resolution authority with jurisdiction over the administrator for the Benchmark or a court or an entity with similar insolvency or resolution authority over the administrator for the Benchmark, which states that the administrator of the Benchmark has ceased or will cease to provide the Benchmark permanently or indefinitely; *provided, however, that* at the time of such statement or publication, there is no successor administrator that will continue to provide the Benchmark; or
- (iii) a public statement or publication of information by the regulatory supervisor for the administrator of the Benchmark announcing that the Benchmark is no longer representative.

“**Compounded SOFR**” shall mean the compounded average of SOFRs for the applicable Corresponding Tenor, with the rate, or methodology for this rate, and conventions for this rate (which will be compounded in arrears with a lookback and/or suspension period as a mechanism to determine the interest amount payable prior to the end of each Interest Period) being established by the Benchmark Determination Person in accordance with:

- (i) the rate, or methodology for this rate, and conventions for this rate selected or recommended by the Relevant Governmental Body for determining compounded SOFR; *provided, however, that:*
- (ii) if, and to the extent that, the Benchmark Determination Person or its designee reasonably determines that Compounded SOFR cannot be determined in accordance with clause (i) above, then the rate, or methodology for this rate, and conventions for this rate that have been reasonably selected by the Benchmark Determination Person or its designee giving due consideration to any industry-accepted market practice for U.S. Dollar denominated floating rate notes at such time.

“**Corresponding Tenor**” shall mean, with respect to a Benchmark Replacement, a tenor (including overnight) having approximately the same length (disregarding business day adjustment) as the applicable tenor for the then-current Benchmark.

“**Interest Determination Date**” means the second business day preceding the first day of the applicable Interest Period.

“**Interpolated Benchmark**” shall mean, with respect to the Benchmark, the rate determined for the Corresponding Tenor by interpolating on a linear basis between: (1) the Benchmark for the longest period (for which the Benchmark is available) that is shorter than the Corresponding Tenor and (2) the Benchmark for the shortest period (for which the Benchmark is available) that is longer than the Corresponding Tenor.

“**ISDA Definitions**” means the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto,



as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time.

“ISDA Fallback Adjustment” shall mean the spread adjustment, (which may be a positive or negative value or zero) that would apply for derivatives transactions referencing the ISDA Definitions to be determined upon the occurrence of an index cessation event with respect to the Benchmark for the applicable tenor.

“ISDA Fallback Rate” shall mean the rate that would apply for derivatives transactions referencing the ISDA Definitions to be effective upon the occurrence of an index cessation date with respect to the Benchmark for the applicable tenor excluding the applicable ISDA Fallback Adjustment.

“Reference Time” shall mean, with respect to any determination of the Benchmark: (1) if the Benchmark is LIBOR, 11:00 a.m. (London time) on the day that is two London banking days preceding the date of such determination, and (2) if the Benchmark is not LIBOR, the time determined by the Benchmark Determination Person or its designee in accordance with the Benchmark Replacement Conforming Changes.

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

“SOFR” shall mean, with respect to any date of determination, the secured overnight financing rate published for such day by the Federal Reserve Bank of New York, as the administrator of the benchmark (or a successor administrator) on the website of the NY Federal Reserve at <http://www.newyorkfed.org>, or any successor source.

“Term SOFR” shall mean the forward-looking term rate for the applicable Corresponding Tenor based on SOFR that has been selected or recommended by the Relevant Governmental Body.

“Unadjusted Benchmark Replacement” shall mean the Benchmark Replacement excluding the Benchmark Replacement Adjustment.

- (e) Calculation of Interest Amount: The Agent Bank will, as soon as practicable after the Interest Determination Date in relation to each Interest Period, calculate the amount of interest (the “Interest Amount”) payable in respect of each Subordinated Note for such Interest Period. The Interest Amount will be calculated by applying the Rate of Interest for such Interest Period to the Calculation Amount, multiplying the product by the actual number of days in such Interest Period divided by 360, rounding the resulting figure to the nearest cent (half a cent being rounded upwards) and multiplying such rounded figure by a fraction equal to the Authorised Denomination of such Subordinated Note divided by the Calculation Amount.
- (f) Publication: The Agent Bank will cause each Rate of Interest and Interest Amount determined by it, together with the relevant Interest Payment Date, to be notified to the other Agents and any quotation system (if any) as soon as practicable after such determination but in any event not later than the first day of the relevant Interest Period. Notice thereof shall also promptly be given to the Noteholders. The Agent Bank will be entitled to recalculate any Interest Amount (on the basis of the foregoing provisions) without notice in the event of an extension or shortening of the relevant Interest Period.

If the Calculation Amount is less than the Authorised Denomination, the Agent Bank shall not be obliged to publish each Interest Amount but instead may publish only the Calculation Amount and the Interest Amount in respect of a Subordinated Note having the minimum Authorised Denomination.

- (g) Notifications etc.: All notifications, opinions, determinations, certificates, calculations, quotations and decisions given, expressed, made or obtained for the purposes of this Condition by the Agent Bank will (in the absence of wilful default, fraud or manifest error) be binding on the Issuer, the Agents and the Noteholders and (subject as aforesaid) no liability to any such person will attach to the Agent Bank in connection with the exercise or non-exercise by it of its powers, duties and discretions for such purposes.
- (h) Calculation Amount: Interest shall be calculated per US\$1,000 in principal amount of the Subordinated Notes (the "Calculation Amount").

## 5 DEFERRAL OF INTEREST

- (a) Regulatory Deficiency Deferral of Interest:
  - (i) Subject to Condition 5(a)(ii) (Regulatory Deficiency Deferral of Interest), payment of interest on the Subordinated Notes by the Issuer will be mandatorily deferred on each Regulatory Deficiency Interest Deferral Date.
  - (ii) Any deferral under Condition 5(a)(i) (Regulatory Deficiency Deferral of Interest) shall be of all (and not less than all) of the Interest Amount accrued on the Subordinated Notes and due and payable as of such Regulatory Deficiency Interest Deferral Date.
  - (iii) The Issuer shall notify the Noteholders and the Fiscal Agent of any Regulatory Deficiency Interest Deferral Date in accordance with Condition 5(e) (Notice of Deferral). A certificate signed by two Authorised Signatories confirming that:
    - (A) a Regulatory Deficiency Interest Deferral Event has occurred and is continuing, or would occur if payment of interest on the Subordinated Notes were to be made; or
    - (B) a Regulatory Deficiency Interest Deferral Event has ceased to occur and/or payment of interest on the Subordinated Notes would not result in a Regulatory Deficiency Interest Deferral Event occurring,shall be treated and accepted by the Issuer, the Noteholders and all other interested parties as correct and sufficient evidence thereof, and (in the absence of manifest error or bad faith) shall be binding on all such persons.
- (b) No default: Notwithstanding any other provision in these Conditions the deferral by the Issuer of any payment of interest in accordance with Condition 2(e) (Solvency Condition) or Condition 5(a) (Regulatory Deficiency Deferral of Interest) will not constitute a default by the Issuer and will not give Noteholders any right to accelerate repayment of the Subordinated Notes or take any enforcement action under the Subordinated Notes.
- (c) Arrears of Interest and Additional Interest Amounts: Any interest on the Subordinated Notes not paid on an Interest Payment Date as a result of the obligation of the Issuer to defer such payment of interest pursuant to Condition 5(a) (Regulatory Deficiency Deferral of Interest) or due to the operation of the Solvency Condition



contained in Condition 2(e) (Solvency Condition) shall (without double counting), to the extent and so long as the same remains unpaid, constitute "Arrears of Interest".

Each amount of Arrears of Interest shall bear interest (as if it constituted the principal of the Subordinated Notes) at the Rate of Interest from time to time applicable to the Subordinated Notes (an "Additional Interest Amount"). Any Additional Interest Amounts which are not paid on the Interest Payment Date at the end of the applicable Interest Period shall become Arrears of Interest and bear interest accordingly.

- (d) Payment of Arrears of Interest and Additional Interest Amounts: Any Arrears of Interest and Additional Interest Amounts may (subject to Condition 2(e) (Solvency Condition) and, to the extent required, the satisfaction of the Regulatory Clearance Condition) be paid by the Issuer in whole or in part at any time upon the expiry of not less than 14 days' notice to such effect given by the Issuer to the Fiscal Agent and the Noteholders in accordance with Condition 16 (Notices) and in any event will become due and payable by the Issuer in whole (and not in part) upon the earliest of the following dates:
- (i) the next Interest Payment Date which is not a Regulatory Deficiency Interest Deferral Date;
  - (ii) the date on which the Issuer pays any dividend or other distribution on any shares in its capital;
  - (iii) the date on which the Issuer makes a payment of interest on, or redeems purchases, cancels, reduces or acquires, any Junior Securities or Parity Securities (save where the Issuer is not able to defer, pass or eliminate the relevant payment or other obligation in accordance with the terms of the relevant Junior Securities or Parity Securities);
  - (iv) the date on which the Winding-Up of the Issuer occurs; or
  - (v) the date fixed for any redemption of the Subordinated Notes pursuant to Condition 6 (Redemption, Purchase and Cancellation) (subject to any deferral of such redemption date pursuant to Condition 6(b) (Deferral of redemption date) or Condition 11 (Default and remedies on default).
- (e) Notice of Deferral: The Issuer shall notify the Fiscal Agent and the Noteholders in writing in accordance with Condition 16 (Notices) not less than 5 Business Days prior to the relevant Interest Payment Date:
- (i) in the case of a deferral due to the operation of the Solvency Condition contained in Condition 2(e) (Solvency Condition), specifying that interest will not be paid because of the operation of such Solvency Condition; or
  - (ii) in the case of Condition 5(a) (Regulatory Deficiency Deferral of Interest), specifying that interest will not be paid because a Regulatory Deficiency Interest Deferral Event has occurred and is continuing or would occur if payment of interest was made on such Interest Payment Date, provided, however, that if the Issuer becomes aware of the operation of the Solvency Condition or a Regulatory Deficiency Interest Deferral Event occurs, less than 5 Business Days prior to an Interest Payment Date the Issuer shall give notice of the interest deferral in accordance with Condition 16 (Notices) as soon as reasonably practicable following its becoming aware of, or the occurrence of, such event.

## 6 REDEMPTION, PURCHASE AND CANCELLATION

(a) Scheduled redemption: Subject to Conditions 2(e) (Solvency Condition), 6(b) (Deferral of redemption date) and 6(i) (Preconditions to redemption and purchases), unless previously redeemed, or purchased and cancelled, the Subordinated Notes will be redeemed at their principal amount on the Maturity Date together with any Arrears of Interest (together with all corresponding Additional Interest Amounts) and any other accrued and unpaid interest to (but excluding) the Maturity Date in accordance with the terms of Condition 8 (Payments).

(b) Deferral of redemption date:

(i) Subject to Condition 6(b)(ii) no Subordinated Notes shall be redeemed:

(A) on or after the Maturity Date pursuant to Condition 6(a) (Scheduled redemption); or

(B) prior to the Maturity Date pursuant to Condition 6(c) (Redemption for tax reasons) or Condition 6(d) (Redemption upon the occurrence of a Capital Event) or Condition 6(e) (Redemption at the option of the Issuer);

if Condition 2(e) (Solvency Condition) is not satisfied or if a Regulatory Deficiency Redemption Deferral Event has occurred and is continuing or would occur if redemption is made pursuant to this Condition 6 (Redemption, Purchase and Cancellation).

(ii) Deferral under Condition 6(b)(i) (Deferral of redemption date) shall be limited to the proportion of the amounts due and payable which would cause a Regulatory Deficiency Redemption Deferral Event to occur and be continuing. In the event that a partial payment is made pursuant to this Condition 6(b)(ii), any partial payments shall be applied pro rata in respect of the Subordinated Notes.

(iii) The Issuer shall notify the Fiscal Agent and the Noteholders in accordance with Condition 16 (Notices) no later than 5 Business Days prior to any date set for redemption of the Subordinated Notes if such redemption is to be deferred in accordance with this Condition 6(b) (Deferral of redemption date) provided, however, that if the Issuer becomes aware of the operation of the Solvency Condition or a Regulatory Deficiency Interest Deferral Event occurs less than 5 Business Days prior to an Interest Payment Date, the Issuer shall give notice of the interest deferral in accordance with Condition 16 (Notices) as soon as reasonably practicable following its becoming aware of, or the occurrence of, such event.

(iv) If redemption of the Subordinated Notes does not occur on the Maturity Date, or, if applicable, the date specified in the notice of redemption by the Issuer under Condition 6(c) (Redemption for tax reasons) or Condition 6(d) (Redemption upon the occurrence of a Capital Event), as a result of Condition 6(b)(i) (Deferral of redemption date), the Issuer shall (subject to satisfaction of the Regulatory Clearance Condition and, in the case of (A) and (B) below only, Condition 2(e) (Solvency Condition)) redeem such Subordinated Notes at their principal amount together with any Arrears of Interest (together with all corresponding Additional Interest Amounts) and any other accrued and unpaid interest upon the earliest of:



- (A) (in case of a failure to redeem the Subordinated Notes due to the operation of Condition 6(b)(i) (Deferral of redemption date) only) the date falling 10 Business Days after the date the Regulatory Deficiency Redemption Deferral Event has ceased (unless on such 10<sup>th</sup> Business Day a further Regulatory Deficiency Redemption Deferral Event has occurred and is continuing or redemption of the Subordinated Notes on such date would result in a Regulatory Deficiency Redemption Deferral Event occurring, in which case the provisions of Condition 6(b)(i) (Deferral of redemption date) and this Condition 6(b)(iv) will apply mutatis mutandis to determine the due date for redemption of the Subordinated Notes); or
- (B) the date falling 10 Business Days after the BMA has agreed to the repayment or redemption of the Subordinated Notes; or
- (C) the date on which a Winding-Up occurs.

If Condition 6(b)(i) (Deferral of redemption date) does not apply, but redemption of the Subordinated Notes does not occur on the Maturity Date or, if applicable, the date specified in the notice of redemption by the Issuer under Condition 6(c) (Redemption for tax reasons) or Condition 6(d) (Redemption upon the occurrence of a Capital Event), as a result of the Solvency Condition not being satisfied at such time and immediately after such payment, the Issuer shall (subject to the satisfaction of the Regulatory Clearance Condition), redeem such Subordinated Notes at their principal amount together with any Arrears of Interest (together with all corresponding Additional Interest Amounts) and any other accrued and unpaid interest on the date falling 10 Business Days immediately following the day that (i) the Issuer is solvent for the purposes of Condition 2(e) (Solvency Condition) and (ii) redemption of the Subordinated Notes would not result in the Issuer ceasing to be solvent for the purposes of Condition 2(e) (Solvency Condition); provided, however, that if on such Business Day specified for redemption a Regulatory Deficiency Redemption Deferral Event has occurred and is continuing, or would occur if the Subordinated Notes were to be redeemed, or if the Solvency Condition would not be satisfied on such date and immediately after the redemption, then the Subordinated Notes shall not be redeemed on such date and Condition 2(e) (Solvency Condition) and Condition 6(b)(i) (Deferral of redemption date) will apply mutatis mutandis to determine the date of redemption of the Subordinated Notes.

- (v) A certificate signed by two Authorised Signatories confirming that (A) a Regulatory Deficiency Redemption Deferral Event has occurred and is continuing, or would occur if redemption of the Subordinated Notes were to be made or (B) a Regulatory Deficiency Redemption Deferral Event has ceased to occur and/or redemption of the Subordinated Notes would not result in a Regulatory Deficiency Redemption Deferral Event occurring, shall be treated and accepted by the Issuer, the Noteholders and all other interested parties as correct and sufficient evidence thereof and (in the absence of manifest error or bad faith) shall be binding on all such persons.
- (vi) Notwithstanding any other provision in these Conditions, the deferral of redemption of the Subordinated Notes in accordance with Condition 2(e) (Solvency Condition) or this Condition 6(b) (Deferral of redemption date) will not constitute a default by the Issuer and will not give Noteholders any right to accelerate the Subordinated Notes or take any enforcement action under the Subordinated Notes.

(c) Redemption for tax reasons: Subject to Condition 2(e) (Solvency Condition), Condition 6(b)(i) (Deferral of redemption date) and Condition 6(i) (Preconditions to redemption and purchase) below, the Subordinated Notes may be redeemed at the option of the Issuer in whole, but not in part, on any Interest Payment Date falling on or after the Early Call Date, on giving not less than 60 days' notice to the Noteholders (which notice shall be irrevocable) at 101% of their outstanding principal amounts (together with any Arrears of Interest, Additional Interest Amounts and any other accrued but unpaid interest to (but excluding) the date fixed for redemption), subject to the BMA Redemption Requirements, if:

(A) immediately before the giving of such notice, the Issuer receives an opinion of external counsel in Bermuda experienced in such matters that the Issuer:

(1) has or will become obliged to pay additional amounts as described under Condition 9 (Taxation); or

(2) would not be entitled to claim a deduction in computing taxation liabilities (and provided such taxation liabilities exist) in Bermuda in respect of any payment of interest to be made on the next Interest Payment Date or the value of such deduction to the Issuer would be reduced;

(B) in each case as a result of any change in, or amendment to, the laws or regulations of Bermuda or any authority therein or thereof having power to tax, or any change in the application or official interpretation of such laws or regulations, including a decision of any court or tribunal, which change or amendment becomes effective on or after the Issue Date;

(C) such obligation or loss of entitlement, as the case may be, cannot be avoided by the Issuer taking reasonable measures available to it; and

(D) such obligation or loss of entitlement shall result in the Issuer suffering a liability for Tax in respect of the Subordinated Notes in excess of an amount equal to (i) 5% multiplied by (ii) the interest payable by the Issuer on an annualised basis (calculated by reference to the Rate of Interest in the first Interest Period),

(any such early redemption events (A), (B), (C) and (D) under this Condition 6(c) (Redemption for tax reasons), a "Tax Event");

provided, however, that (in the case of (A)(2) above) no such notice of redemption shall be given earlier than 90 days prior to the earliest date on which the Issuer would not be entitled to claim a deduction in computing taxation liabilities (and provided such taxation liabilities exist) in Bermuda in respect of any payment of interest to be made on the next Interest Payment Date or the value of such deduction to the Issuer would be reduced were a payment in respect of the Subordinated Notes then due.

(d) Redemption upon the occurrence of a Capital Event: Subject to Condition 2(e) (Solvency Condition), Condition 6(b) (Deferral of redemption date) and Condition 6(i) (Preconditions to redemption and purchase) below and the BMA Redemption Requirements, if a Capital Event occurs, the Subordinated Notes may be redeemed at the option of the Issuer in whole, but not in part, on any Interest Payment Date falling on or after the Early Call Date, at 101% of their outstanding principal amounts (together with any Arrears of Interest, Additional Interest Amounts and any other accrued but unpaid interest to (but excluding) the date fixed for redemption); provided,



however, that the Issuer provides not less than 60 days' prior notice to the Fiscal Agent and the Noteholders in accordance with Condition 16 (Notices) (such notice being irrevocable) specifying the date fixed for such redemption.

- (e) Redemption at the option of the Issuer: Subject to Condition 2(e) (Solvency Condition) and Condition 6(i) (Preconditions to redemption and purchase) below, the Subordinated Notes may be redeemed on the First Call Date or on any Interest Payment Date thereafter, at the option of the Issuer, in whole or in part, at their outstanding principal amounts (together with any Arrears of Interest, Additional Interest Amounts and any other accrued but unpaid interest to (but excluding) the date fixed for redemption); provided, however, that the Issuer provides not less than 60 days' prior notice to the Fiscal Agent and the Noteholders in accordance with Condition 16 (Notices) specifying the date fixed for such redemption; provided, further, that if the Subordinated Notes are redeemed in part, there shall be no less than US\$25,000,000 aggregate principal amount of Notes outstanding after each such redemption. Subject to Conditions 8(a) (Principal) and 8(b) (Interest), upon the expiry of such notice, the Issuer shall redeem the Subordinated Notes. Any such notice of redemption may at the option of the Issuer state that, in the Issuer's sole discretion, the relevant redemption date may be postponed by up to 60 days from the original scheduled redemption date, provided, however, that the Issuer may only postpone the relevant redemption date on one occasion and such postponement must be communicated by the Issuer to the Fiscal Agent and the Noteholders not less than 30 days' prior to the original scheduled redemption date. For the avoidance of doubt, in the event of any such postponement of the redemption date, any calculation of or determination concerning the redemption price that depends on the redemption date (including the amount of accrued and unpaid interest on the relevant Subordinated Notes to, but excluding, the redemption date) shall be made by reference to the redemption as so postponed.
- (f) No other redemption: The Issuer shall not be entitled to redeem the Subordinated Notes otherwise than as provided in Condition 6(a) (Scheduled redemption), Condition 6(b) (Deferral of redemption date), Condition 6(c) (Redemption for tax reasons), Condition 6(d) (Redemption upon the occurrence of a Capital Event) and Condition 6(e) (Redemption at the option of the Issuer).
- (g) Purchase: Subject to Condition 2(e) (Solvency Condition) and Condition 6(i) (Preconditions to redemption and purchases), the Issuer may at any time purchase Subordinated Notes in the open market or otherwise and at any price. All Subordinated Notes purchased by or on behalf of the Issuer may be held, reissued, resold or, at the option of the Issuer and the relevant purchaser, surrendered for cancellation to the Fiscal Agent.
- (h) Cancellation: All Subordinated Notes redeemed by the Issuer pursuant to this Condition 6, and all Subordinated Notes purchased and surrendered for cancellation pursuant to Condition 6(g) (Purchase), will forthwith be cancelled. Any such Subordinated Notes so surrendered for cancellation may not be reissued or resold and the obligations of the Issuer in respect of any such Subordinated Notes shall be discharged.
- (i) Preconditions to redemption and purchases:
  - (i) Prior to the publication of any notice of redemption or any purchase of the Subordinated Notes, the Issuer will be required to have complied with the Regulatory Clearance Condition and be in continued compliance with both the Enhanced Capital Requirement and with the Relevant Rules.

- (ii) The Issuer shall not redeem any Subordinated Notes or purchase any Subordinated Notes (i) unless at the time of such redemption or purchase it is in compliance with both the Enhanced Capital Requirement and with the Relevant Rules, (ii) where such redemption or purchase would cause a breach of the Enhanced Capital Requirement, and (iii) prior to the fifth anniversary of the Issue Date, unless such redemption or purchase is to be financed out of the proceeds of an issuance of securities that qualify as either Tier 2 Capital or Tier 1 Capital.
- (iii) A certificate signed by two Authorised Signatories confirming such compliance shall be treated and accepted by the Issuer, the Noteholders and all other interested parties as correct and sufficient evidence thereof and (in the absence of manifest error or bad faith) shall be binding on all such persons.

## 7 VARIATION AND SUBSTITUTION

If a Capital Event or a Tax Event occurs, the Issuer may, at its sole option, as an alternative to redemption of the Subordinated Notes, at any time, without the consent of any Noteholder, vary any term or condition of the Subordinated Notes or substitute all (but not less than all) of the Subordinated Notes for other notes, so that the varied Subordinated Notes or the substituted notes, as the case may be, constitute Qualifying Equivalent Securities.

The principal amount of the Qualifying Equivalent Securities to be received by Noteholders in substitution shall be equal to the principal amount of the Subordinated Notes.

Any variation or substitution of the Subordinated Notes is subject to no more than 60 nor less than 30 calendar days' prior notice by the Issuer to the Fiscal Agent, the Lead Arranger and the Noteholders (which notice shall be irrevocable and shall specify the date fixed for such variation or substitution) in accordance with the notice provisions governing the Subordinated Notes and to:

- (a) the Issuer being in compliance with the Relevant Rules on the date of such variation or substitution (after giving effect to such variation or substitution), and such variation or substitution not resulting directly or indirectly in a breach of the Relevant Rules;
- (b) in respect of substitution only, all payments of interest, including Arrears of Interest, and any other amount payable under the Subordinated Notes that, in each case, has accrued to Noteholders and has not been paid, being satisfied in full on or prior to the date of such variation or substitution; and
- (c) immediately after the substitution or variation, the Issuer not triggering its right to redeem the Subordinated Notes pursuant to provisions of Conditions 6(c) (Payments subject to fiscal laws) and 6(d) (Payments on business days).

The Issuer shall deliver to the Fiscal Agent on the date fixed for any such variation or substitution (i) a certificate signed by two Authorised Signatories stating that the provisions of this Condition 7 have been complied with and (ii) a legal opinion from an Independent Adviser standing to the effect that the varied Subordinated Notes or the substituted Subordinated Notes constitute Qualifying Equivalent Securities.

No variation or substitution of the Subordinated Notes shall occur in accordance with this Condition 7 if any Noteholder delivers notice to the Issuer, prior to the date fixed for the relevant variation or substitution, that, acting reasonably and in good faith, it is of the view that the terms of the varied or substituted securities are materially less favourable to the Noteholders.



## 8 PAYMENTS

- (a) **Principal:** Payments of principal shall be made by transfer to a dollar-denominated account maintained by the payee and notified to the Issuer and (in the case of redemption) upon surrender (or, in the case of part payment only, endorsement) of the relevant Note Certificates at the Specified Office of any Paying Agent.
- (b) **Interest:** Payments of interest (including, without limitation, Arrears of Interest and Additional Interest Amounts) shall be made by transfer to a dollar-denominated account maintained by the payee and notified to the Issuer and (in the case of interest (including, without limitation, Arrears of Interest and Additional Interest Amounts) payable on redemption) upon surrender (or, in the case of part payment only, endorsement) of the relevant Note Certificates at the Specified Office of any Paying Agent.
- (c) **Payments subject to fiscal laws:** Payments will be subject in all cases to any fiscal or other laws and regulations applicable thereto in the place of payment, but without prejudice to the provisions of Condition 9 (Taxation). No commissions or expenses shall be charged to the Noteholders in respect of such payments.
- (d) **Payments on business days:** If the due date for payment of any amount in respect of any Subordinated Note is not a business day in the place of presentation (following any modification in accordance with Condition 4(a) (Interest)), the Noteholder shall not be entitled to payment in such place of the amount due until the next succeeding business day in such place and shall not be entitled to any further interest or other payment in respect of any such delay. In this Condition 8(d), "business day" means, in respect of any place of presentation, any day on which banks are open for presentation and payment of bearer debt securities and for dealings in foreign currencies in such place of presentation and, in the case of payment by transfer to a dollar-denominated account as referred to above, on which dealings in foreign currencies may be carried on both in London and in such place of presentation.
- (e) **Partial payments:** If the Fiscal Agent makes a partial payment in respect of any Subordinated Note presented to it for payment, such Paying Agent will endorse thereon a statement indicating the amount and the date of such payment.
- (f) **No commissions:** No commissions or expenses shall be charged to the Noteholders in respect of any payments made in accordance with this Condition 8 (Payments).
- (g) **Record date:** Each payment in respect of a Subordinated Note will be made to the person shown as the Noteholder in the Register at the opening of business in the place of the Registrar's Specified Office on the Clearing System Business Day immediately preceding the due date for such payment.
- (h) **Agents:** The names of the initial Paying Agents and their initial specified offices are set out at the end of these Conditions. The Issuer reserves the right at any time to vary or terminate the appointment of any Paying Agent or Agent Bank and to appoint a successor fiscal agent or agent bank and additional or other paying agents, provided, however, that the Issuer will at all times maintain a fiscal agent and agent bank.

Notice of any termination or appointment and of any changes in specified offices of any of the Paying Agents or their Specified Offices will be given to the Noteholders promptly by the Issuer in accordance with Condition 16 (Notices).

In acting under the Paying Agency Agreement and in connection with the Subordinated Notes, the Paying Agents and the Agent Bank act solely as agents of the

Issuer and do not assume any obligations towards or relationship of agency or trust for or with any of the Noteholders.

So long as the Subordinated Notes are represented by the Global Certificate, each payment in respect of the Global Certificate will be made to the person shown as the holder of such Global Certificate in the Register at the close of business (of the relevant clearing system) on the Clearing System Business Day before the due date for such payments.

## 9 TAXATION

All payments of principal and interest in respect of the Subordinated Notes by or on behalf of the Issuer shall be made free and clear of, and without withholding or deduction for or on account of, any present or future taxes, duties, assessments or governmental charges of whatever nature imposed, levied, collected, withheld or assessed by or on behalf of Bermuda or any political subdivision thereof or any authority therein or thereof having power to tax, unless the withholding or deduction of such taxes, duties, assessments or governmental charges is required by law. In that event the Issuer shall pay such additional amounts as will result in receipt by the Noteholders after such withholding or deduction of such amounts as would have been received by them had no such withholding or deduction been required, except that no such additional amounts shall be payable in respect of any Subordinated Note:

- (a) held by a Noteholder which is liable to such taxes, duties, assessments or governmental charges in respect of such Subordinated Note by reason of its having some connection with Bermuda other than the mere holding of the Subordinated Note;
- (b) where the present or future taxes, duties or governmental charges of whatever nature imposed, levied, collected, withheld or assessed are so imposed, levied, collected or withheld outside Bermuda on the income or gains of the relevant Noteholder; or
- (c) where (in the case of a payment of principal or interest on redemption) the relevant Note Certificate is surrendered for payment more than 30 days after the Relevant Date except to the extent that the relevant Noteholder would have been entitled to such additional amounts if it had surrendered the relevant Note Certificate on the last day of such period of 30 days.

In these Conditions, "Relevant Date" means whichever is the later of (1) the date on which the payment in question first becomes due and (2) if the full amount payable has not been received by the Fiscal Agent on or prior to such due date, the date on which (the full amount having been so received) notice to that effect has been given to the Noteholders.

Any reference in these Conditions to principal or interest shall be deemed to include any additional amounts in respect of principal or interest (as the case may be) which may be payable under this Condition 9.

If the Issuer becomes subject at any time to any taxing jurisdiction other than the Bermuda references in these Conditions to Bermuda shall be construed as references to Bermuda and/or such other jurisdiction.

The Issuer has been issued a tax assurance certificate by the Minister of Finance of Bermuda pursuant to section 2 of the Exempted Undertakings Tax Protection Act 1996 (the "Tax Assurance") which states that in the event of there being enacted in Bermuda any legislation imposing tax computed on profits or income or computed on any capital asset, gain or appreciation, or any tax in the nature of estate duty or inheritance tax, then the imposition of any tax described therein shall not be applicable to the Issuer or to any of its operations or the shares, debentures or other obligations of the Issuer, provided, however, that such



assurance will not prevent the application of any such tax or duty to persons ordinarily resident in Bermuda or prevent any tax payable in accordance with the provisions of the Land Tax Act 1967 or otherwise payable in relation to the land leased to the Issuer. The Tax Assurance shall be in effect until 31 March 2035. The Issuer will not be required under the law of Bermuda to make any deduction or withholding on account of tax from any payment it may make under the Subordinated Notes.

## 10 PRESCRIPTION

Claims against the Issuer for payment in respect of the Subordinated Notes shall be prescribed and become void unless made within 10 years (in the case of principal) or five years (in the case of interest including, without limitation, Arrears of Interest and Additional Interest Amounts) from the appropriate Relevant Date in respect of them.

## 11 DEFAULT AND REMEDIES ON DEFAULT

- (a) Payment default: If the Issuer fails to meet any of its payment obligations on the date that such payment obligations were due under the Subordinated Notes and such payment obligations are not met within 30 days of the date that such payment obligations were due:
- (i) any Noteholder may, at its own discretion and without further notice, institute proceedings in order to recover the amounts due from the Issuer to such Noteholder (including amounts due in accordance with sub-paragraph (ii) below); and
  - (ii) the Majority Noteholders may, by written notice addressed to the Issuer and delivered to the Issuer or to the Specified Office of the Fiscal Agent, declare the Subordinated Notes to be immediately due and payable, whereupon they shall become immediately due and payable at their outstanding principal amount together with interest (including Arrears of Interest and Additional Interest Amounts) (if any) accrued to such date and the claim in respect thereof will be subject to the subordination provided for in Condition 2 (Status of the Subordinated Notes), provided, however, that a Noteholder may not petition the Winding-Up of the Issuer or institute any other proceedings seeking the same equivalent relief in respect of the Issuer.

For the avoidance of doubt, no amount shall be due from the Issuer in circumstances where payment of such amount is deferred in accordance with Condition 2(e) (Solvency Condition), Condition 5(a) (Regulatory Deficiency Deferral of Interest) or Condition 6(b) (Deferral of redemption date).

- (b) Winding-Up: Upon the Winding-Up of the Issuer (or other equivalent proceedings), the Subordinated Notes shall automatically become due and payable at their outstanding principal amount together with interest (including Arrears of Interest and Additional Interest Amounts) (if any) accrued to such date and the claim in respect thereof will be subject to the subordination provided for in Condition 2 (Status of the Subordinated Notes). In addition, any other amounts in respect of the Subordinated Notes (including any damages awarded for breach of any obligations under these Conditions in respect of which the Solvency Condition was not satisfied on the date upon which the same would otherwise have become due and payable (“Solvency Claims”) will be payable by the Issuer in a Winding-Up or administration of the Issuer, and the claim in respect thereof will be subject to the subordination provided for in Condition 2 (Status of the Subordinated Notes). A Solvency Claim shall not bear interest.

- (c) **Regulatory Default:** If the Issuer ceases to be regulated by the BMA (or other equivalent supervisor), the Majority Noteholders may, by written notice addressed to the Issuer and delivered to the Issuer or to the Specified Office of the Fiscal Agent, declare the Subordinated Notes to be immediately due and payable, whereupon they shall become immediately due and payable at their outstanding principal amount together with interest (including Arrears of Interest and Additional Interest Amounts) (if any) accrued to such date and the claim in respect thereof will be subject to the subordination provided for in Condition 2 (Status of the Subordinated Notes).
- (d) **Enforcement:** Without prejudice to Condition 11(a) (Payment default) above, any Noteholder may institute such proceedings or take such steps or actions against the Issuer as it may think fit to enforce any obligation, term, condition or provision binding on the Issuer under the Subordinated Notes or the Deed of Covenant, provided, however, that a Noteholder may not at any time file for the Winding-Up of the Issuer and provided, further, that in no event shall the Issuer, by virtue of the institution of any such proceedings or the taking of such steps or actions, be obliged to pay any sum or sums (in cash or otherwise) sooner than the same would otherwise have been payable by it.
- (e) **Extent of Noteholders' remedy:** Without prejudice to the occurrence and consequences of a Premium Load Event, no remedy against the Issuer, other than as referred to in this Condition 11, shall be available to the Noteholders, whether for the recovery of amounts owing in respect of the Subordinated Notes or in respect of any breach by the Issuer of any of its other obligations under or in respect of the Subordinated Notes.

## 12 UNDERTAKINGS OF THE ISSUER

The undertakings in this Condition 12 remain in force from the Issue Date for so long as any Subordinated Note is outstanding.

- (a) The Issuer undertakes to supply to the Noteholders:
  - (i) no later than 60 calendar days following the end of the preceding financial quarter, the Issuer's and its Group's quarterly unaudited income statement and balance sheet, in each case prepared in accordance with GAAP; and
  - (ii) no later than 120 calendar days following the end of the fiscal year, the Issuer's and its Group's consolidated annual financial statements prepared in accordance with GAAP.
- (b) The Issuer undertakes that its capital, as shown in its annual Capital and Solvency Return, shall be no less than 120% of the Issuer's Bermuda Solvency Capital Requirement, as shown in such Capital and Solvency Return.
- (c) The Issuer shall maintain a Debt to Capital Ratio no greater than 40%, measured quarterly, as of each calendar quarter end, on the basis of the report delivered pursuant to Condition 12(a)(i) (Undertakings of the Issuer), and annually, on the basis of the report delivered pursuant to Condition 12(a)(ii) (Undertakings of the Issuer); provided, however, that the Issuer may incur Indebtedness in breach of this requirement in order to redeem in whole, but not in part, the Subordinated Notes.
- (d) The Issuer undertakes not to directly or indirectly:
  - (i) declare or pay any dividend on or in respect of its Capital Stock, or purchase, redeem, retire or otherwise acquire for value any of its Capital Stock; or



- (ii) make any payment or other distribution on any of its securities that rank junior to or pari passu with the Subordinated Notes,

(all such payments and other actions under (i) and (ii), a "Restricted Payment"), unless, at the time of, and after giving effect to, such Restricted Payment: (A) the Issuer is not and will not be in breach of the Relevant Rules, the Enhanced Capital Requirement or any of the Conditions (including the Issuer's payment obligations in respect of the Subordinated Notes); (B) no Regulatory Deficiency Deferral Event is existing at the time of (nor will start to exist immediately after and as a consequence of) the Restricted Payment; and (C) the Issuer is not in breach of Conditions 12(b) (Undertakings of the Issuer) or 12(c) (Undertakings of the Issuer).

- (e) The Issuer shall use its commercially reasonable endeavours to obtain an Investment Grade Rating for the Subordinated Notes no later than 30 days after the Issue Date and thereafter retain such Investment Grade Rating.
- (f) The Issuer will not create, incur, assume or guarantee or otherwise permit to exist any Indebtedness secured by any Lien on the Issuer's assets other than Permitted Liens.
- (g) The Issuer undertakes not to materially change the nature of its business to any business that it would not be able to carry out as a Bermuda-licensed insurance and reinsurance company.
- (h) Subject to compliance with all applicable laws and regulations, the Issuer agrees to promptly notify in accordance with Condition 16 (Notices) the Lead Arranger and/or the Noteholders of any regulatory filings or other requirements that the Issuer becomes aware of that the Issuer, the Lead Arranger and/or the Noteholders may be required to respond to as a result of the entry into of the Subscription Deed, the issuance of the Subordinated Notes, or any actions taken by or anticipated to be taken by the Issuer in connection therewith.
- (i) The Issuer undertakes to maintain its corporate existence and continue to be duly organised and validly existing under the laws of Bermuda.
- (j) The Issuer undertakes to comply in all material respects with all applicable laws and orders to which it may be subject.
- (k) The Issuer undertakes to notify the Fiscal Agent and the Noteholders of the occurrence of any Premium Load Event promptly upon becoming aware of its occurrence.

### 13 BUSINESS TRANSFER

The Issuer shall not effect a Business Transfer unless the purchaser in such Business Transfer expressly assumes all of the Issuer's obligations under the Subordinated Notes and these Conditions.

### 14 REPLACEMENT OF NOTE CERTIFICATES

If any Note Certificate is lost, stolen, mutilated, defaced or destroyed, it may be replaced at the Specified Office of the Registrar, subject to all applicable laws, upon payment by the claimant of the expenses incurred in connection with such replacement and on such terms as to evidence, security, indemnity and otherwise as the Issuer may reasonably require. Mutilated or defaced Note Certificates must be surrendered before replacements will be issued.

15      **MODIFICATION AND WAIVER**

Subject to and in accordance with Condition 4(c) (*Rate of Interest*) and Condition 7 (*Variation and Substitution*), none of the Subordinated Notes, these Conditions, the Deed of Covenant or the Paying Agency Agreement may be amended without the consent of the Majority Noteholders, *provided, however, that* the Paying Agency Agreement may be amended without the consent of such Noteholders for the purpose of curing any ambiguity or of curing, correcting or supplementing any manifest or proven error or any other defective provision contained therein and any such amendment to the Paying Agency Agreement shall not, in the sole opinion of the Issuer, be materially prejudicial to the interests of the Noteholders.

16      **NOTICES**

Notices to the Noteholders shall be valid if delivered to the Specified Office of the Fiscal Agent (who shall deliver them to the Noteholders) in accordance with the terms of the Paying Agency Agreement and [REDACTED], as Lead Arranger at the following address: [REDACTED] and by email to [REDACTED] or any other address as notified from time to time by the relevant party.

17      **GOVERNING LAW**

The Subordinated Notes and any non-contractual obligations arising out of or in connection with the Subordinated Notes are governed by, and shall be construed in accordance with, English law, except that the subordination provisions of the Subordinated Notes set out in Condition 2(a) (*Status and Subordination*) will be governed by and construed in accordance with the laws of Bermuda.

18      **JURISDICTION**

The courts of England have exclusive jurisdiction to settle any dispute (a “**Dispute**”) arising out of or in connection with the Subordinated Notes (including a dispute regarding any non-contractual obligation arising out of or in connection with the Subordinated Notes). The Issuer agrees that the courts of England are the most appropriate and convenient courts to settle any Dispute and, accordingly, that it will not argue to the contrary.

19      **DEFINED TERMS**

In these Conditions:

“**Additional Interest Amount**” has the meaning given in Condition 5(c) (*Arrears of Interest and Additional Interest Amounts*);

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

“**Arrears of Interest**” has the meaning given in Condition 5(c) (*Arrears of Interest and Additional Interest Amounts*);

“**Assets**” means the unconsolidated gross assets of the Issuer as shown in the latest published audited balance sheet of the Issuer, but adjusted for contingencies and subsequent events;

“**Authorised Signatory**” means any Director or other person authorised to bind the Issuer;



“BMA” means the Bermuda Monetary Authority (or any successor which carries on the role of regulator of financial services companies generally in Bermuda);

“BMA Redemption Requirements” means, in connection with any redemption of Notes, that (a) the Issuer replaces the capital represented by the Subordinated Notes to be redeemed or repaid with capital having equal or better capital treatment as the Subordinated Notes under the Relevant Rules (or the satisfaction of such condition is otherwise not required under the Relevant Rules so as to permit the Subordinated Notes to qualify as Tier 2 Capital) and (b) such redemption has been approved by the BMA (only if and to the extent required by the BMA);

“Business Day” means a day on which commercial banks and foreign exchange markets settle payments and are open for general business (including dealings in foreign exchange and foreign currency deposits) in New York, London and Hamilton (Bermuda); provided, however, that, for the purpose of Condition 8(d) (Payments on business days), “business day” shall have the meaning given in Condition 8(d), and provided, further, that, for the purpose of Condition 3(d) (Registration and delivery of Note Certificates), “business day” shall have the meaning given in Condition 3(d) (Registration and delivery of Note Certificates);

“Business Transfer” means any single transaction or series of transactions resulting in a transfer of 50 percent or more of the assets of the Issuer to any currently unaffiliated entity, but excluding any transaction involving a transfer of assets on an independent, arm’s length basis for fair market value consideration;

“Calculation Amount” has the meaning given in Condition 4(h) (Calculation Amount);

“Capital Event” means, at any time on or after the Issue Date, a change in the regulatory classification of the Subordinated Notes that results or would be likely to result in the exclusion of the Subordinated Notes in whole or, to the extent not prohibited by the Relevant Rules, in part, from the Issuer’s Tier 2 Capital other than where such exclusion is only as a result of any applicable limitation on the amount of such capital, and such change in the regulatory classification has or would have a material negative impact on the Issuer (it being understood that a change in the regulatory classification of the Subordinated Notes that results or would be likely to result in the exclusion of the Subordinated Notes from the Issuer’s Tier 2 Capital shall be deemed to have a material negative impact on the Issuer);

“Capital Stock” means any and all shares (whether voting or non-voting, and including preferred shares) in the equity of such person or entity;

“Clearing System Business Day” means a day on which the clearing system for which the Subordinated Notes are being held is open for business;

“Clearstream, Luxembourg” means Clearstream Banking, SA;

“Consolidated Equity” means, at any time, total shareholder’s equity as set out in the Issuer’s latest published audited balance sheet (or, if more recent, the Issuer’s quarterly unaudited balance sheet);

“Debt to Capital Ratio” means, as of any date of determination, the ratio of (1) the Issuer’s consolidated Indebtedness to (2) (a) the Issuer’s consolidated Indebtedness plus (b) the Issuer’s Consolidated Equity, in each case as shown in the relevant financial statements of the Issuer;

“Directors” means the members of the board of directors of the Issuer from time to time;

“Dispute” has the meaning given in Condition 18 (Jurisdiction);

“Early Call Date” means the Interest Payment Date falling on or immediately after the third anniversary of the Issue Date;

“Enhanced Capital Requirement” means the “enhanced capital requirement” as defined in the Relevant Rules, applicable to the Issuer;

“Euroclear” means Euroclear Bank S.A. / N.V.;

“First Call Date” means the Interest Payment Date falling on or immediately after the tenth anniversary of the Issue Date;

“First Interest Payment Date” has the meaning given in Condition 4(a) (Interest);

“GAAP” means the generally accepted accounting principles in the United Kingdom or the United States, or such other generally accepted accounting principles as may be applicable to the Issuer and/or its parent company from time to time;

“Group” means Ark Insurance Holdings Limited (or its successor) and its consolidated subsidiaries;

“Holding Company” means, in relation to a person, any other person in respect of which it is a Subsidiary;

“Indebtedness” means, with respect to any person:

- the principal of and any premium and interest on (a) indebtedness of such person for money borrowed and (b) indebtedness evidenced by notes, debentures, bonds or other similar instruments for the payment of which such person is responsible or liable;
- all obligations of such person issued or assumed as the deferred purchase price of property, all conditional sale obligations and all obligations under any title retention agreement (but excluding trade accounts payable arising in the ordinary course of business);
- all obligations of such person for the reimbursement of any obligor on any letter of credit, banker’s acceptance or similar credit transaction (other than obligations with respect to trusts, letters of credit or any other arrangements securing obligations (other than obligations described above) entered into in the ordinary course of business to the extent such letters of credit are not drawn upon or, if and to the extent drawn upon, such drawing is reimbursed no later than the tenth (10<sup>th</sup>) Business Day following receipt by such person of a demand for reimbursement following payment on the letter of credit); and
- any amendments, modifications, refundings, renewals or extensions of any indebtedness or obligation described as indebtedness above in this bulleted list;

“Independent Adviser” means an independent financial institution of international repute or an independent financial adviser with appropriate expertise appointed by the Issuer;

“Insurance Act” means the Bermuda Insurance Act 1978 and related regulations, as amended from time to time;



“Interest Amount” has the meaning given to it in Condition 4(e) (Calculation of Interest Amount);

“Interest Determination Date” has the meaning given to it in Condition 4(c) (Rate of Interest);

“Interest Payment Date” has the meaning given in Condition 4(a) (Interest);

“Interest Period” means a period from (and including) one Interest Payment Date (or in the case of the first Interest Period only, the Issue Date) up to (but excluding) the next following Interest Payment Date;

“Investment Grade Rating” means a rating of bbb- or better by A.M. Best (or its equivalent under any successor rating category of A.M. Best), a rating of BBB- or better by Fitch (or its equivalent under any successor rating category of Fitch), a rating of BBB- or better by KBRA (or its equivalent under any successor rating category of KBRA), a rating of Baa3 or better by Moody’s (or its equivalent under any successor rating category of Moody’s), a rating of BBB- or better by S&P (or its equivalent under any successor rating category of S&P) or an equivalent rating by a “nationally recognized statistical rating organization” (as defined for purposes of Section 3(a)(62) under the U.S. Exchange Act of 1934). The Issuer shall use commercially reasonable efforts to maintain a credit rating of the Subordinated Notes with the foregoing agencies;

“Issue Date” has the meaning given in Condition 1 (Form and Denomination);

“Junior Creditors” means creditors of the Issuer who are not Senior Creditors;

“Junior Securities” has the meaning given to it in Condition 2(a) (Status and Subordination);

“Lead Arranger” means [REDACTED]

“Liabilities” means the unconsolidated gross liabilities of the Issuer, as shown in the latest published audited balance sheet of the Issuer, but adjusted for contingent liabilities and for subsequent events, all in such manner as the Directors may determine;

“Lien” means any mortgage, pledge, lien, charge, security interest or other encumbrance of any nature whatsoever;

“Majority Noteholder” means a Noteholder or Noteholders holding in aggregate more than 50 per cent. of the Principal Amount Outstanding of the Subordinated Notes. For the avoidance of doubt, Subordinated Notes held indirectly or directly by Affiliates of the Issuer shall not be included for the purposes of this definition;

“Margin” means:

- (a) for the period that begins (and includes) the Issue Date and ends on (but excludes) the Step-Up Date:
  - (i) 6.10% per annum; or
  - (ii) if a Premium Load Event has occurred and is continuing within such period, 7.10% per annum for so long as such Premium Load Event continues within such period;

- (b) for the period that begins (and includes) the Step-Up Date and ends on (but excludes) the Maturity Date:
- (i) 7.10% per annum; or
  - (ii) if a Premium Load Event has occurred and is continuing within such period, 8.10% per annum for so long as such Premium Load Event continues within such period; and
- (c) for the period that begins (and includes) the Maturity Date and ends on (but excludes) the date on which the Subordinated Notes are actually redeemed:
- (i) 8.10% per annum; or
  - (ii) if a Premium Load Event has occurred and is continuing within such period, 9.10% per annum for so long as such Premium Load Event continues within such period.

For the avoidance of doubt, if a Premium Load Event occurs and is subsequently remedied, any increase in the Margin as a result of the occurrence of such Premium Load Event (in accordance with this definition) shall no longer apply (unless a further Premium Load Event occurs and is continuing).

“Maturity Date” means the Interest Payment Date falling on or immediately after the twentieth anniversary of the Issue Date;

“Noteholder” means any person that holds an interest in the Subordinated Notes;

“Parity Securities” has the meaning given to it in Condition 2(a) (Status and Subordination);

“Permitted Liens” means:

- Liens created in the ordinary course of the Issuer’s business (including, without limitation, any Funds at Lloyd’s posted by the Issuer on behalf of any member of its group or other collateral or trust assets posted in connection with its (re)insurance business);
- Liens arising by operation of law and in the ordinary course of business of the Issuer or any of its Subsidiaries which does not (either alone or together with any one or more other such Liens) materially impair the Issuer’s ability to meet its payment obligations under the Subordinated Notes and which has not been enforced against the assets to which it attaches, other than enforcement which is being contested in good faith by the Issuer;
- Liens created in connection with any letter of credit or liquidity facility (whether now existing or incurred in the future) for the benefit of any member of the Issuer’s group;
- Liens existing on the Issue Date or any renewal, replacement, or extension of existing (or successive extensions, renewals, or replacements) Liens, provided, however, that any such existing Liens with respect to obligations of the Issuer that exceed US\$1,000,000 must have been disclosed to the Lead Arranger on or prior to the Issue Date;
- Liens to secure indebtedness of a subsidiary to the Issuer or another subsidiary, but only as long as the Indebtedness is held by the Issuer or a subsidiary;



- Liens on assets, property or capital stock of a person existing at the time such person becomes a subsidiary of the Issuer or is merged or amalgamated with or into or consolidated with the Issuer;
- Liens on assets or property existing at the time of acquisition of the assets or property by the Issuer;
- Liens for taxes, assessments or governmental charges or claims that are not yet due and payable or that are being contested in good faith by appropriate proceedings;
- Liens on assets pursuant to merger agreements, stock or asset purchase agreements and similar agreements in respect of the disposition of such assets;
- other Liens with respect to obligations of the Issuer that do not exceed US\$5,000,000; or
- deposits made in the ordinary course of business to secure liability to insurance carriers or under self-insurance arrangements in respect of such obligations;

“Premium Load Event” means:

- (a) the breach by the Issuer of any of the undertakings set out in Conditions 12(a), 12(b), 12(c) or 12(d) (Undertakings of the Issuer);
- (b) the failure by the Issuer to meet any of its payment obligations on the date that such payment obligations were due under the Subordinated Notes, provided that such payment obligations are not met within 30 days of the date that such payment obligations were due; or
- (c) the Subordinated Notes not receiving an Investment Grade Rating within 30 days of the Issue Date or maintaining such Investment Grade Rating thereafter,

provided, however, that a Premium Load Event in accordance with this definition shall only be deemed to occur on the date falling 60 days after the date on which such breach or event occurs (and only occurring if such breach or event is not remedied within such 60 day period) and continuing until such breach or event is remedied. For the avoidance of doubt and without prejudice to Condition 6(e) (Redemption at the option of the Issuer), the occurrence of a Premium Load Event shall not itself create any contractual entitlement for the Issuer to redeem the Subordinated Notes.

“Principal Amount Outstanding of the Subordinated Notes” means the original principal amount of the Subordinated Notes outstanding under Condition 6(a) (Scheduled Redemption);

“Qualified Investor” means a person:

- (a) who either (i) is a non-US Person (as such term is defined in Regulation S of the Securities Act of 1933, as amended (the “Securities Act”) outside of the United States who is acquiring the Subordinated Notes in an offshore transaction in accordance with Regulation S; or (ii) is in the United States and is (A) both an “Accredited Investor” as defined in Regulation D of the Securities Act and (B) a “Qualified Purchaser” as defined in Section 2(a)(51) of the Investment Company Act of 1940, as amended;
- (b) who is a “qualified investor” as defined in Article 2(e) of Regulation (EU) 2017/1129;

- (c) who is a “Qualified Participant” as defined in section 9(2) of the Bermuda Investment Funds Act 2006;
- (d) to whom the offering of Subordinated Notes could lawfully be communicated by virtue of section 21(1) of the Financial Services and Markets Act 2000;
- (e) who is a “well-informed investor” as defined by the Luxembourg law of 13 February 2007 on specialised investment funds;
- (f) who is a “Professional Client” or an “Eligible Counterparty” as defined by the Markets in Financial Instruments Directive, as amended;
- (g) who is a “qualified investor” as defined by the Swiss Federal Collective Investment Schemes Act; or
- (h) in any other jurisdiction who would satisfy the requirements of any of paragraphs (a) to (g) above if they were subject to the securities laws of such jurisdictions;

“Qualifying Equivalent Securities” means securities which have terms not materially less favourable to the Noteholders, as reasonably determined by the Issuer in consultation with an Independent Adviser, consulting firm or comparable expert, in each case being independent and of international standing on the subject, and which:

- (a) satisfy the criteria for the eligibility for inclusion of the proceeds of the Subordinated Notes as Tier 2 Capital under the Relevant Rules;
- (b) contain terms providing for the same interest rate and interest payment dates as apply to the Subordinated Notes;
- (c) rank senior to, or have the same ranking as, the Subordinated Notes;
- (d) preserve all obligations as to repayment of the Subordinated Notes, including (without limitation) as to timing of such repayment (including preserving the same Maturity Date);
- (e) do not contain terms providing for loss absorption through principal write-down or conversion into ordinary shares; and
- (f) preserve any rights to any accrued and unpaid interest, and any existing rights to other amounts payable under the Subordinated Notes which have accrued to Noteholders and not been paid;

“Rate of Interest” has the meaning given to it in Condition 4(c) (Rate of Interest);

“Reference Rate” has the meaning given to it in Condition 4(c) (Rate of Interest);

“Regulatory Clearance Condition” means, in respect of any proposed act on the part of the Issuer, the Issuer having notified the BMA, and obtained the consent or non-objection of the BMA, in relation to such act (in any case only if and to the extent required by the BMA and/or pursuant to the Relevant Rules);

“Regulatory Deficiency Deferral Event” means a Regulatory Deficiency Interest Deferral Event or a Regulatory Deficiency Redemption Deferral Event;

“Regulatory Deficiency Interest Deferral Date” means each Interest Payment Date in respect of which a Regulatory Deficiency Interest Deferral Event has occurred and is



continuing or would occur if payment of the full amount of interest otherwise due was made on such Interest Payment Date;

“Regulatory Deficiency Interest Deferral Event” means: (a) any event which causes the Enhanced Capital Requirement to be breached and such breach is an event which, under the Relevant Rules, would require the Issuer to defer a payment of interest in respect of the Subordinated Notes in order for the Subordinated Notes to constitute Tier 2 Capital (for the avoidance of doubt, a breach of one or several of the Issuer’s subsidiaries capital requirements that would not trigger a breach of the Enhanced Capital Requirement will not be considered as a Regulatory Deficiency Interest Deferral Event); or (b) the BMA has otherwise provided written notice to the Issuer prohibiting the Issuer from making payments under the Subordinated Notes;

“Regulatory Deficiency Redemption Deferral Event” means any event which causes the Enhanced Capital Requirement to be breached and such breach is an event which, under the Relevant Rules, would require the Issuer to defer or suspend a scheduled repayment or redemption of the Subordinated Notes in order for the Subordinated Notes to constitute Tier 2 Capital. For the avoidance of doubt, any event which (i) causes the capital requirement of one or several of the Issuer’s subsidiaries to be breached but (ii) that would not cause the Enhanced Capital Requirement to be breached and (iii) that would not constitute an event which, under the Relevant Rules, would require the Issuer to defer or suspend a scheduled repayment or redemption of the Subordinated Notes in order for the Subordinated Notes to constitute Tier 2 Capital, will not be considered as a Regulatory Deficiency Redemption Deferral Event;

“Relevant Date” has the meaning given in Condition 9 (Taxation);

“Relevant Rules” means the Insurance Act, and the rules and regulations promulgated thereunder, and any other legislation, rules or regulations of Bermuda or of the BMA from time to time relating to the characteristics, features or criteria of own funds or capital resources and which are, at such time, applicable to the Issuer;

“Senior Creditors” means:

- (a) any policyholders and policy beneficiaries of the Issuer and its Subsidiaries (and, for the avoidance of doubt, the claims of Senior Creditors who are policyholders and/or policy beneficiaries shall include all amounts to which any such policyholder or policy beneficiary (as applicable) would be entitled in its capacity as such under any applicable legislation or rules relating to the Winding-Up of insurance companies to reflect any right to receive, or expectation of receiving, policyholder or policy beneficiary benefits which such policyholder or policy beneficiary (as applicable) may have);
- (b) creditors of the Issuer (other than policyholders) who are unsubordinated creditors of the Issuer including, without limitation, tax authorities and holders of senior guarantees issued by the Issuer;
- (c) any senior or subordinated secured creditors of the Issuer to the extent of the security therefor; and
- (d) any other creditors to whose claims the Subordinated Notes must be subordinated under the Relevant Rules so as to permit the Subordinated Notes to qualify as Tier 2 Capital;

“Step-Up Date” means the Interest Payment Date falling on or immediately after the tenth anniversary of the Issue Date;

“Subsidiary” means any person (referred to as the “first person”) in respect of which another person:

- (a) has the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:
  - (i) cast, or control the casting of, more than 50 per cent. of the maximum number of votes that might be cast at a general meeting of the first person;
  - (ii) appoint or remove all, or the majority, of the Directors or other equivalent officers of the first person; or  
give directions with respect to the operating and financial policies of the first person with which the Directors or other equivalent officers of the first person are obliged to comply; or
- (b) holds beneficially more than 50 per cent. of the issued share capital of the first person (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital);

“Tax Event” has the meaning given in Condition 6(c) (Redemption for tax reasons);

“Tier 1 Capital” means capital which is treated as a constituent of Tier 1 under the Relevant Rules;

“Tier 2 Capital” means capital which is treated as a constituent of Tier 2 under the Relevant Rules;

“Winding-Up” means any time when: (i) an order is made, or an effective resolution is passed, for the winding-up, dissolution or liquidation of the Issuer or any other analogous procedures in any jurisdiction (except, in any such case, a solvent winding-up solely for the purpose of a reconstruction, amalgamation or substitution of the Issuer, the terms of which have previously been approved by the Majority Noteholders); or (ii) a provisional liquidator, receiver, administrator or similar officer is appointed in respect of the Issuer and has given notice that it intends to declare a dividend; and

“US\$” and “U.S. Dollar” mean the lawful currency of the United States of America.



## SCHEDULE 4

### REGULATIONS CONCERNING TRANSFERS AND REGISTRATION OF SUBORDINATED NOTES

1. The Subordinated Notes are in the denomination of US\$70,000,000. Subordinated Notes may only be held in holdings in the aggregate principal amount of US\$200,000 and integral multiples of \$1,000 in excess thereof (each, an “**Authorised Holding**”).
2. Subject to paragraph 2 above and paragraph 4 and paragraph 12 below, Subordinated Notes may be transferred by execution of the relevant form of transfer under the hand of the transferor or, where the transferor is a corporation, under its common seal or under the hand of two of its officers duly authorised in writing. Where the form of transfer is executed by an attorney or, in the case of a corporation, under seal or under the hand of two of its officers duly authorised in writing, a copy of the relevant power of attorney certified by a financial institution in good standing or a notary public or in such other manner as the Registrar may require or, as the case may be, copies certified in the manner aforesaid of the documents authorising such officers to sign and witness the affixing of the seal must be delivered with the form of transfer. In this Schedule, “**transferor**” shall, where the context permits or requires, include joint transferors and shall be construed accordingly.
3. The Note Certificate, if any, issued in respect of the Subordinated Notes to be transferred must be surrendered for registration, together with the form of transfer (including any certification as to compliance with restrictions on transfer included in such form of transfer) endorsed thereon, duly completed and executed, at the Specified Office of the Registrar or any Transfer Agent, and together with such evidence as the Registrar or (as the case may be) the relevant Transfer Agent may reasonably require to prove the title of the transferor and the authority of the persons who have executed the form of transfer. The signature of the person effecting a transfer of a Subordinated Note shall conform to any list of duly authorised specimen signatures supplied by such Noteholder or be certified by a financial institution in good standing, notary public or in such other manner as the Registrar or such Transfer Agent may require.
4. No Noteholder may require the transfer of a Subordinated Note to be registered during the period of 15 calendar days ending on the due date for any payment of principal or interest in respect of such Subordinated Note.
5. No Noteholder which has executed a Form of Proxy in relation to a Meeting may require the transfer of a Subordinated Note covered by such Form of Proxy to be registered until the earlier of the conclusion of the Meeting and its adjournment for want of a quorum.
6. The executors or administrators of a deceased Holder of a Subordinated Note (not being one of several joint Holders) and, in the case of the death of one or more of several joint Holders, the survivor or survivors of such joint Holders, shall be the only persons recognised by the Issuer as having any title to such Note.
7. Any person becoming entitled to any Notes in consequence of the death or bankruptcy of the Holder of such Notes may, upon producing such evidence that he holds the position in respect of which he proposes to act under this paragraph or of his title as the Registrar or the relevant Transfer Agent may require (including legal opinions), become registered himself as the Holder of such Notes or, subject to the provisions of these Regulations, the Subordinated Notes and the Conditions as to transfer, may transfer such Notes. The Issuer, the Transfer Agents, the Registrar and the Paying Agents shall be at liberty to retain any amount payable upon the Subordinated Notes to which any person is so entitled until such person is so registered or duly transfers such Notes.



8. Unless otherwise required by it and agreed by the Issuer and the Registrar, the Noteholder shall be entitled to receive only one Note Certificate in respect of its holding.
9. The joint Noteholders shall be entitled to one Note Certificate only in respect of their joint holding which shall, except where they otherwise direct, be delivered to the joint Noteholder whose name appears first in the Register in respect of the joint holding.
10. Where there is more than one transferee (to hold other than as joint Noteholders), separate forms of transfer (obtainable from the Specified Office of the Registrar or any Transfer Agent) must be completed in respect of each new holding.
11. A Noteholder may transfer all or part only of his holding of Subordinated Notes; provided, however, that both the principal amount of Subordinated Notes transferred and the principal amount of the balance not transferred are an Authorised Holding. Where a Noteholder has transferred part only of his holding of Subordinated Notes, a new Note Certificate in respect of the balance of such holding will be delivered to him.
12. The Issuer, the Transfer Agents and the Registrar shall, save in the case of the issue of replacement Subordinated Notes pursuant to the Conditions, make no charge to the Noteholders for the registration of any holding of Subordinated Notes or any transfer thereof or for the issue of any Subordinated Notes or for the delivery thereof at the Specified Office of any Transfer Agent or the Registrar or by uninsured post to the address specified by the Noteholder, but such registration, transfer, issue or delivery shall be effected against such indemnity from the Noteholder or the transferee thereof as the Registrar or the relevant Transfer Agent may require in respect of any tax or other duty of whatever nature which may be levied or imposed in connection with such registration, transfer, issue or delivery.
13. Provided a transfer of a Subordinated Note is duly made in accordance with all applicable requirements and restrictions upon transfer and the Subordinated Note(s) transferred are presented to a Transfer Agent and/or the Registrar in accordance with the Agency Agreement and these Regulations, and subject to unforeseen circumstances beyond the control of such Transfer Agent or the Registrar arising, such Transfer Agent or the Registrar will, within five business days of the request for transfer being duly made, deliver at its Specified Office to the transferee or despatch by uninsured post (at the request and risk of the transferee) to such address as the transferee entitled to the Subordinated Notes in relation to which such Note Certificate is issued may have specified, a Note Certificate in respect of which entries have been made in the Register, all formalities complied with and the name of the transferee completed on the Note Certificate by or on behalf of the Registrar; and, for the purposes of this paragraph, "business day" means a day on which commercial banks are open for business (including dealings in foreign currencies) in the cities in which the Registrar and (if applicable) the relevant Transfer Agent have their respective Specified Offices.
14. No transfer of a Subordinated Note (or any beneficial interest therein) may be effected unless:
  - (a) such Subordinated Note is transferred in a transaction that does not require registration under the Securities Act, applicable State securities laws and is not in violation of the United States Investment Company Act of 1940;
  - (b) such transfer is effected in accordance with the provisions of any restrictions on transfer specified in the legends (if any) set forth on the face of the Note Certificate issued in relation to such Subordinated Note;
  - (c) the transferee delivers to the Registrar or the relevant Transfer Agent a form of transfer (including any certification as to compliance with restrictions on transfer included in such form of transfer) endorsed on the Note Certificate issued in relation to such Subordinated Note; and



- (d) if the Issuer so requests, the relevant Transfer Agent and the Registrar receive an opinion of counsel satisfactory to all of them.

**SCHEDULE 5**

**SPECIFIED OFFICES OF THE AGENTS**

Specified Office and Contact Details of the Fiscal Agent, Transfer Agent and Agent Bank:

**The Bank of New York Mellon, London Branch**

One Canada Square  
London E14 5AL  
United Kingdom

Phone Number: [REDACTED]

Email: [REDACTED]

Specified Office and Contact Details of the Registrar:

**The Bank of New York Mellon SA/NV, Dublin Branch**

Riverside Two  
Sir John Rogerson's Quay  
Grand Canal Dock  
Dublin 2, Ireland

Email: [REDACTED]



**PRINCIPAL EXECUTIVE OFFICER CERTIFICATION PURSUANT TO RULE 13a-14(a)  
OF THE SECURITIES EXCHANGE ACT OF 1934**

I, G. Manning Rountree, certify that:

1. I have reviewed this quarterly report on Form 10-Q of White Mountains Insurance Group, Ltd.;
2. Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and we have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this quarterly report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

November 8, 2021

By:

/s/ G. Manning Rountree  
Chief Executive Officer  
(Principal Executive Officer)

**PRINCIPAL FINANCIAL OFFICER CERTIFICATION PURSUANT TO RULE 13a-14(a)  
OF THE SECURITIES EXCHANGE ACT OF 1934**

I, Reid T. Campbell, certify that:

1. I have reviewed this quarterly report on Form 10-Q of White Mountains Insurance Group, Ltd.;
2. Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and we have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this quarterly report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

November 8, 2021

By:

/s/ Reid T. Campbell

Executive Vice President and Chief Financial Officer  
(Principal Financial Officer)

**PRINCIPAL EXECUTIVE OFFICER  
CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the quarterly report on Form 10-Q of White Mountains Insurance Group, Ltd. (the "Company"), for the period ending September 30, 2021 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, G. Manning Rountree, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. §1350, as adopted pursuant to §906 of the Sarbanes-Oxley Act of 2002, that to my knowledge:

- The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and,
- The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company as of and for the periods presented in the Report.

/s/ G. Manning Rountree  
Chief Executive Officer  
(Principal Executive Officer)

November 8, 2021



**PRINCIPAL FINANCIAL OFFICER  
CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the quarterly report on Form 10-Q of White Mountains Insurance Group, Ltd. (the "Company"), for the period ending September 30, 2021 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Reid T. Campbell, Executive Vice President and Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. §1350, as adopted pursuant to §906 of the Sarbanes-Oxley Act of 2002, that to my knowledge:

- The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and,
- The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company as of and for the periods presented in the Report.

/s/ Reid T. Campbell

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Executive Vice President and Chief Financial Officer  
(Principal Financial Officer)

November 8, 2021