



Registration of a Charge

Company Name: **GOLDMAN SACHS INTERNATIONAL**

Company Number: **02263951**



Received for filing in Electronic Format on the: **26/04/2021**

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Details of Charge

Date of creation: **19/04/2021**

Charge code: **0226 3951 0373**

Persons entitled: **GIFMS CAPITAL COMPANY, LLC**

Brief description:

Contains fixed charge(s).

Contains negative pledge.

Authentication of Form

This form was authorised by: **a person with an interest in the registration of the charge.**

Authentication of Instrument

Certification statement: **I CERTIFY THAT SAVE FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **NORTON ROSE FULBRIGHT LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 2263951

Charge code: 0226 3951 0373

The Registrar of Companies for England and Wales hereby certifies that a charge dated 19th April 2021 and created by GOLDMAN SACHS INTERNATIONAL was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 26th April 2021 .

Given at Companies House, Cardiff on 27th April 2021

The above information was communicated by electronic means and authenticated by the Registrar of Companies under section 1115 of the Companies Act 2006



Companies House



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES

EXECUTION VERSION

Dated 19 April 2021

GOLDMAN SACHS INTERNATIONAL
(as *Chargor*)

GIFMS CAPITAL COMPANY, LLC
(as *Secured Party*)

SECURITY AGREEMENT

I certify that, save for material redacted pursuant to s.859G of the Companies Act 2006, this copy instrument is a correct copy of the electronic original instrument.

Norton Rose Fulbright LLP

Date: 26 April 2021

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THIS SECURITY AGREEMENT (this *Agreement*) is made on 19 April 2021.

BETWEEN

- (1) **GOLDMAN SACHS INTERNATIONAL**, a private company with unlimited liability under the laws of England and Wales whose registered office is at Plumtree Court, 25 Shoe Lane, London EC4A 4AU (the *Chargor*); and
- (2) **GIFMS Capital Company, LLC**, a limited liability company formed under the laws of the Cayman Islands acting through its designated office at 227 West Monroe, Suite 4900, Chicago, IL 60606 (the *Secured Party*).

WHEREAS

- (A) The Chargor is required to enter into this Agreement as a condition of the Secured Agreements (as defined below).
- (B) It is intended that this document takes effect as a deed notwithstanding the fact that a party may only execute this document under hand.

IT IS AGREED as follows:

1. Interpretation

1.1 Definitions

In this Agreement, unless the context otherwise requires, the following words and expressions shall have the meanings given to them in this Clause 1 (*Interpretation*):

Ancillary Rights means with respect to the Chargor all rights relating to the Charged Accounts which the Chargor may have now or in the future against the Secured Party, the Custodian or any third party, including, without limitation, any right to delivery of Property which arises in connection with (a) any Securities being transferred to a clearance system or financial intermediary; (b) any interest in or to any Securities being acquired while those Securities are in a clearance system or held through a financial intermediary; (c) any terms of business applicable to the relevant Charged Accounts, including the Custody Agreement; or (d) any other rights that the Chargor may have now or in the future with respect to any relevant Charged Account, in each case solely to the extent such rights relate to the Charged Accounts and any Cash or Securities credited to such Charged Accounts;

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

Borrower means the Chargor as borrower of securities under any Secured Agreements;

Business Day means any day on which commercial banks are open for business in London;

Cash means money in any currency, credited to an account (including at the Custodian or any Subcustodian), or a similar claim for repayment of money, and includes money market deposits;

Cash Account means each cash account comprised in the Segregated Accounts from time to time being cash accounts to which Cash shall be credited by the Chargor as security for the Secured Obligations in accordance with the terms of the Secured Agreements;

Charged Accounts means the Cash Accounts, the Securities Accounts and all rights of the Chargor in relation thereto and the reference to **Charged Account** shall mean any one of such Charged Accounts;

Custodian means The Bank of New York Mellon, London Branch of One Canada Square, London, E14 5AL (or such other office in England and Wales as it may determine from time to time) as custodian for the Borrower or such other person appointed as a successor custodian pursuant to clause 7 of the Triparty Account Control Agreement;

Custody Agreement means the Dealer Safekeeping Agreement referred to in the Triparty Account Control Agreement;

Enforcement Event means the occurrence of an Event of Default (as defined under the terms of the relevant Secured GMSLA) in respect of which the Chargor is the Defaulting Party under each of the Secured GMSLA Loans;

Financial Collateral means “financial collateral” as defined in the Financial Collateral Regulations;

Financial Collateral Regulations means the Financial Collateral Arrangements (No.2) Regulations 2003 (SI 2003/3226) (as amended from time to time);

GMSLA means the Global Master Securities Lending Agreement (January 2010 Version) together with the schedule thereto dated 19 April 2021, as amended and supplemented from time to time, between the Chargor and the Secured Party;

Interest means any interest paid or credited by the Custodian from time to time in respect of the balance standing to the credit of any Cash Account;

Lender means the Secured Party as lender under the Secured GMSLA Loans;

Notice of Exclusive Control means a “Notice of Exclusive Control” (as such term is defined in the Triparty Account Control Agreement) given by or on behalf of the Secured Party pursuant to the Triparty Account Control Agreement;

Parties means each of the parties to this Agreement from time to time;

Property means bonds, debentures, notes, stocks, shares, units or other securities and all rights or property which may at any time accrue or be offered (whether by way of bonus, redemption, preference, option or otherwise) in respect of any of the foregoing or evidencing or representing any other rights or interests therein (including, without limitation, any of the foregoing not

constituted, evidenced or represented by a certificate or other document but by an entry in the books or other permanent records of the issuer, a trustee or other fiduciary thereof, any financial intermediary, custodian or sub-custodian, depository or any clearance or settlement system);

Related Rights means, in relation to any Security Asset:

- (a) any proceeds of, or agreement for, sale, transfer or other disposal of that Security Asset;
- (b) any moneys or proceeds paid or payable which derive from that Security Asset and any dividends and distributions of any kind, interest and other income of any kind, and any other sum (whether in the nature of interest, income, principal, capital or otherwise) received or receivable in respect of that Security Asset (in each case, whether in cash or in specie);
- (c) any rights, claims, guarantees, indemnities, Security or covenants for title in relation to that Security Asset;
- (d) any awards or judgments in favour of the Chargor in relation to that Security Asset;
- (e) any rights, shares, depository receipts, money or other assets accruing, issued, paid or offered by way of redemption, bonus, option, conversion, exchange, substitution, consolidation, subdivisions, preference, warrant, purchase or otherwise in respect of that Security Asset;
- (f) any allotments, offers and rights accruing, issued, paid or offered in respect of that Security Asset; and
- (g) any other rights and assets attaching to, deriving from, relating to, or exercisable by virtue of the ownership or holding of, that Security Asset.

Secured Agreement means the Security Documents and the Secured GMSLAs;

Secured GMSLA means the GMSLA and any other securities lending agreement the Chargor and Secured Party designate in writing as a “Secured GMSLA” for the purposes of this Agreement;

Secured GMSLA Loan means each loan made under the Secured GMSLA in respect of which, pursuant to the terms of the confirmation of such loan, collateral is not to be provided by way of title transfer but is to be provided by way of security. For the avoidance of doubt, any reference to all Secured GMSLA Loans shall be a reference to all Secured GMSLA Loans under all confirmations entered into pursuant to the Secured GMSLAs;

Secured Obligations means the Secured Other Obligations and the Secured Outstanding Amount Obligations;

Secured Other Obligations means all money, obligations (including to deliver securities or financial instruments) or liabilities due, owing or incurred, whether for payment, delivery or otherwise, at present or in the future, whether actual or contingent, to the Secured Party by the Chargor under any Secured Agreement

together with all interest accruing thereon (to the extent provided in any Secured Agreement) other than the Secured Outstanding Amount Obligations;

Secured Outstanding Amount Obligations means the obligations of the Chargor (as borrower) under all Secured GMSLA Loans to return Equivalent Loaned Securities (as defined therein);

Securities means securities or financial instruments or other property or assets which may from time to time be provided as collateral in connection with a Secured Agreement;

Securities Account means each securities account comprised in the Segregated Accounts from time to time being securities accounts to which securities and other financial assets shall be credited by the Chargor as security for the Secured Obligations in accordance with the terms of the Secured Agreements;

Security means any mortgage, sub-mortgage, security assignment, charge, sub-charge, pledge, lien, right of set-off, trust, hypothecation or other security interest or encumbrance of any kind howsoever created or arising, including anything having the corresponding legal effect to any of the foregoing under the laws of any jurisdiction;

Security Assets means all the assets of the Chargor from time to time charged (or expressed to be charged) pursuant to the Security Documents;

Security Documents means this Agreement and the Triparty Account Control Agreement;

Segregated Accounts has the meaning given to it in the Triparty Account Control Agreement;

Segregated Account Terms mean the terms of the Custody Agreement solely to the extent they relate to the Segregated Accounts;

Subcustodian means a sub-custodian of the Custodian;

Transaction Security means the Security interests constituted, created or evidenced (or expressed to be constituted, created or evidenced) in favour of the Secured Party under this Agreement or any other Security Document; and

Triparty Account Control Agreement means the triparty account control agreement among the Chargor, Custodian and Secured Party dated on or about the date of this Agreement pursuant to which the Secured Party has control of the Security Assets provided or to be provided by the Borrower as collateral under the Secured Agreements.

1.2 Construction

- (a) Unless a contrary indication appears, any reference in this Agreement to:
 - (i) Chargor, Secured Party, Custodian, Lender or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees;

- (ii) a person includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
 - (iii) a regulation includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but, if not having the force of law, with which the parties are accustomed to comply) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
 - (iv) a provision of law is a reference to that provision as amended or re-enacted;
 - (v) a time of day is a reference to London time, unless otherwise stated; and
 - (vi) Clause, sub-Clause and Schedule headings are for ease of reference only.
- (b) Unless the context requires otherwise, terms used in the singular shall include the plural and vice-versa.
 - (c) An Enforcement Event is continuing if it has not been remedied or waived.
 - (d) In the event of any conflict or inconsistency between the provisions of this Agreement and any other Secured Document, the provisions of this Agreement shall prevail.
 - (e) References to demands or notices to be given in writing in this Agreement shall include demands made or notices given by electronic means in accordance with the terms of Clause 19 (*Notices*) of this Agreement.
 - (f) The term “includes” or “including” shall, where the context so permits, be interpreted as meaning “includes, without limitation” or “including, without limitation”.
 - (g) A reference to any agreement (including any oral agreement), deed or instrument is a reference to that agreement, deed or instrument as varied, amended, novated, supplemented, extended, restated (however fundamentally and whether or not more onerously) or replaced from time to time and includes, in the case of each Secured GMSLA Loan, each agreement in respect of each loan of securities entered into thereunder.
 - (h) A reference in this Agreement to any stock, share, debenture, loan stock, security, bond, warrant, coupon, interest in any investment fund and any other investment includes:

- (i) all dividends, interest, coupons and other distributions paid or payable;
- (ii) all stocks, shares, securities, rights, moneys, allotments, benefits and other assets accruing or offered at any time by way of redemption, substitution, conversion, exchange, bonus or preference, under option rights or otherwise; and
- (iii) any rights against any clearance system and any right under any custodian or other agreement,

in relation to that stock, share, debenture, loan stock, security, bond, warrant, coupon, interest in any investment fund or other investment;

1.3 Third parties

- (a) Except as otherwise expressly provided in Clause 10.5(a) (*Protection of third parties*) or elsewhere in this Agreement, the terms of this Agreement may be enforced only by a party to it and the operation of the Contracts (Rights of Third Parties) Act 1999 is excluded.

1.4 Chargor intent

Without prejudice to the generality of any other provision of this Agreement, the Chargor expressly confirms that it intends that this Agreement and the Transaction Security shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Secured Agreements and/or any present or future facility or amount made available under any of the Secured Agreements, including Secured GMSLA Loans entered into after the date hereof.

2. Covenant to Pay

- (a) The Chargor, as primary obligor and not merely as surety, covenants with the Secured Party that it will pay, discharge or perform promptly on demand each of the Secured Obligations on the date on which such Secured Obligation is expressed to become due for payment, discharge or performance and in the manner provided for in the Secured Agreements;
- (b) The Chargor acknowledges to the Secured Party that the amount secured by this Agreement and in respect of which this Agreement and the Transaction Security hereby created is enforceable is the full amount of the Secured Obligations from time to time.

3. Creation of Security

3.1 Charge over assets constituting Financial Collateral

The Chargor, as continuing security for, first, the Secured Outstanding Amount Obligations and, secondly, subject to the Secured Outstanding Amount Obligations being repaid finally and in full, for the Secured Other Obligations, hereby charges and agrees to charge in favour of the Secured Party by way of

first ranking charge all its rights, title and interest from time to time in and to, to the extent the same constitutes Financial Collateral:

- (a) the Cash Account and the Securities Account, which shall include:
 - (i) all its present and future rights, title and interest in and to the Cash Account and all amounts (including Interest) now or in the future standing to the credit of or accrued or accruing on or to the Cash Account;
 - (ii) all its present and future rights, title and interest in and to the Securities Account and all Securities that qualify as Financial Collateral now or in the future held in the Securities Account, including without limitation any rights to delivery thereof or to an equivalent number or nominal value thereof which arises in connection with any such Securities being held through a financial intermediary (including a Subcustodian);
 - (iii) any sub-accounts of the Cash Account or the Securities Account from time to time maintained with the Custodian by the Chargor in connection with the Secured Agreements, together with all Interest from time to time earned on such sums and the debts represented by such sums and interest to the extent the assets held in such accounts qualify as Financial Collateral; and
 - (iv) all Ancillary Rights and Related Rights relating to (a)(i) to (iii) (inclusive) above; and
- (b) the Securities credited to the Securities Account that qualify as Financial Collateral, and all its present and future rights, title and interest whether proprietary or contractual, in and to such Securities (including any Ancillary Right and Related Rights in respect thereof).

3.2 Charge over assets not constituting Financial Collateral

The Chargor as continuing security for, first, the Secured Outstanding Amount Obligations and, secondly, subject to the Secured Outstanding Amount Obligations being repaid finally and in full, for the Secured Other Obligations, hereby charges and agrees to charge in favour of the Secured Party by way of first ranking charge all its rights, title and interest from time to time in and to, to the extent the same do not constitute Financial Collateral:

- (a) any sub-accounts of the Securities Account from time to time maintained with the Custodian by the Chargor in connection with the Secured Agreements, together with all interest from time to time earned on such sums and the debts represented by such sums and interest to the extent the assets held in such accounts do not qualify as Financial Collateral (including any Ancillary Rights and Related Rights in respect thereof); and
- (b) to the extent such Securities do not qualify as Financial Collateral, all its present and future rights, title and interest whether proprietary or contractual, in and to the Securities from time to time credited to the

Securities Account (including any Ancillary Rights and Related Rights in respect thereof).

3.3 Charge over Segregated Accounts Terms

The Chargor as continuing security hereby charges and agrees to charge in favour of the Secured Party by way of first ranking charge all its rights, title and interest from time to time present under or pursuant to the Segregated Accounts Terms.

3.4 Separate agreements constituting the Security

The Security created by Clause 3.1 is a separate Security interest to those created by Clauses 3.2 and 3.3. Notwithstanding that each is contained in a single document, the Security created by Clause 3.1 shall be deemed to be included in a separate agreement to that created by Clauses 3.2 and 3.3 and any fact or circumstance affecting the legality, validity or enforceability (including the application of any moratorium) of one such agreement shall not affect the legality, validity or enforceability (or whether a moratorium should apply in respect) of the other such agreement.

4. Release

4.1 Release on discharge of all of the Secured Obligations

Upon service of a Control Event Notice by the Chargor to the Custodian and the Secured Party and the occurrence of the Control Event Notice Effective Time in relation to that Control Event Notice (each term as defined in the Triparty Account Control Agreement), the Secured Party shall:

- (a) release from the Security created under this Agreement or any other Secured Agreement the rights, title and interest in and to the Security Assets and, for the avoidance of doubt, the Ancillary Rights and Related Rights in respect thereof; and
- (b) execute such notices and directions to any persons as the Chargor may reasonably require in order to give effect to such release.

4.2 Release on substitution or release of excess collateral

Any Cash or Securities (and any interest therein or right thereto and any Ancillary Rights and Related Rights in respect thereof) transferred from the Cash Account or Securities Account in accordance with the rights of substitution in Clause 2.1.3C of the Triparty Account Control Agreement or the right to receive Margin Excess under Clause 2.1.3B(ii) of the Triparty Account Control Agreement or in accordance with Clause 2.1.11 of the Triparty Account Control Agreement shall, on being transferred or debited from such Cash Account or Securities Account to, or as may be directed by, the Borrower, be released from the Security constituted by this Agreement.

5. Provisions relating to Transaction Security

- (a) The parties agree that the Transaction Security is a continuing security for the payment, discharge and performance of all of the Secured Obligations and will extend to the ultimate balance of all sums payable under or in connection with the Secured Agreements regardless of any intermediate payment or discharge in whole or in part.
- (b) The Transaction Security created pursuant to this Agreement shall be in addition to and not in substitution for or derogation of any other Security (whether given by the Chargor or otherwise) now or from time to time hereafter held by the Secured Party in respect of or in connection with any or all of the Secured Obligations.

6. Negative Pledge and Restriction on Dealings

The Chargor may not:

- (a) create or permit to subsist any Security in, over or in respect of any of the Security Assets or any Charged Account (including any account or sub-account held with a Subcustodian appointed by the Custodian) (other than the Security created by any Security Document and other than a lien generally imposed on securities in a clearing system in which such Security Asset (or the securities it represents) is held or by a lien in favour of a Subcustodian (without prejudice to such lien being in breach of the terms of the Triparty Account Control Agreement)); or
- (b) (whether by a single transaction or a number of transactions, whether related or unrelated, whether voluntary or involuntary and whether at the same time or over a period of time) sell, loan, assign, charge, transfer or dispose of or create any interest or option in or over all or any part of the Security Assets or all or any part of its rights, title and interest in and to any Security Asset,

unless expressly permitted to do so by clauses 2.1.3B(ii) (*Margin Excess*) or 2.1.3C (*Substitution*) of the Triparty Account Control Agreement without the prior consent of the Secured Party.

7. Representations and Warranties

7.1 Representations and warranties

The Chargor represents and warrants to the Secured Party on a continuing basis to the intent that such representations and warranties shall survive the completion of any transaction pursuant to the Secured Agreements that for so long as any Secured Obligations are outstanding:

- (a) *Due authorisation:*
 - (i) it has all necessary licences and approvals and is duly authorised and empowered to perform its duties and obligations under this Agreement and the other Secured Agreements; and

- (ii) it will do nothing prejudicial to the continuation of such authorisations, licences or approvals;
- (b) *Non-conflict with other obligations:*
it is not restricted under the terms of its constitution or in any other manner from granting the Security purported to be granted hereunder or from otherwise performing its obligations under this Agreement and the other Secured Agreements;
- (c) *Security Assets:*
 - (i) other than pursuant to a Security Document, it has good and marketable title to the Security Assets and is the sole legal and beneficial owner of, and absolutely entitled to, the assets it purports to charge or assign under this Agreement free from any liens, charges and encumbrances other than a lien generally imposed on securities in a clearing system in which such Security Asset (or the securities it represents) is held or by a lien in favour of a Subcustodian (without prejudice to such lien being in breach of the terms of the Triparty Account Control Agreement).

8. Acknowledgements

8.1 Financial Collateral

The Chargor and the Secured Party intend that the security constituted pursuant to Clause 3.1 (*Charges over assets constituting Financial Collateral*) constitutes a “security financial collateral arrangement” as defined in the Financial Collateral Regulations to the extent that the Security Assets constitute “financial collateral”. The Chargor and the Secured Party have entered into the Triparty Account Control Agreement with the intention that the Security Assets are “in the possession or under the control” (as defined in the Financial Collateral Regulations) of the Secured Party or a person acting on its behalf.

9. Withdrawal of Security Assets

9.1 Prior to an Enforcement Event

Prior to the occurrence of an Enforcement Event and service by the Secured Party on the Custodian of a Notice of Exclusive Control:

- (a) the Chargor shall not be entitled to withdraw any Security Assets or exercise any rights with respect to making payments or transfers of any cash or securities out of the Charged Accounts other than in accordance with the terms of each Secured GMSLA Loan and the Triparty Account Control Agreement relating to substitutions and release of excess collateral to transfer Cash or Securities credited to any Charged Accounts on the terms set out in the Secured Agreements; and
- (b) the Chargor may only exercise any other rights it has in respect of the Security Assets with the prior written consent of the Secured Party.

9.2 Exercise of rights on Enforcement Event

On and after the occurrence of an Enforcement Event and the delivery of a Notice of Exclusive Control to the Custodian:

- (a) the Chargor shall not be entitled to receive, withdraw or otherwise transfer any Security Assets or any credit balance from time to time on any Charged Account except with the prior written consent of the Secured Party; and
- (b) the Secured Party shall be entitled without notice to:
 - (i) withdraw, apply, transfer or set off any or all of the credit balances from time to time on any Charged Account;
 - (ii) transfer or otherwise realise (including to the fullest extent permitted by applicable law, through appropriation) any or all of the Security Assets held from time to time in the Charged Accounts in accordance with the terms of the Security Documents,

in or towards payment, discharge or other satisfaction of all or part of the Secured Obligations.

10. Enforcement of Transaction Security

10.1 Timing and manner of enforcement

- (a) The Transaction Security shall become enforceable and the powers referred to in paragraph (a) of Clause 10.2 (*General*) shall become exercisable immediately upon the occurrence of an Enforcement Event.
- (b) Without prejudice to any specific provisions contained in this Agreement, immediately after the Transaction Security has become enforceable, the Secured Party may deliver a Notice of Exclusive Control to the Custodian and thereafter in its absolute and sole discretion and without notice to the Chargor or prior authorisation from any person, court or similar body (subject to the other provisions of this Agreement) enforce all or any part of the Transaction Security in any manner it sees fit.
- (c) The Chargor acknowledges and agrees that the Security Assets may decline speedily in value and are of a type customarily sold on a recognised market and therefore that the Secured Party is not required to send any notice of its intention to sell or otherwise dispose of any Security Assets. Following the occurrence of an Enforcement Event and delivery of a Notice of Exclusive Control, the Secured Party may, in its sole and absolute discretion, sell the Security Assets in a private sale, block trade or in such other manner and under such circumstances as the Secured Party may deem necessary.

10.2 General

- (a) The Secured Obligations shall be deemed to have become due and payable on the date of this Agreement for the purposes of section 101 of the Law of Property Act 1925.
- (b) The power of sale and other powers conferred by section 101 of the Law of Property Act 1925 (as varied or extended by this Agreement) and all other powers conferred on a mortgagee by law shall be deemed to arise immediately after execution of this Agreement.
- (c) Any restriction imposed by law on the power of sale (including under Section 103 of the Law of Property Act 1925) shall not apply to the Transaction Security or this Agreement.

10.3 Exercise of powers

All or any of the powers conferred on mortgagees by the Law of Property Act 1925 as varied or extended by this Agreement and all or any of the rights and powers conferred by this Agreement (including but not limited to the powers set out in Schedule 1 of this Agreement) (whether express or implied) may be exercised by the Secured Party at any time after an Enforcement Event has occurred, irrespective of whether the Secured Party has taken possession of the Security Assets.

10.4 Restrictions on notices

The Secured Party shall not give a Notice of Exclusive Control unless it determines, acting reasonably and in good faith, that an Enforcement Event has occurred.

10.5 Protection of third parties

- (a) No person (including a purchaser) dealing with the Secured Party will be concerned to enquire:
 - (i) whether the Secured Obligations have become payable or otherwise required to be performed;
 - (ii) whether any power which the Secured Party may purport to exercise has become exercisable or is being properly exercised;
 - (iii) whether any amount or requirement to make delivery remains due under the Secured Agreements; or
 - (iv) how any money paid to the Secured Party is to be applied.
- (b) Any person (including a purchaser) dealing with the Secured Party shall benefit from the protections given to purchasers (as that term is used in the LPA 1925) from a mortgagee by sections 104 and 107 of the LPA 1925, and to persons dealing with a receiver by section 42(3) of the IA 1986, and any such person who is not a Party may rely on this paragraph (b) and enforce its terms under the Contracts (Rights of Third Parties) Act 1999.

- (c) The receipt by the Secured Party of any moneys paid to the Secured Party by any person (including a purchaser) shall be an absolute and conclusive discharge and shall relieve any person dealing with the Secured Party of any obligation to see to the application of any moneys paid to or at the direction of the Secured Party and any such person who is not a Party may rely on this paragraph (c) and enforce its terms under the Contracts (Rights of Third Parties) Act 1999. Any sale or disposal of any Security Asset and any acquisition, in each case, by the Secured Party or any receiver shall be for such consideration, and made in such manner and on such terms as the Secured Party or that receiver sees fit.
- (d) In this Clause 10.5, *purchaser* includes any person acquiring, for money or money's worth, any interest or right whatsoever in relation to any Security Asset.

10.6 No liability as mortgagee in possession

The Secured Party will not be liable by reason of entering into possession of a Security Asset:

- (a) to account as mortgagee in possession for any loss on realisation in respect of such Security Asset; or
- (b) for any act, neglect, default, omission or misconduct for which a mortgagee in possession might be liable,

and any such person who is not a Party may rely on this Clause 10.6 and enforce its terms under the Contracts (Rights of Third Parties) Act 1999.

10.7 Redemption of prior Security

The Secured Party may at any time after an Enforcement Event has occurred redeem any prior Security on or relating to any of the Security Assets or procure the transfer of that Security to itself, and may settle and pass the accounts of any person entitled to that prior Security. Any account so settled and passed shall (subject to any manifest error) be conclusive and binding on the Chargor. The Chargor will on demand pay to the Secured Party all principal monies and interest and all losses incidental to any such redemption or transfer.

10.8 Right of appropriation

- (a) At any time after an Enforcement Event has occurred and a Notice of Exclusive Control has been delivered, the Secured Party may appropriate all or part of any Security Assets which are Financial Collateral in or towards satisfaction of some or all of the Secured Obligations. For the avoidance of doubt, the Secured Party shall be entitled to do so on any number of occasions and with respect to some only or all Secured Obligations owing in respect of the Secured Party.
- (b) The Secured Party shall attribute the value of such Security Assets so appropriated as follows:
 - (i) in the case of Cash, its face value at the time of appropriation;

- (ii) in the case of Securities or other Financial Collateral, the amount determined by the Secured Party, acting in good faith and a commercially reasonable manner, in accordance with the valuation procedures set out in Clause 11 of the GMSLA. The Parties agree that the methods of valuation set out in this paragraph are commercially reasonable for the purposes of the Financial Collateral Regulations.
- (c) If the value so determined exceeds the amount of the Secured Obligations, the Secured Party shall, subject to the provisions of this Agreement, promptly account to the Chargor, by payment to the Segregated Accounts, for the amount by which the value so determined of the appropriated Security Assets exceeds the amount secured.

10.9 Application of Charged Accounts

At any time after an Enforcement Event has occurred and is continuing, but following its giving a Notice of Exclusive Control, the Secured Party may and is hereby irrevocably and unconditionally authorised, without further enquiry and without obtaining any consent, to apply the whole or part of the Charged Accounts in or towards payment of the Secured Obligations.

10.10 Set-off by the Secured Party

Without prejudice to Clause 10.9 (*Application of Charged Accounts*), the Secured Party may, at any time after an Enforcement Event has occurred and is continuing and following its giving a Notice of Exclusive Control, set-off all or any part of any amounts payable by the Chargor with respect to the Secured Obligations against any obligation owed by the Secured Party to the Chargor, regardless of the place of payment, booking branch or currency of either obligation.

10.11 Set-off with different currencies

For the purposes of Clause 10.10 (*Set-off by the Secured Party*) the Secured Party is authorised to effect any necessary currency conversions or effect any transaction in currencies which it reasonably thinks fit, and to do so at such times and rates as it reasonably thinks proper.

10.12 Set-off with Unliquidated Claims

If, at any time after notice demanding payment of any sum which is then due but unpaid in respect of the Secured Obligations has been given by the Secured Party to the Chargor, the relevant obligation or liability is unliquidated or unascertained, the Secured Party may set-off the amount which it reasonably estimates (in good faith) will be the final amount of that obligation or liability once it becomes liquidated or ascertained (provided that that such set-off with respect to an unliquidated claim shall be without prejudice to any subsequent settlement in favour of the Chargor following the determination of such final liquidated or ascertained amount).

10.13 Valuation of Secured Outstanding Amount Obligations

For the purposes of this Agreement (including, without limitation, for purposes of Clause 10.8(c) above and for purposes of determining the Chargor's equity of redemption), the amount or value of the Secured Outstanding Amount Obligations shall be equal to their Default Market Value. For these purposes, "**Default Market Value**" shall have the meaning given to such term in the relevant Secured GMSLA without regard to any provisions of the confirmation for any Secured GMSLA Loan which replaces paragraphs 11.1 to 11.7 of the Secured GMSLA with a physical-settlement procedure.

11. Preservation of Security

11.1 Reinstatement

- (a) If any payment or delivery by the Chargor or any discharge or release given by the Secured Party (whether in respect of the obligations of any person or any security for those obligations or otherwise) is avoided or reduced as a result of insolvency or any similar event:
 - (i) the liability of the Chargor and the relevant security shall continue as if the payment, delivery, discharge, release, avoidance or reduction had not occurred; and
 - (ii) the Secured Party shall be entitled to recover the value or amount of that security, payment or delivery from the Chargor, as if the payment, delivery, discharge, avoidance or reduction had not occurred.
- (b) The Secured Party may concede or compromise any claim that any payment, delivery, security or other disposition is liable to avoidance or restoration.

11.2 Waiver of defences

None of the obligations of the Chargor under this Agreement nor the Transaction Security will be affected by any act, omission, matter or thing (whether or not known to the Chargor, the Secured Party or the Custodian) which, but for this provision, would reduce, release, prejudice or provide a defence to any of those obligations including:

- (a) any time, waiver, release or consent granted to, or composition with, the Chargor or any other person;
- (b) the release of the Chargor or any other person under the terms of any composition or arrangement;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over the assets of, the Chargor or any other person or any non-presentation or non-observance of any formality or other requirement in

respect of any instrument or any failure to realise the full value of any such rights or security;

- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Chargor or any other person;
- (e) the refusal or failure to take up, hold, perfect or enforce by any person any rights under or in connection with any security, guarantee or indemnity or any document (including any failure to present, or comply with, any formality or other requirement in respect of any instrument, or any failure to realise the full value of any rights against, or security over the assets of, any Chargor or any other person);
- (f) the existence of any claim, set-off or other right which any Chargor may have at any time against the Secured Party or any other person;
- (g) the making, or absence, of any demand for payment or discharge of any Secured Obligations;
- (h) any variation, amendment, waiver, release, novation, supplement, extension, restatement or replacement of, or in connection with, any Secured Agreement or any other document or any security, guarantee or indemnity, in each case, however fundamental and of whatever nature (and including any amendment that may increase the liability of the Chargor);
- (i) any change in the identity of the Secured Party;
- (j) any unenforceability, illegality or invalidity of any obligation of any person under any Secured Agreement or any other document or security;
or
- (k) any insolvency or similar proceedings.

11.3 Immediate recourse

The Chargor waives any right it may have of first requiring the Secured Party to proceed against or enforce any other rights or security or claim payment from any person before claiming from or enforcing against the Chargor under this Agreement. This waiver applies irrespective of any law or any provision of a Secured Agreement to the contrary.

11.4 Appropriations

On and after the occurrence of an Enforcement Event and until all the Secured Obligations have been irrevocably paid, discharged or performed in full, the Secured Party may:

- (a) refrain from applying, appropriating or enforcing any other moneys, security or rights held or received by the Secured Party in respect of the Secured Obligations, or apply, appropriate and enforce the same in such manner and order as it sees fit (whether against the Secured Obligations

or otherwise) and the Chargor shall not be entitled to the benefit of the same; and

- (b) hold in an interest-bearing suspense account any moneys received from the Chargor or on account of the Chargor's liability under this Agreement or any Secured Agreement.

11.5 Additional security/non-merger

The Transaction Security created pursuant to this Agreement is cumulative to, in addition to, independent of and not in substitution for or derogation of, and shall not be merged into or in any way be excluded or prejudiced by any other Security (whether given by the Chargor or otherwise) now or hereafter held by or on behalf of the Secured Party in respect of or in connection with any or all of the Secured Obligations or any other amount due by the Chargor to the Secured Party.

11.6 Power of consolidation

Section 93 of the Law of Property Act 1925 shall not apply to this Agreement or to the Transaction Security.

11.7 New accounts and ruling off

- (a) The Secured Party may open a new account in the name of the Chargor at any time after a subsequent Security affects any Security Asset. If the Secured Party does not open a new account in such circumstances it will nevertheless be deemed to have done so upon the occurrence of such circumstances.
- (b) No moneys paid into any account (whether new or continuing) after the occurrence of any circumstances referred to in paragraph (a) of this Clause 11.7 shall reduce or discharge the Secured Obligations.

12. Further Assurances

The Chargor shall, at its own expense, promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) and take whatever action the Secured Party may reasonably require for:

- (a) creating, perfecting, protecting or maintaining any Security created, expressed to be or intended to be created by or pursuant to any Security Document;
- (b) facilitating the realisation of any Security Asset or any asset which is, or is intended to be, the subject of the Transaction Security;
- (c) facilitating the exercise of any right, power, discretion or remedy exercisable by the Secured Party in respect of any Security Asset or by or pursuant to any of the Secured Agreements or by law,

including, without limitation:

- (i) the execution of any legal mortgage, charge, transfer, conveyance, assignment or assurance of any property, to the Secured Party;
- (ii) any steps required to convert the charge contemplated by this Agreement into a mortgage (to the extent that it is not a mortgage);
- (iii) the payment of any stamp duty, registration or other similar taxes payable in respect of this Agreement or as may be required in accordance with the terms of any Secured Agreement;
- (iv) delivering to the Secured Party any applicable consent or other document which may be necessary to effect the transfer of any Security Assets to the Secured Party and
- (v) the giving of any notice, order or direction and the making of any filing or registration,

which, in any such case, is reasonably required.

13. Power of Attorney

13.1 Appointment

- (a) The Chargor by way of security irrevocably appoints the Secured Party as its attorney with full power of substitution, on its behalf and in its name or otherwise, at such time and in such manner as the attorney thinks fit:
 - (i) to do anything which the Chargor is obliged to do under this Agreement or any other Secured Agreement (but has not done);
 - (ii) on and after the occurrence of an Enforcement Event, to do anything which the Chargor is obliged to do under this Agreement; and
 - (iii) to exercise any of the rights conferred on the Secured Party in relation to the Security Assets or under any Secured Agreement or any law.
- (b) The power of attorney conferred on the Secured Party shall continue notwithstanding the exercise by the Secured Party of any right of appropriation pursuant to Clause 10.8 (*Right of appropriation*).

13.2 Ratification

The Chargor ratifies and confirms and agrees to ratify and confirm whatever any attorney shall do in the exercise or purported exercise of the power of attorney granted by it in Clause 13.1 (*Appointment*).

14. Expenses and Indemnities

14.1 The Chargor will on demand pay and reimburse the Secured Party under this Agreement, on the basis of a full indemnity, in respect of:

- (a) all reasonable costs and expenses (including legal fees and other out of pocket expenses and any value added tax or other similar tax thereon) properly incurred by the Secured Party in connection with the holding, preservation or enforcement or the attempted preservation or enforcement of the Secured Party's rights under this Agreement or otherwise in connection with the performance of this Agreement (including any proceedings instituted by or against the Secured Party as a consequence of taking or holding the Transaction Security or enforcing its rights) or any documents required pursuant to this Agreement including any costs and expenses arising from any actual or alleged breach by any person of any law, agreement or regulation (including the investigation of such breach); or
- (b) the exercise of any of the rights, powers, discretions, authorities and remedies vested in the Secured Party by the Secured Agreements or by law

(otherwise, in each case, than by reason of the Secured Party's gross negligence or wilful misconduct or breach of the terms of any Secured Agreement).

14.2 The Chargor shall pay and, within three Business Days of demand, indemnify the Secured Party against any cost, loss or liability that the Secured Party incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Secured Agreement.

15. Miscellaneous

15.1 Security for additional transactions and new Secured GMSLA Loans

The Chargor agrees and confirms that the Transaction Security is for the benefit of existing and future lenders of securities under stock lending agreements that are now or may in the future be designated as a Secured GMSLA, the person acting as agent in connection with the arrangement, performance, collateral management, monitoring of or otherwise dealing with any Secured GMSLA Loan and any securities loans thereunder and for all transactions, whether existing or entered into in the future, and whether or not contingent, under such Secured GMSLA.

15.2 Secured Party's liability

The Secured Party shall not (either by reason of taking possession of the Security Assets or for any other reason and whether as mortgagee in possession or otherwise) be liable to the Chargor or any other person for any costs, losses, liabilities or expenses relating to the realisation of any Security Assets or the taking of any other action permitted by this Agreement except to the extent caused by its or his own fraud, gross negligence or wilful misconduct or breach of the terms of any Secured Agreement.

16. Currency clauses

- 16.1 *Conversion.* All moneys received or held by the Secured Party under this Agreement may be converted into any other currency which the Secured Party reasonably considers necessary to cover the obligations and liabilities comprised in the Secured Obligations in that other currency at the Secured Party's spot rate of exchange then prevailing for purchasing that other currency with the existing currency.
- 16.2 *No Discharge.* No payment to the Secured Party (whether under any judgment or court order or otherwise) shall discharge the obligation or liability of the Chargor in respect of which it was made unless and until the Secured Party has received payment in full in the currency in which the obligation or liability is payable or, if the currency of payment is not specified, was incurred. To the extent that the amount of any such payment shall on actual conversion into that currency fall short of that obligation or liability expressed in that currency, the Secured Party shall have a further separate cause of action against the Chargor and shall be entitled to enforce the Transaction Security to recover the amount of the shortfall.

17. Remedies and waivers

No failure to exercise, nor any delay or omission on the part of the Secured Party in exercising any right or remedy provided by law or under any Secured Agreement shall impair, affect or operate as a waiver of that or any other right or remedy or constitute an election to affirm any Secured Agreement. The single or partial exercise by the Secured Party of any right or remedy shall not, unless otherwise expressly stated, preclude or prejudice any other or further exercise of that, or the exercise of any other right or remedy. The rights and remedies of the Secured Party under the Secured Agreements are in addition to, and do not affect, any other rights or remedies available it by law.

18. Partial Invalidity

If any provision of a Secured Agreement is or becomes invalid, illegal or unenforceable in any respect under the laws of any jurisdiction, that shall not affect the legality, validity or enforceability of the remaining provisions in that jurisdiction or of that provision in any other jurisdiction.

19. Notices

19.1 Method

Any communication to be made under or in connection with this Agreement shall be in writing and, unless otherwise stated, may be made in person, by fax, letter, e-mail or other electronic communication agreed between the Chargor and the Secured Party. For the purpose of this Agreement, an electronic communication will be treated as being in writing.

The contact details of each Party for any communication or document to be made or delivered under or in connection with this Agreement is as identified with its name below, or any substitute address, email or fax number or

department or officer as the Party may notify to the other Parties by not less than five (5) Business Days' notice.

19.2 Address

(a) The contact details of the Chargor are:

Address: Goldman Sachs International
Plumtree Court
25 Shoe Lane
London EC4A 4AU
England

E-mail: gs-CAF@ny.email.gs.com

Attention: GMD Cross Asset Financing

Fax: +44 207 051 5424

Telephone: +44 207 051 5967

(b) The contact details of the Secured Party are:

Address: GIFMS Capital Company, LLC
227 W. Monroe Street, Suite 4900
Chicago, Illinois 60606

E-mail: chioperations@guggenheimpartners.com

Attention: Operations Department

Telephone: 312-827-0100

19.3 Delivery

Any communication or document made or delivered by one person to another under or in connection with this Agreement will only be effective:

- (a) if by way of fax, when received in legible form;
- (b) if by way of letter or by courier, on the date it is delivered; and
- (c) if by e-mail or any other electronic communication, at the time that the sending party sends such email or electronic communication provided that it does not receive any failure message from at least one of the addresses of such email or electronic communication. only when actually received (or made available) in readable form and only if it is addressed to the email addresses set out above.

20. Amendments and Waivers

- 20.1 Any term of this Agreement may be amended or waived only with the consent of each of the parties hereto and if made in writing and any such amendment or waiver will be binding on all parties.
- 20.2 The Chargor will not agree to any amendment, variation or waiver of, or supplement to the terms of the Segregated Accounts without the prior written consent of the Secured Party.

21. Counterparts

This Agreement may be executed in any number of counterparts, and by each party hereto on separate counterparts. Each counterpart is an original, but all counterparts shall together constitute one and the same instrument. Delivery of a counterpart of this Agreement by e-mail attachment or telecopy shall be an effective mode of delivery.

22. No Petition

Chargor hereby covenants and agrees that prior to the date which is one year and one day after the payment in full of all outstanding indebtedness of Secured Party in respect of the Secured Obligations, it will not institute against or join any other person in instituting against Secured Party any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings or other similar proceeding under the laws of the United States or any state of the United States or any other jurisdiction. The agreements set forth in this paragraph and the parties' respective obligations under this paragraph shall survive the termination of this Security Agreement.

23. Limited Recourse

Notwithstanding anything to the contrary contained herein, Chargor hereby acknowledges and agrees that Secured Party shall have no obligation to pay any amounts hereunder unless and until the Secured Party has received such amounts from the Financial Collateral. In addition, Chargor agrees that the Secured Party shall have no obligation to pay any amounts constituting fees, reimbursement for expenses or indemnities (collectively, "Expense Claims") and that such Expense Claims shall not constitute a claim (as defined in Section 101 of Title 11 of the United States Bankruptcy Code or any similar law in another jurisdiction) against Secured Party unless or until Secured Party has received amounts sufficient to pay such Expense Claims from the Financial Collateral and such amounts are not required to pay the outstanding indebtedness of Secured Party. The agreements set forth in this paragraph and the parties' respective obligations under this paragraph shall survive the termination of this Security Agreement.

24. Governing Law and Enforcement

24.1 Governing law

This Agreement and any non-contractual obligations arising out of or in relation to this Agreement shall be governed by, and interpreted in accordance with, English law.

24.2 Jurisdiction

The English courts shall have exclusive jurisdiction in relation to all disputes arising out of or in connection with this Agreement (including claims for set-off and counterclaims), including, without limitation, disputes arising out of or in connection with: (i) the creation, validity, effect, interpretation, performance or non-performance of, or the legal relationships established by, this Agreement; and (ii) any non-contractual obligations arising out of or in connection with this Agreement. For such purposes each party irrevocably submits to the jurisdiction of the English courts and waives any objection to the exercise of such jurisdiction.

THIS SECURITY AGREEMENT has been executed and delivered as a deed on the date stated at the beginning of this Agreement.

Schedule 1

Powers of Secured Party

The Secured Party shall, following an Enforcement Event and the delivery of a Notice of Exclusive Control, have the following rights, powers and discretions in addition to those referred to elsewhere in this Agreement:

1. to take immediate possession of, get in and collect any Security Asset and to require payment to it of any monetary claims or credit balance on any Charged Account;
2. to sell, exchange, convert into money and realise any Security Asset by public auction or private contract and generally in any manner, and on any terms which it thinks fit and for a consideration of any kind (which may be payable in a lump sum or by instalments spread over any period);
3. to raise and borrow money either unsecured or on the security of any Security Asset either in priority to this Transaction Security or otherwise and generally on any terms and for whatever purpose which he thinks fit;
4. to bring, prosecute, enforce, defend and abandon any action, suit or proceedings in relation to any Security Asset which it thinks fit;
5. to settle, adjust, refer to arbitration, compromise and arrange any claim, account, dispute, question or demand with or by any person who is or claims to be a creditor of the Chargor or relating in any way to any Security Asset;
6. to give a valid receipt for any moneys and execute any assurance or thing which may be proper or desirable for realising any Security Asset;
7. to exercise in relation to any Security Asset all the powers, authorities and things which it would be capable of exercising if it were the absolute beneficial owner of that Security Asset;
8. to do all other acts and things which it may consider desirable or necessary for realising any Security Asset or incidental or conducive to any of the rights, powers or discretions conferred on the Secured Party under or by virtue of this Agreement or law; and
9. to use the name of the Chargor for any of the purposes set out in paragraphs 1 to 8 (inclusive) of this Schedule 1.

SIGNATORIES TO THE SECURITY AGREEMENT

The Chargor

EXECUTED as a **DEED**)
by **GOLDMAN SACHS**)
INTERNATIONAL)
acting by:)

Director:

Director/Secretary:

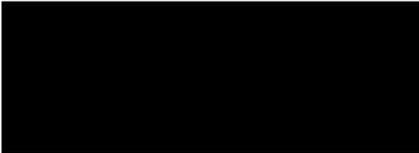
The Secured Party

SIGNED as a **DEED**)
and **DELIVERED**)
by **GIFMS Capital Company, LLC**)

acting by its duly authorised)
attorney: )
.....)
Name: Carey D. Fear)

.....
Signature

in the presence of:

Witness: Signature: 

Name: Ruta Stastrny
.....

Address: 