

# WHITE & CASE

**Dated 10 February 2022**

## **Security Trust Agreement**

between

**Fidelity Exchange Traded Products GmbH**  
as Issuer

and

**The Law Debenture Trust Corporation p.l.c.**  
as Security Trustee

relating to the 10,000,000,000 bonds secured by Bitcoin, ISIN XS2434891219

issued under its

**Programme for the issuance of Bonds secured by Cryptocurrencies**

## Table of Contents

	Page
1. Interpretation.....	1
2. Covenant to Pay .....	4
3. Assignment .....	4
4. Fixed Charge.....	4
5. Declaration of Trust .....	4
6. Representations and Warranties.....	4
7. Undertakings of the Issuer .....	5
8. Role of the Security Trustee .....	6
9. Restrictions on operations with Issuer-Owned Bonds and Deposited Cryptocurrency; Appointment of the Administrator.....	14
10. Enforcement of Relevant Security .....	15
11. Appointment of Receiver .....	16
12. Application of Moneys .....	18
13. Release of Security .....	19
14. Waivers and Subrogation.....	19
15. Termination.....	20
16. Invalidity .....	20
17. Responsibility .....	20
18. Security Trustee remuneration .....	21
19. Successors, Duration and Independence.....	21
20. Information .....	22
21. Stamp Duties.....	22
22. Miscellaneous .....	23
23. Entire Agreement.....	24
24. Governing Law and Jurisdiction .....	24
Schedule 1                      List of Pre-approved Administrators .....	25
Schedule 2                      List of Generally Accepted Regulatory Regimes for Administrators.....	26
Schedule 3                      Issuer's Certificate regarding appointment of Administrator.....	27

**This Security Trust Agreement** (the "**Agreement**") is made on 10 February 2022

**Between:**

- (1) **Fidelity Exchange Traded Products GmbH**, a limited liability company organised under the laws of the Federal Republic of Germany, having its corporate seat at Hohe Bleichen 18, 20354 Hamburg, Federal Republic of Germany, which is registered in the commercial register of the local court of Hamburg (*Amtsgericht Hamburg*) under HRB 168990 on 5 February 2021 as security grantor (the "**Issuer**"), and
- (2) **The Law Debenture Trust Corporation p.l.c.**, 8th Floor, 100 Bishopsgate, London EC2N 4AG, United Kingdom, as security trustee (the "**Security Trustee**") for and on behalf of all present and future Secured Creditors (as defined below).

The Issuer and the Security Trustee are hereinafter also referred to as the "**Parties**" and each a "**Party**".

**Whereas:**

- (1) The Issuer has issued a Series of 10,000,000,000 secured bonds in bearer form (ISIN: XS2434891219) on 10 February 2022 (the "**Bonds**") under its programme for the issuance of bonds secured by Cryptocurrencies. The Bonds are issued in the form of a global note with the terms and conditions (the "**Terms and Conditions**") attached thereto. Each Bond represents the right of the Bondholder to demand from the Issuer delivery of Bitcoin or cash as set out in and pursuant to the Terms and Conditions.
- (2) The Security Trustee is authorised under the Terms and Conditions to represent the Bondholders in relation to this Agreement.
- (3) The Issuer has agreed to grant a security interest relating to its rights in relation to the Issuer-Owned Bonds and the Cryptocurrency Security for the benefit of the Security Trustee, both of which shall be administered pursuant to the terms of this Agreement.

**It is agreed:**

## **1. Interpretation**

### **1.1 Definitions**

Capitalised terms used and not otherwise defined herein shall have the meaning as defined in the Terms and Conditions (directly or by reference to another document). In addition in this Agreement (including the preamble):

"**Act**" means the Law of Property Act 1925.

"**Administration Agreement**" means an agreement governed by the laws of Ireland to be entered into between the Issuer and Brown Brothers Harriman Fund Administration Services (Ireland) Limited or any other additional administrator to be appointed by the Issuer on or around the date hereof in relation to the Bonds relating to the instructions required from the respective Administrator for any transfer of Issuer-Owned Bonds or Deposited Cryptocurrencies in relation to the Bonds, which have been pledged as security for the benefit of the Bondholders, the Security Trustee itself and the Bondholders' Representative (if appointed, whereby such appointment shall be published as set out in § 17(5) and (6) of the Terms and Conditions in connection with Section 17 of the German Bond Act (*Schuldverschreibungsgesetz*)).

"**Administrator**" means any third party entity appointed by the Issuer with the consent of the Security Trustee, legally required to verify compliance of the Issuer with: (a) the covenant set out in paragraph (3) (*Deposited Cryptocurrency*) of section 12 (*Covenants*) of the Terms and

Conditions; and (b) the obligation of the Issuer to transfer Bonds to a subscribing party once the appropriate subscription price was paid.

**"Bond Documents"** means this Agreement, the Security Documents and any other document entered into by the Issuer in connection with the Bonds.

**"Bondholders"** means any holder of a proportionate co-ownership or other beneficial interest or right in the Bonds and shall include those persons who are the beneficiaries of Secured Exercise Obligations or Secured Settlement Obligations.

**"Clearing System"** means Clearstream Banking S.A., 42 Avenue JF Kennedy, 1855 Luxembourg, Grand Duchy of Luxembourg and Euroclear Bank SA/NV, Boulevard du Roi Albert II, 1210 Brussels, Belgium or Clearstream Banking AG, Frankfurt am Main, Mergenthalerallee 61, 65760 Eschborn, Germany, as applicable.

**"Cryptocurrency"** means Bitcoin, a cryptocurrency and worldwide payment system, released as an open source software in 2009.

**"Cryptocurrency Security"** means the security interest created in the Cryptocurrency held in the Depostary Wallet, in accordance with the Cryptocurrency Security Agreement.

**"Cryptocurrency Security Documents"** means any agreement or document acknowledging, perfecting or giving legal effect to Bondholders' security interest in the Depositary Wallet and/or the Deposited Cryptocurrencies.

**"Depositary Wallet"** means the accounts created, controlled and secured by the Depositary associated with the account identifier ESFET00200000 including but not limited to the created in accordance with the custodial services agreement between the Issuer and Depositary dated 24 January 2022, to store the Cryptocurrency and any other supported cryptocurrency or digital asset which results from the fork of, split of or airdrop on the blockchain of the Cryptocurrency, which is made available to the Issuer, which include one or more cryptographic asset wallets that hold cryptocurrencies or any other digital asset.

**"Depo Bank"** means The Bank of New York Mellon, London Branch, One Canada Square, London E14 5AL, United Kingdom.

**"Enforcement Notice"** means a notice delivered by the Security Trustee to the Issuer in accordance with Clause 10.1 below which declares that the Bonds are immediately due and payable and the Security is enforceable.

**"Fee Letter"** means any fee letter between, *inter alias*, the Issuer and the Security Trustee.

**"Issuance Account"** means (i) the separate securities account with the number 254989, maintained solely in relation to the Issuer-Owned Bonds, held by the Issuer with the Depo Bank, segregated from any other securities accounts (including such securities accounts maintained in relation to other series of bonds issued by the Issuer under its programme), or (ii) any other account(s) replacing or substituting for this Issuance Account for whatever reason, to which the pertinent co-ownership interests in the collective custody holdings are being and shall exclusively be credited to at any time, and which will be a blocked account.

**"Liabilities"** means, in respect of any person, any losses, damages, costs, charges, awards, claims, demands, expenses, judgments, actions, proceedings or other liabilities whatsoever including, without limitation, properly incurred legal fees and expenses and any taxes and penalties incurred by that person, together with any VAT charged or chargeable in respect thereof (except to the extent that such person or any affiliate is entitled to repayment or credit in respect of such VAT).

**"List of Generally Accepted Regulatory Regimes for Administrators"** means the list of regulatory authorizations of administrators attached as Schedule 2 (*List of Generally Accepted Regulatory Regimes for Administrators*).

**"List of Pre-approved Administrators"** means the list of professional administrators attached as Schedule 1 (*List of Pre-approved Administrators*).

**"Party"** means a party to this Agreement.

**"Receiver"** means a receiver and manager or any other receiver of all or any of the Security Assets, and shall, where permitted by law, include an administrative receiver in each case, appointed under this Agreement.

**"Secured Creditors"** means the Bondholders, any Bondholders' Representative appointed pursuant to the Terms and Conditions and the Security Trustee.

**"Secured Obligations"** means (a) the Secured Exercise Obligations, the Outstanding Amount and the Secured Settlement Obligations of the Issuer under the Bonds (including its Terms and Conditions) to the Bondholders; and (b) any payment liabilities of the Issuer towards any Secured Creditors under the Bonds, this Agreement or any other Bond Documents in each case together with all costs, charges and expenses incurred therewith.

**"Security"** means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

**"Security Assets"** means the assets subject to the Security created by this Agreement.

**"Security Interest"** means the Security granted pursuant to this Agreement.

**"Trustee Acts"** means both the Trustee Act 1925 and the Trustee Act 2000 of England and Wales, as amended and supplemented from time to time.

## **1.2 Successors, Assigns and Transferees**

The expressions **"Issuer"** and **"Security Trustee"** shall, where the context permits, include all of their respective successors, assigns and transferees (by way of assignment, subrogation, substitution or otherwise).

## **1.3 Construction**

In this Agreement, unless the context requires otherwise:

- (a) references to provisions of any law or regulation shall be construed as references to those provisions as amended, modified, re-enacted or replaced from time to time;
- (b) references to this Agreement and any document or agreement defined herein shall be construed as references to this Agreement or such document or agreement as the same may be amended, supplemented, restated or novated from time to time;
- (c) save where the contrary is indicated, the singular of any defined term includes the plural, and vice versa; and
- (d) this Agreement is made in the English language. For the avoidance of doubt, the English language version of this Agreement shall prevail over any translation of this Agreement. However, where a German translation of a word or phrase appears in the text of this Agreement, the German translation of such word or phrase shall prevail.

#### **1.4 Third Party Rights**

- (a) Unless expressly provided to the contrary in this Agreement, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the “**Third Parties Act**”) to enforce or enjoy the benefit of any term of this Agreement.
- (b) The Parties may without the consent of any third party vary or rescind this Agreement.

#### **2. Covenant to Pay**

The Issuer agrees that it will pay and discharge the Secured Obligations promptly on demand of the Security Trustee.

#### **3. Assignment**

The Issuer, with full title guarantee and as continuing security for the payment and discharge of all Secured Obligations, assigns absolutely (subject to a proviso for reassignment on redemption) to the Security Trustee all its present and future right, title and interest in and to and the benefit of the Issuer-Owned Bonds.

#### **4. Fixed Charge**

To the extent not otherwise assigned by way of security pursuant to Clause 3 (*Assignment*), the Issuer, with full title guarantee, and as continuing security for the payment and discharge of the Secured Obligations, charges in favour of the Security Trustee by way of first fixed charge, all its present and future right, title and interest in the Issuer-Owned Bonds.

#### **5. Declaration of Trust**

The Security Trustee hereby accepts its appointment as trustee on behalf of the Secured Creditors and declares (and the Issuer hereby acknowledges) itself trustee of all the covenants, undertakings, charges, assignments and other Security made or given to be made or given under or pursuant to this Agreement, including (without limitation) the Issuer-Owned Bonds, for itself and the other Secured Creditors in respect of the Secured Obligations, owed to each of them respectively upon and subject to the terms and conditions of this Agreement. Each Secured Creditor acknowledges and agrees to that trust.

#### **6. Representations and Warranties**

The Issuer represents and warrants to the Security Trustee, that as at the date hereof:

- (a) it is a company with limited liability, duly organised and registered under the laws of Germany with full power and authority to own its property and assets and conduct its business and is resident for tax purposes solely in, and has its usual place of abode in, Germany and does not have a taxable presence in any jurisdiction other than Germany;
- (b) it is the legal and beneficial owner of the Issuer-Owned Bonds;
- (c) the Issuer-Owned Bonds are free and clear of any encumbrance or other right, title, adverse claims or interest of any person other than as permitted under the Terms and Conditions, the Security Documents and this Agreement or for any security interest over the Issuance Accounts arising out of the general business conditions of the Depo Bank;

- (d) no effective security agreement, financing statement, equivalent security or lien instrument or continuation statement, financing statement or financing change statement covering all or any part of the Issuer-Owned Bonds is on file or of record in any public office, other than any such instrument included in the Bond Documents;
- (e) this Agreement creates the Security Interests it purports to create;
- (f) without prejudice to the restrictions imposed by this Agreement, it has the right to transfer, grant security over or otherwise freely dispose of the Issuer-Owned Bonds without the consent of any person, and there is no other restriction in relation to the Issuer-Owned Bonds other than as set out in the Terms and Conditions, the Security Documents, this Agreement and as provided by German statutory law;
- (g) all necessary corporate action, acts, conditions and things have been taken, fulfilled and performed to authorise the execution of this Agreement and the Security Documents by the Issuer and the performance of its obligations hereunder and thereunder and the exercise of its rights and performance of its obligations hereunder and thereunder, and the Security Documents will not violate any provision of any existing law applicable to the Issuer or any contractual undertaking or organisational document to which the Issuer is a party or which is binding on the Issuer or any of its assets and this Agreement and the Security Documents create legal, valid and binding obligations of the Issuer which are enforceable in accordance with their terms;
- (h) no effect on or change to the business of the Issuer, taken as a whole, that is, or is reasonably likely to be, materially adverse to the operations, condition (financial or otherwise), assets, liabilities (contingent or otherwise), prospects, cash flow, income or business operations of such business (a "**Material Adverse Effect**"), taken as a whole, has occurred or shall occur as a result of the entering into of this Agreement or the performance of the Issuer hereunder; and
- (i) no action, suit, investigation, arbitration or proceeding by any person or before any regulatory authority or governmental authority is pending, or, to the best knowledge of the Issuer, threatened against or affecting the Issuer or its business which, individually or in the aggregate, if determined adversely to the interest of the Issuer, could have a Material Adverse Effect or which could prevent or materially impede the consummation of the transactions contemplated by this Agreement.

## 7. Undertakings of the Issuer

### 7.1 Negative Undertakings

At all times until full discharge of the Secured Obligations, the Issuer covenants with the Security Trustee that it shall not, without prejudice to transactions permitted by Clause 9.1 (*Restrictions on operations with Issuer-Owned Bonds*), Clause 9.2 (*Restrictions on operations with Deposited Cryptocurrency*), sell, transfer, assign, encumber or otherwise dispose of, nor grant any right or title with regard to, any of the Issuer-Owned Bonds or the Deposited Cryptocurrency or any interest therein or agree to do so unless:

- (i) such action does not cause the Issuer to be in breach of the Terms and Conditions; and
- (ii) such action is approved in accordance with Clause 9.1 (*Restrictions on operations with Issuer-Owned Bonds*) or Clause 9.2 (*Restrictions on operations with Deposited Cryptocurrency*) of the Agreement.

Any proceeds paid out to the Issuer in breach hereof shall be held for the benefit of the Security Trustee.

## 7.2 Positive Undertakings

At all times until full discharge of the Secured Obligations, the Issuer covenants with the Security Trustee that it shall:

- (a) give notice in writing to the Security Trustee: (i) of the appointment or removal of a Bondholders' Representative in accordance with the Terms and Conditions; and (ii) of the occurrence of any Event of Default and/or the service of a Termination Notice (such notice to be effective by the delivery of a copy of the Termination Notice to the Security Trustee), in each case immediately upon becoming aware thereof and without waiting for the Security Trustee to take any further action;
- (b) inform the Security Trustee without undue delay of the occurrence of any event which results in any of the representations and warranties contained in Clause 6 (*Representations and Warranties*) hereof being untrue or inaccurate; and
- (c) (i) notify the Depo Bank without undue delay of the security interests granted pursuant to this Agreement (a "**Notification**"), by sending a notice by registered post with return receipt, requesting the Depo Bank to acknowledge receipt of the Notification by sending to the Issuer and the Security Trustee a countersigned copy thereof (an "**Acknowledgement**"), and (ii) provide evidence to the Security Trustee in the form of a copy of such signed Notification and the respective return receipt within five Business Days after the date of this Agreement, provided that such Notification and Acknowledgement may be so made and so evidenced pursuant to any relevant agreement to which the Depo Bank and Issuer are party of which a copy is provided to the Security Trustee.

## 8. Role of the Security Trustee

### 8.1 Instructions

- (a) The Security Trustee shall:
  - (i) unless a contrary indication appears in a Bond Document, subject always to Clause 8.1(d) below, exercise or refrain from exercising any right, power, authority or discretion vested in it as Security Trustee in accordance with any instructions given to it by the Bondholders' Representative; and
  - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph (i) above.
- (b) The Security Trustee shall be entitled to request instructions, or clarification of any instruction, from the Bondholders' Representative as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Security Trustee may refrain from acting unless and until it receives any such instructions or clarification that it has requested.
- (c) Unless a contrary indication appears in a Bond Document, any instructions given to the Security Trustee by the Bondholders' Representative shall override any conflicting instructions given by any other parties and will be binding on all Bondholders in accordance with the Terms and Conditions.
- (d) The Security Trustee may refrain from acting in accordance with any instructions of the Bondholders' Representative until it has received any indemnification and/or security and/or prefunding that it may in its discretion require (which may be greater in extent than that contained in the Bond Documents and which may include payment in advance).



- (e) In the absence of instructions, the Security Trustee shall not be obliged to act but may act (or refrain from acting) as it considers to be in the best interest of the Bondholders.
- (f) The Security Trustee shall be entitled to request a legal opinion from competent legal counsel at the cost of the Issuer before performing or refraining from performing any action in connection with this Agreement and any relevant Security, provided that, in such case, provided no Event of Default has occurred and is outstanding, the Security Trustee shall obtain and present to the Issuer fee quotes from at least two legal counsel.
- (g) The Security Trustee shall be under no obligation to monitor or supervise the functions of any other person, including the performance by the Issuer or any of the other parties to any Bond Documents of their respective obligations under the Bond Documents or any other agreement or document relating to the transactions herein or therein contemplated and shall be entitled to assume that (i) in the absence of actual knowledge of a breach of such obligation, each such person is properly performing and complying with its obligations and (ii) unless it shall have received written notice to the contrary, no Event of Default has occurred and is outstanding and no Termination Notice has been delivered pursuant to the Terms and Conditions.
- (h) Notwithstanding anything contained in this Agreement or any Bond Document, to the extent required by any applicable law, if the Security Trustee is or will be required to make any deduction or withholding from any distribution or payment made by it under this Agreement or any other Bond Document or if the Security Trustee is or will be otherwise charged, or is or may become liable to, tax as a consequence of performing its duties hereunder or thereunder, whether as principal, agent or otherwise, and whether by reason of any assessment, prospective assessment or other imposition of liability to taxation of whatsoever nature and whenever made upon the Security Trustee, and whether in connection with or arising from any sums received or distributed by it or to which it may be entitled under this Agreement (other than in connection with its remuneration as provided for herein) or any investments or deposits from time to time representing the same, including any income or gains arising therefrom or any action of the Security Trustee in connection with the obligations and rights constituted by this Agreement (other than the remuneration herein specified) or any other Bond Document or otherwise, then the Security Trustee shall be entitled to make such deduction or withholding or, as the case may be, to retain out of sums received by it an amount sufficient to discharge any liability to tax which relates to sums so received or distributed or to discharge any such other liability of the Security Trustee to tax from the funds held by the Security Trustee pursuant to this Agreement or any other Bond Document.

## **8.2 Rights and discretion of the Security Trustee**

To the fullest extent permitted by law, Section 1 of the Trustee Act 2000 shall not apply to the duties of the Security Trustee in relation to the trusts constituted by this Agreement. Where there are any inconsistencies between the Trustee Acts and the provisions of this Agreement, the provisions of this Agreement will, to the extent allowed by law, prevail and, in the case of any such inconsistency with the Trustee Act 2000, the provisions of this Agreement will constitute a restriction or exclusion for the purposes of that Act. The Security Trustee will have all the powers conferred upon trustees by the Trustee Acts and by way of supplement thereto it is expressly declared as follows:

- (a) The Security Trustee may in relation to any Bond Document act on the opinion or report or advice of or a certificate or any information obtained from any lawyer, banker, valuer, surveyor, broker, auctioneer, accountant, financial adviser, securities dealer, merchant bank or other expert or professional advisor, whether obtained by the Security Trustee and whether or not addressed to the Security Trustee and whether or not the

liability of any such adviser in relation to such opinion, certificate, report, advice or information is limited in accordance with normal practice, and shall in no circumstances be responsible for any loss occasioned by so acting. The Security Trustee may rely without enquiry on the contents of such opinions, certificates, reports, advice and information as conclusive evidence of the matters stated therein or the matters to which they relate and shall incur no liability to any person for so doing. Any such opinions, certificates, reports, advice and information may be sent or obtained by letter, telegram, facsimile reproduction, electronic mail or in any other form and the Security Trustee shall not be liable for acting on any opinion, advice, certificate or information purporting to be so conveyed although the same shall contain some error or shall not be authentic.

- (b) The Security Trustee may call for and shall be at liberty to accept a certificate, believed by it to be genuine, duly signed by any authorized managing director of the Issuer or any other party to a Bond Document (such position to be evidenced by a recent commercial register excerpt) as sufficient evidence of any fact or matter or the expediency of any transaction or thing, and to treat such a certificate to the effect that any particular dealing or transaction or step or thing is, in the opinion of the persons so certifying, expedient or proper as sufficient evidence that it is expedient or proper, and the Security Trustee shall not be bound in any such case to call for further evidence or be responsible for any loss or liability that may be caused by acting on any such certificate.

The Security Trustee may rely and shall not be liable or responsible for the existence, accuracy or sufficiency of any opinions searches, reports, certificates, valuations or investigations delivered or obtained or required to be delivered or obtained at any time in connection with the Bond Documents.

- (c) The Security Trustee shall (save as otherwise expressly provided in any Bond Document) as regards all the trusts, powers, authorities and discretions vested in it by or pursuant to any Bond Document to which the Security Trustee is a party or which constitute part of the Security or which are conferred upon the Security Trustee by operation of law, have absolute and uncontrolled discretion as to the exercise or non-exercise thereof (save as otherwise provided to the contrary) and shall not be responsible for any loss, costs, damages, expenses or inconvenience that may result from the exercise or non-exercise thereof.
- (d) Notwithstanding any other provision of this Agreement or the Bond Documents, the Security Trustee shall not be bound to take any steps or institute any proceedings or take any other action to enforce the security constituted by or pursuant to this Agreement or the Security Documents, or take any other proceedings actions, steps or exercise any rights, powers or discretions under or in relation to any Bond Document unless first indemnified, secured or pre-funded to its satisfaction against all actions, proceedings, claims and demands to which it may render itself liable and all costs, charges, damage and expenses (including legal costs and expenses) and liabilities which it may properly incur by so doing.
- (e) The Security Trustee may appoint a custodian and shall be at liberty to place any Bond Document to which the Security Trustee is a party or which constitute part of the Security and all deeds and other documents relating to the Security in any safe deposit, safe or other receptacle selected by the Security Trustee, in any part of the world (excluding, however, any jurisdiction where any stamp or withholding or other tax is triggered), or with any bank or banking company or company whose business includes undertaking the safe custody of documents, lawyer or firm of lawyers believed by it to be of good repute, in any part of the world (excluding, however, any jurisdiction where any stamp or withholding or other tax is triggered), and the Security Trustee shall not

be responsible for or be required to insure against any loss incurred in connection with any such deposit, and the Issuer shall pay all sums required to be paid on account of or in respect of any such deposit.

- (f) The Security Trustee as between itself and the Secured Creditors shall have full power to determine all questions and doubts arising in relation to any of the provisions of this Agreement or any other Bond Document and every such determination, whether made upon a question actually raised or implied in the acts or proceedings of the Security Trustee shall be conclusive and shall bind the Secured Creditors.
- (g) Any agent engaged by the Security Trustee being a banker, lawyer, broker or other person engaged in any profession or business shall be entitled to charge and be paid all properly incurred professional and other charges for business transacted and acts done by him/her or his/her partners or firm on matters arising in connection with any Bond Document and also his/her charges in addition to disbursements for all other work and business done and all time spent by him/her or his/her partners or firm on matters arising in connection with any Bond Document.
- (h) Any consent to be given by the Security Trustee for the purposes of any Bond Document may be given on such terms and subject to such conditions (if any) as the Security Trustee thinks fit and, notwithstanding anything to the contrary contained in any Bond Document, may be given retrospectively.
- (i) The Security Trustee shall not be responsible for recitals, statements, warranties or representations of any party (other than those relating to or provided by it) contained in any Bond Document or other document entered into in connection therewith and shall assume the accuracy and correctness thereof and shall not be responsible for the execution, legality, effectiveness, adequacy, genuineness, validity or enforceability or admissibility in evidence of any such agreement or other document or any trust or security thereby constituted or evidenced. Notwithstanding the generality of the foregoing, each Secured Creditor shall be solely responsible for making its own independent appraisal of, and investigation into, the financial condition, creditworthiness, condition, affairs, status and nature of the Issuer, and the Security Trustee shall not at any time have any responsibility for the same and each Secured Creditor shall not rely on the Security Trustee in respect thereof.
- (j) The Security Trustee shall be entitled to rely upon a certificate of the Issuer in respect of every matter and circumstance for which a certificate is expressly provided for under any Bond Document as sufficient evidence thereof, and the Security Trustee shall not be bound in any such case to make enquiries or call for further evidence or be responsible for any loss, liability, costs, damages, expenses or inconvenience that may be occasioned by its failing so to do.
- (k) The Security Trustee shall be protected and shall incur no liability for, or in respect of, any actions or thing done or suffered by it in reliance upon any document reasonably believed by it to be genuine and to have been signed by the proper parties.
- (l) In connection with any proposed modification, waiver, authorisation or determination permitted by the terms of this Agreement, the Security Trustee shall not have regard to the consequences thereof for individual Secured Creditors resulting from their being for any purpose domiciled or resident in, or otherwise connected with, or subject to, the jurisdiction of any particular territory.
- (m) The Security Trustee shall not be liable for any error of judgement made in good faith by any officer, employee or delegate of the Security Trustee assigned by the Security Trustee to administer its corporate trust matters unless it shall be proved that the

Security Trustee (or such officer, employee or delegate of the Security Trustee) was grossly negligent in ascertaining the pertinent facts.

- (n) No provision of any Bond Document shall require the Security Trustee to (i) do anything which may be illegal or contrary to applicable law or regulation or (ii) expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties, or in the exercise of any of its rights or powers or otherwise in connection with any Bond Document (including, without limitation, enforcing the Security or forming any opinion or employing any legal, financial or other adviser), if it shall have grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not assured to it.
- (o) Notwithstanding the generality of this Clause 8, the Security Trustee shall
  - (i) not be responsible for the genuineness, validity, effectiveness or suitability of any Bond Document or any other documents entered into in connection therewith or any other document or any obligation or rights created or purported to be created thereby or pursuant thereto or any security or the priority thereof constituted or purported to be constituted thereby or pursuant thereto, nor shall it be responsible or liable to any person because of any invalidity of any provision of such documents or the unenforceability thereof, whether arising from statute, law or decisions of any court; and
  - (ii) (without prejudice to the generality of the foregoing) not have any responsibility for or have any duty to make any investigation in respect of or in any way be liable whatsoever (in the absence of fraud or wilful misconduct) for:
    - (A) the nature, status, creditworthiness or solvency of the Issuer, any other person party to any Bond Document or any other person or entity who has at any time provided any security or support whether by way of guarantee, charge or otherwise in respect of the Secured Obligations;
    - (B) the execution, legality, validity, adequacy, admissibility in evidence or enforceability of any Bond Document or any other document entered into in connection therewith;
    - (C) the title, ownership, value, sufficiency or existence of any Bond Document or the Security;
    - (D) the registration, filing, protection or perfection of any security or the priority of the security whether in respect of any initial advance or any subsequent advance or any other sums or liabilities or the failure to effect or procure such registration, filing, protection or perfection of any of the security;
    - (E) the scope or accuracy of any representations, warranties or statements made by or on behalf of the Issuer or any other person or entity who has at any time provided any agreement or document acknowledging, perfecting or giving legal effect to Bondholder's security interest or any document entered into in connection therewith;
    - (F) the performance or observance by the Issuer or any other person of any provisions of any Security Document or any document entered into in connection therewith or the fulfilment or satisfaction of any conditions contained therein or relating thereto or any waiver or consent which has at any time been granted in relation to any of the foregoing;

- (G) the existence, accuracy or sufficiency of any legal or other opinions, searches, reports, certificates, valuations or investigations delivered or obtained or required to be delivered or obtained at any time in connection with any Security Document or the transactions contemplated thereby;
  - (H) the failure to call for delivery of documents of title to or require any transfers, legal mortgages, charges or other further assurances in relation to any of the Security; or
  - (I) any other matter or thing relating to or in any way connected with this Agreement or any document entered into in connection therewith whether or not similar to the foregoing.
- (p) The Security Trustee shall not be liable or responsible for any loss, cost, damages, expenses or inconvenience which may result from anything done or omitted to be done by it in accordance with the provisions of any Bond Document.
- (q) The Security Trustee shall not have any responsibility whatsoever to any Secured Creditor or the Issuer (as applicable) as regards:
  - (i) any deficiency which might arise because the Security Trustee is subject to tax in respect of the Security or any part thereof or any income therefrom or any proceeds thereof;
  - (ii) the application of moneys realised under any Bond Document; and
  - (iii) any shortfall which arises on the enforcement of the Security.
- (r) The Security Trustee shall not be liable to the Issuer or any other person whatsoever for any loss or damage arising from the realisation of the Security or any part thereof.
- (s) The Security Trustee shall not be under any obligation to insure any of the Security, or to pay any premiums in respect of any insurance policy in respect of the Security, or to require any other person to maintain any such insurance and shall not be responsible for any loss which may be suffered by any person as a result of the lack of or inadequacy or insufficiency of any such insurance.
- (t) The Security Trustee may in relation to this Agreement or any other Bond Document instead of acting personally appoint any person to act as its agent or nominee on any terms to transact or conduct, or concur in transacting or conducting, any business and to do, or concur in doing, all acts required to be done in connection with this Agreement or any other Bond Document (including the receipt and payment of money). The Security Trustee will not be under any obligation to supervise the proceedings or acts of any such agent and, provided it has exercised due care in the selection and instruction of such agent, the Security Trustee shall not be in any way responsible for any Liability incurred by reason of any misconduct, omission or default on the part of any such agent, provided, however, that none of the provisions of this Agreement shall relieve the Security Trustee from or indemnify the Security Trustee against any liabilities, loss or damage which by virtue of any rule of law would, but for any such provision, attach to it in respect of any gross negligence, wilful misconduct or fraud on the part of the Security Trustee.
- (u) Whenever the Security Trustee considers it expedient, it may delegate to any person, including without limitation any person to act as custodian or nominee in relation to such assets of the trust constituted by these presents, on any terms (including power to sub-delegate) all or any of its functions. If the Security Trustee exercises due care in selecting such delegate, it shall not have any obligation to supervise such delegate or

be responsible for any Liability incurred by reason of any misconduct or default by any such delegate or sub-delegate. Notwithstanding any delegation (including sub-delegation) by the Security Trustee of the performance of any of its obligations, the Security Trustee shall not thereby be released or discharged from any liability under this Agreement in respect of any gross negligence, fraud or wilful default of which it may be guilty in relation to its duties under this Agreement.

- (v) Notwithstanding the foregoing the Security Trustee may at all times, whether or not so directed, take such action in respect of any right, power or discretion which is personal to the Security Trustee or is to preserve or protect the Security Trustee's position or is of a purely administrative nature.
- (w) The Security Trustee shall not (unless required by law or ordered so to do by a court of competent jurisdiction) be required to disclose to any Bondholder (or the Bondholders' Representative, if appointed) confidential information or other information made available to the Security Trustee by the Issuer in connection with this Agreement or any Bond Document and the Bondholders (or the Bondholders' Representative, if appointed) shall not be entitled to take any action to obtain from the Security Trustee any such information.
- (x) Provided that such losses have not arisen as a direct consequence of the wilful misconduct or fraud of the Security Trustee, the Security Trustee shall not be liable under any circumstances for special, punitive, indirect or consequential loss or damage of any kind whatsoever (including but not limited to loss of profits), regardless of whether the claim for such loss or damage is made in negligence, for breach of contract, breach of trust or breach of fiduciary obligation.

### 8.3 Security trustee contracting with the Issuer and others

- (a) Neither the Security Trustee nor any director or officer or holding company, subsidiary or associated company of a corporation acting as a trustee under this Agreement will by reason of its or his fiduciary position be in any way precluded from:
  - (i) entering into or being interested in any contract or financial or other transaction or arrangement with the Issuer or any other party to any Bond Document (each a "**Relevant Company**") or any person or body corporate associated with a Relevant Company (including without limitation any contract, transaction or arrangement of a banking or insurance nature or any contract, transaction or arrangement in relation to the making of loans or the provision of financial facilities or financial advice to, or the purchase, placing or underwriting of or the subscribing or procuring subscriptions for or otherwise acquiring, holding or dealing with, or acting as paying agent in respect of, the Bonds or any other notes, bonds, stocks, shares, debenture stock, debentures or other securities of, a Relevant Company or any person or body corporate associated as aforesaid); or
  - (ii) accepting or holding the trusteeship of any other trust agreement constituting or securing any other securities issued by or relating to, or any other liabilities of, a Relevant Company or any person or body corporate associated as aforesaid or any other office of profit under a Relevant Company or any such person or body corporate associated as aforesaid,

and the Security Trustee will be entitled to exercise and enforce its rights, comply with its obligations and perform its duties under or in relation to any such contract, transaction or arrangement as is referred to in paragraph (i) above or, as the case may be, any such trusteeship or office of profit as is referred to in paragraph (ii) above without regard to the interests of the Secured Creditors and notwithstanding that the

same may be contrary or prejudicial to the interests of one or more of the Secured Creditors and will not be responsible for any Liability occasioned to the Secured Creditors thereby and will be entitled to retain and will not be in any way liable to account for any profit made or share of brokerage or commission or remuneration or other amount or benefit received thereby or in connection therewith.

- (b) Where any holding company, subsidiary or associated company of the Security Trustee or any director or officer of the Security Trustee acting other than in his capacity as such a director or officer has any information, the Security Trustee will not thereby be deemed also to have knowledge of such information and, unless it has actual knowledge of such information, it will not be responsible for any loss suffered by the Secured Creditors resulting from the Security Trustee's failing to take such information into account in acting or refraining from acting under or in relation to this Agreement or any other Bond Document.

#### **8.4 Payment**

The Issuer shall pay to the Security Trustee, by way of remuneration for its services as Security Trustee, such amount as shall be agreed from time to time in a Fee Letter between the Issuer and the Security Trustee. Such remuneration shall accrue from day to day from the date of this Agreement and be payable (in priority to payments to Bondholders) up to and including the date when, all the Secured Obligations have been irrevocably satisfied and discharged in full.

#### **8.5 Bondholders' Representative**

- (a) If a Bondholders' Representative has been appointed and such appointment has been notified by the Issuer to the Security Trustee in accordance with the terms of this Agreement, any request for consent or approval of the Bondholders' Representative in accordance with this Agreement or the Bond Documents may be delivered in writing to, and granted in writing by, the Bondholders' Representative on behalf of the Bondholders in accordance with the Terms and Conditions, and if so granted shall bind the Bondholders without any requirement for any consent, instruction or direction from any Bondholder.
- (b) Until notified in writing by the Issuer of the removal of any Bondholders' Representative, the Security Trustee shall be entitled:
  - (i) to assume that such Bondholders' Representative remains appointed and is entitled to exercise the rights and obligations of the Bondholders' Representative under the Terms and Conditions; and
  - (ii) to rely conclusively on any direction or communication purported to be delivered by such Bondholders' Representative without further enquiry.
- (c) The parties agree and acknowledge that, notwithstanding whether a Bondholders' Representative is in office or such appointment has been notified to the Security Trustee, no Bondholder or Bondholders (including acting by way of a majority resolution of Bondholders) under the Terms and Conditions or otherwise may instruct the Security Trustee directly in the exercise of any right, power, authority or discretion vested in it as Security Trustee.

## **9. Restrictions on operations with Issuer-Owned Bonds and Deposited Cryptocurrency; Appointment of the Administrator**

### **9.1 Restrictions on operations with Issuer-Owned Bonds**

The Issuer may only transfer Issuer-Owned Bonds out of the Issuance Account if:

- (a) after the occurrence of an Event of Default, the Security Trustee has approved such transfer to the Depo Bank in writing; or
- (b) prior to the occurrence of an Event of Default, the Administrator has approved such transfer to the Depo Bank in accordance with the Issuance Account Control Agreement and with the operational procedures established in the course of its appointment.

For the avoidance of doubt: the restriction to transfer Issuer-Owned Bonds out of the Issuance Account shall not apply with regard to any revaluation of Bonds which leads to the Global Note being written down and written up.

### **9.2 Restrictions on operations with Deposited Crypto-Asset**

In case the Issuer has granted Cryptocurrency Security over the Deposited Cryptocurrency to the Security Trustee, the Issuer may only transfer Deposited Cryptocurrency out of the Depositary Wallet in accordance with the terms of the relevant Cryptocurrency Security Document.

### **9.3 Appointment of the Administrator**

The Security Trustee shall approve the appointment or replacement of the Administrator only if it is satisfied that the proposed Administrator:

- (a) (i) is listed on the List of Pre-approved Administrators appended hereto as Schedule 1; or (ii) holds regulatory permission(s) listed on the List of Generally Accepted Regulatory Regimes for Administrators appended hereto as Schedule 2; or (iii) has been approved by the Bondholders' Representative;
- (b) has experience and capacity (including and not limited to legal capacity and access to all necessary information sources) to perform its functions;
- (c) if not listed on the List of Pre-approved Administrators, is otherwise sufficiently independent from the Issuer, or there are satisfactory measures in place to mitigate any potential conflict of interest arising from any connection to the Issuer;
- (d) is legally required pursuant to its agreement with the Issuer to verify Issuer's ongoing compliance with (i) the covenant set out in paragraph (3) (Deposited Cryptocurrency) of section 12 (*Covenants*) of the Terms and Conditions and (ii) the obligation of the Issuer to transfer Bonds to a subscribing party once the appropriate subscription price was paid; and
- (e) has the power to stop, prevent or veto (i) any instructions issued by the Issuer to the Depo Bank with respect to the Issuer-Owned Bonds and (ii) instructions issued by the Issuer to the Depositary with respect to the Deposited Cryptocurrency, pursuant to an account authorisation, account control agreement, the provision of sole signing rights or any other agreement or arrangement between the Issuer, the Depo Bank or the Depositary and the Administrator (as applicable), and such power to stop, prevent or veto any transaction cannot be removed from the Administrator without the consent of the Security Trustee.

Provided that, in giving any such approval, the Security Trustee shall be entitled to rely conclusively on certificate(s) from: (A) the Issuer confirming that each of the conditions set out



in paragraphs (a) to (e) above are satisfied with respect to the proposed Administrator (which shall specify, in respect of the condition listed in paragraph (a) above, which of conditions (i), (ii) and/or (iii) have been satisfied) in the form appended hereto as Schedule 3 (*Issuer's Certificate regarding appointment of Administrator*) (the “**Issuer Certification**”); and (B) if the condition listed in paragraph (a) above is satisfied by compliance with (a)(ii) only, by a reputable international law firm as selected by the Issuer (at its sole cost) confirming that the conditions set out in paragraph (a)(ii) are satisfied with respect to the proposed Administrator (the “**Law Firm Certification**”). For the avoidance of doubt, if any Issuer Certification specifies that, in respect of the condition listed in paragraph (a) above, conditions (i) and/or (iii) have been satisfied, the Law Firm Certification need neither be requested nor provided.

If an approval prescribed by this paragraph is given, the Security Trustee shall take such actions which are reasonably necessary to confirm or otherwise make effective the nomination of the Administrator by the Issuer, including but not limited to countersigning any notification from the Issuer of such nomination, approval or consent to the Depo Bank and/or Depositary.

## **10. Enforcement of Relevant Security**

### **10.1 Events triggering acceleration and enforcement of Security Interests**

- (a) Upon the occurrence of an Event of Default, the Security Trustee may and, upon notification by the Bondholders' Representative of the occurrence of an Event of Default listed in sub paragraph (a) of paragraph 1 of Section 11 of the Terms and Conditions (an “**Enforcement Event**”), in each case subject to paragraph (b) below and subject to being indemnified and/or secured and/or prefunded to its satisfaction, the Security Trustee (acting on the instructions of the Bondholders' Representative) shall, firstly, deliver an Enforcement Notice and, secondly, enforce the Security Interests created hereunder.
- (b) If the Bondholders' Representative informs the Security Trustee that the underlying cause which triggered enforcement of the Security Interests under Clause 10.1(a) has ceased to exist, been waived by the party affected or remedied by the Issuer, the Security Trustee shall, acting on the instructions of the Bondholders' Representative and subject to being indemnified and/or secured and/or prefunded to its satisfaction, terminate any enforcement action commenced under Clause 10.1(a) to the extent reasonably practicable.

### **10.2 Security Trustee's discretion in enforcing Security**

The Security Trustee is entitled to grant the Issuer a remedy period of up to 30 days in which time no actions pursuant to Clause 10.1 (*Events triggering enforcement of Relevant Security*) may be undertaken, in order to provide the Issuer with sufficient time to remedy, arrange for the breach to be waived by the party affected or otherwise cure the cause of the Security Interests created hereunder becoming enforceable, provided that the Security Trustee received instructions of the Bondholders' Representative to perform such action.

### **10.3 General**

- (a) The power of sale and any other power conferred on a mortgagee by law (including under section 101 of the Act) as varied or amended by this Agreement shall be immediately exercisable upon and at any time after the occurrence of an Enforcement Event.
- (b) For the purposes of all powers implied by law, the Secured Obligations are deemed to have become due and payable on the date of this Agreement.

- (c) Any restriction imposed by law on the power of sale (including under section 103 of the Act) or the right of a mortgagee to consolidate mortgages (including under section 93 of the Act) does not apply to the Security created by this Agreement.
- (d) Any powers of leasing conferred on the Security Trustee by law are extended so as to authorise the Security Trustee to lease, make agreements for leases, accept surrenders of leases and grant options as the Security Trustee may think fit and without the need to comply with any restrictions conferred by law (including under section 99 or 100 of the Act).

## **11. Appointment of Receiver**

### **11.1 Appointment and Entitlements**

- (a) Except as provided below, the Security Trustee may (subject to being indemnified and/or secured and/or prefunded to its satisfaction) appoint any one or more persons to be a Receiver of all or any part of the Issuer-Owned Bonds if the Security created by this Agreement has become enforceable (which appointment may be made either before or after the Security Trustee shall have taken possession of the Security Assets or any part thereof).
- (b) Any appointment under paragraph (a) above may be by deed, under seal or in writing under its hand.
- (c) Any restriction imposed by law on the right of a mortgagee to appoint a Receiver (including an appointment under section 109(1) of the Act) does not apply to this Agreement. If the Security Trustee appoints more than one person as Receiver, each Receiver shall be entitled to act either jointly or severally.

Such Receiver shall in the exercise of his powers, authorities and discretions conform to any regulations from time to time made and given by the Security Trustee. In addition to the powers conferred on the Security Trustee by this Agreement, each Receiver shall have in relation to the property in respect of which such Receiver was appointed (a) all the powers conferred by the Law of Property Act 1925 on a receiver appointed under that Act and (b) (whether or not such Receiver is an administrative receiver) all the powers of an administrative receiver set out in Schedule 1 to the Insolvency Act 1986.

- (d) The Security Trustee may from time to time and at any time require any such Receiver to give security for the due performance of its duties as Receiver and may fix the nature and amount of the security to be so given but the Security Trustee shall not be bound in any case to require any such security.
- (e) Save so far as otherwise directed by the Security Trustee, all monies from time to time received by such Receiver shall be paid over to the Security Trustee and applied in accordance with this Agreement and Clause 12.
- (f) Any Receiver shall be entitled to the benefit of all indemnities and all rights of retention that are given in favour of the Security Trustee pursuant to this Agreement and the Bond Documents.
- (g) A Receiver shall for all purposes be deemed to be the agent of the Issuer and accordingly will be deemed to be in the same position as a Receiver duly appointed by a mortgagee under the 1925 Act. The Issuer is solely responsible for the contracts, engagements, acts, omissions, defaults and losses and for all Liabilities incurred by a Receiver.

- (h) If a liquidator of the Issuer is appointed, the Receiver will act as principal and not as agent of the Security Trustee.
- (i) The Issuer alone shall be responsible for any Receiver's acts, defaults, misconduct and negligence and neither the Security Trustee nor any other Issuer Secured Party shall incur any Liability for such acts, defaults, misconduct or negligence.
- (j) No Secured Party will incur any liability (either to the Issuer or to any other person) by reason of the appointment of a Receiver or for any other reason.

## **11.2 Removal and Replacement**

The Security Trustee may by writing under its hand, whenever it may deem it expedient, remove any Receiver appointed by it and may, whenever it thinks fit, appoint a new Receiver in the place of any Receiver whose appointment has terminated.

## **11.3 Remuneration**

The Security Trustee may fix the remuneration of any Receiver appointed by it without the limitations imposed by section 109(6) of the Act. The Issuer will pay the remuneration of any Receiver in accordance with the terms and in the manner agreed from time to time between the relevant Receiver and the Security Trustee, subject to the terms and conditions of this Agreement and in accordance with the Priority of Payments. The amount of such remuneration shall form part of the Secured Obligations of the Issuer under this Agreement and shall accordingly be secured on the Security Assets under the Security created by or pursuant to this Agreement.

## **11.4 Relationship with Security Trustee**

To the fullest extent allowed by law, any right, power or discretion conferred by this Agreement (either expressly or impliedly) or by law on a Receiver may, after the Security created by this Agreement becomes enforceable, be exercised by the Security Trustee in relation to any Security Asset without first appointing a Receiver or notwithstanding the appointment of a Receiver.

## **11.5 No Liability as Mortgagee in Possession**

Neither the Security Trustee nor any Receiver shall, by reason of entering into possession of all or any part of a Security Asset or taking any action permitted by this Agreement, be liable:

- (a) to account as mortgagee in possession or for any loss on realisation; or
- (b) for any default or omission or loss of any kind for which a mortgagee in possession might be liable.

## **11.6 Redemption of Prior Mortgages**

- (a) At any time after the occurrence of an Event of Default which is continuing, the Security Trustee may:
  - (i) redeem any prior Security against any Security Asset;
  - (ii) procure the transfer of that Security to itself; and/or
  - (iii) settle and pass the accounts of the prior mortgagee, chargee or encumbrancer; any accounts so settled and passed will be, in the absence of manifest error, conclusive and binding on the Issuer.

- (b) The Issuer shall pay to the Security Trustee, immediately on demand, the costs and expenses incurred by the Security Trustee in connection with any such redemption and/or transfer, including the payment of any principal or interest.

### **11.7 Privileges**

Each Receiver and the Security Trustee is entitled to all the rights, powers, privileges and immunities conferred by law (including by the Act), as extended by this Agreement, on mortgagees and receivers duly appointed under any law (including the Act) save that section 103 of the Act shall not apply.

### **11.8 Contingencies**

If the Security created by this Agreement is enforced at a time when no amount is due in respect of the Secured Obligations but at a time when amounts may or will become due, the Security Trustee (or the Receiver) may pay the proceeds of any recoveries effected by it into such number of suspense accounts as it considers appropriate.

### **11.9 Protection of Third Parties**

No person (including a purchaser) dealing with the Security Trustee or a Receiver or its delegate will be concerned to enquire:

- (a) whether the Secured Obligations have become payable;
- (b) whether any power which the Security Trustee or a Receiver is purporting to exercise has become exercisable or is being properly exercised;
- (c) whether any money remains due in respect of the Secured Obligations; or
- (d) how any money paid to the Security Trustee or that Receiver is to be applied.

### **11.10 Power of Attorney**

By way of security for the performance of its obligations under this Agreement, the Issuer irrevocably appoints each of the Security Trustee and any Receiver (and their respective delegates and sub-delegates) to be its attorney acting severally (or jointly with any other such attorney or attorneys) and on its behalf and in its name or otherwise to do any and every thing which the Issuer is obliged to do under the terms of this Agreement or which such attorney considers necessary or desirable in order to enable the Security Trustee, any Receiver or such attorney to exercise the rights conferred on it by or pursuant to this Agreement or by law.

## **12. Application of Moneys**

All amounts received or recovered in connection with the enforcement of the Security pursuant to this Agreement shall be applied in the following order:

- (a) first, in payment of all unpaid fees, costs and expenses and other amounts due and payable (including interest thereon) incurred by or on behalf of the Security Trustee or a Receiver (as applicable) and the remuneration of the Security Trustee and its advisors and agents or a Receiver (as applicable), in each case to the extent payable under the Security Documents; and
- (b) second, in payment of redemption payments owed by the Issuer to the Bondholders and each of them under the Terms and Conditions.

## **13. Release of Security**

### **13.1 After full satisfaction**

- (a) The Parties are aware that the Security Interests are accessory rights and as such will expire automatically by operation of law once the Secured Obligations have been irrevocably repaid in full.
- (b) After the Secured Obligations having been irrevocably satisfied in full, the Security Trustee shall, at the request of the Issuer, arrange for the execution and delivery to the Issuer of a written acknowledgement of satisfaction of the Secured Obligations and termination of this Agreement (other than any indemnity referred to herein which shall survive such termination) which states that the Security Interests are released. This shall not apply to the extent that a third party is legally entitled to the Security Assets (or any part thereof). The Issuer shall reimburse the Security Trustee for all reasonable out-of-pocket expenses (including legal fees), if any, incurred in connection with the acknowledgement referred to above.
- (c) The Cryptocurrency Security shall be released and relevant agreements terminated in accordance with relevant Cryptocurrency Security Documents.

### **13.2 Prior to full satisfaction**

- (a) Subject to the provisions of this Agreement, the Security Trustee is hereby authorised to execute on behalf of itself and each Bondholder, without the need for any further referral to or authority from such person, any release of a Security Interest.
- (b) Subject to the satisfaction of the condition precedent of the authorisation of the disposal of any Issuer-Owned Bonds from the Issuance Account (i) prior to the occurrence of an Event of Default, by the Administrator or (ii) after the occurrence of an Event of Default, the Security Trustee, each in accordance with the terms of this Agreement and the Issuance Account Control Agreement (the "**Disposed Bonds**"), the Security Interests over such Disposed Bonds, the Security Trustee hereby releases any rights and claims in connection therewith shall be re-assigned to the Issuer.
- (c) Subject to the satisfaction of the condition precedent of the authorisation by the Administrator or the Security Trustee of the disposal of any Deposited Cryptocurrency from the Depositary Wallet, the Security Trustee hereby releases any security interest over such Deposited Cryptocurrency and re-assigns any rights and claims in connection therewith to the Issuer.
- (d) Notwithstanding any other provision hereof, prior to the occurrence of an Event of Default, in respect of any Bonds which are redeemed or terminated in accordance with the Terms and Conditions, the Security granted pursuant to the Security Documents shall be automatically released without any further action from the Security Trustee.

## **14. Waivers and Subrogation**

### **14.1 Waiver of Defences**

The obligations of the Issuer under this Agreement shall not be affected by any act, omission or thing which, but for this provision, would reduce, release or prejudice any of its obligations under this Agreement (whether or not known to it or any Secured Party). This includes:

- (a) any time or waiver granted to, or composition with, any person;
- (b) any release of any 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 assets of, any person;
- (d) 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 security;
- (e) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any person;
- (f) any amendment of this Agreement or any other document or security;
- (g) any unenforceability, illegality, invalidity or non provability of any obligation of any person under this Agreement or any other document or security; or
- (h) any insolvency or similar proceedings.

## **14.2 Immediate Recourse**

The Issuer waives any right it may have of first requiring the Security Trustee or any Bondholder to proceed against or enforce any other rights or security or claim for payment from any person prior to enforcing the rights under this Agreement.

## **15. Termination**

### **15.1 Final Discharge**

Subject to any release of all or any part of the Security Interests pursuant to and in accordance with Clause 12 (*Release of Security*) hereof, the Security Interests shall remain in full force and effect until the Secured Obligations have been irrevocably repaid in full. The Security Interests shall not cease to exist if any payments made in satisfaction of the Secured Obligations have only temporarily discharged the Secured Obligations.

### **15.2 Payments Avoided**

If an amount paid to any Secured Creditor under any Bond Document is capable of being avoided or otherwise set aside on the liquidation, administration, winding-up or other similar proceedings in the jurisdiction of the person by whom such payment was made, then such amount shall not be considered to have been finally and irrevocably paid for the purposes hereof.

## **16. Invalidity**

The illegality, invalidity or unenforceability of any provision of this Agreement or any omission from this Agreement shall not affect the legality, validity or enforceability of this Agreement or any of its other provisions. Any illegal, invalid or unenforceable provision shall be replaced by the parties hereto by a provision, or any omission shall be rectified by incorporation of a provision, which best achieves the commercial effect that the parties hereto intended thereby. The Security Interests shall not be affected by the number and/or denomination of any Issuer-Owned Bonds being inaccurate or incomplete.

## **17. Responsibility**

- (a) The Security Trustee is not responsible to any of the Bondholders for any failure in perfecting or protecting the security created by this Agreement unless directly caused by its fraud or wilful misconduct.

- (b) The Security Trustee is not responsible to any of the Bondholders for any failure in perfecting or protecting the security created by this Agreement caused by any action or inaction of the Administrator.

## **18. Security Trustee remuneration**

- (a) In the event of:
  - (i) an Event of Default;
  - (ii) the Security Trustee being requested to undertake duties which Security Trustee and the Issuer agree to be of an exceptional nature or outside the scope of the normal duties of the Security Trustee under the Bond Documents; or
  - (iii) the Issuer and the Security Trustee agreeing that it is otherwise appropriate in the circumstances,

the Issuer shall pay to the Security Trustee any additional remuneration that may be agreed between them. For the avoidance of doubt any duties in connection with investments, the granting of consents or waivers, concurring in modifications, enforcement or during the period post enforcement or duties (including any reporting requirements) undertaken to ensure regulatory compliance, shall be deemed to be of an exceptional nature.

- (b) The Issuer covenants with and undertakes to the Security Trustee that the Issuer shall on demand indemnify and keep indemnified the Security Trustee (on its own behalf and on behalf of its directors, officers, employees and agents and every receiver, attorney, delegate, manager, agent, appointee or other person appointed by the Security Trustee under this Agreement and their respective officers and employees) against any Liabilities incurred by the Security Trustee, any Receiver or any agent or appointee in, or directly or indirectly as a result of, the exercise or purported exercise of any of the rights, powers, duties, obligations and/or discretions vested in them under this Agreement or any other Bond Document and against all Liabilities suffered or incurred by any of them in respect of any matter or thing done or omitted relating to the Security Interests or in respect of any other matter or thing done or omitted in relation to the Bond Documents, unless such Liabilities have resulted from the gross negligence, wilful default or fraud of the Security Trustee. The Security Trustee and any Receiver may retain and pay all those sums out of the Security Assets and any monies received by it under this Agreement; and
- (c) the Issuer shall, on its own behalf and on behalf of its directors, officers, employees and agents, on demand indemnify and keep indemnified the Security Trustee in respect of all Liabilities occasioned by any breach of any of its covenants or other obligations under this Agreement or otherwise relating to all or any part of the Security Interests.

## **19. Successors, Duration and Independence**

- (a) This Agreement shall be binding upon the Parties hereto and their respective successors in law.
- (b) This Agreement shall remain in full force and effect until the full and complete payment and discharge of the Secured Obligations (other than any indemnity obligations or other obligations that specifically survive termination). This Agreement shall not cease to exist if any payments made in satisfaction of the Secured Obligations have only temporarily discharged the Secured Obligations.

- (c) The Issuer shall be authorised and obliged to replace the Security Trustee with a reputable accounting firm or financial institution (which is experienced in the business of Security Trusteeship and which has obtained any required authorisations, registrations and licences), if the Issuer has been instructed in writing by a Bondholders' Resolution.
- (d) The Security Trustee may retire at any time on giving at least 30 days' written notice to the Issuer without giving any reason or being responsible for any liability occasioned by such retirement and the Bondholders' Representative may remove any Security Trustee, on giving at least 30 days' written notice to the Security Trustee, provided that the retirement or removal of a sole trust corporation shall not be effective until a new trust corporation is appointed as successor Security Trustee.
- (e) If the Security Trustee gives notice of retirement or instructions by the Bondholders' Representative are received for its removal, the Issuer shall use all reasonable endeavours to procure that another trust corporation be appointed as Security Trustee. If the Issuer fails to appoint a replacement Security Trustee within 30 days of the Security Trustee's notice of retirement or the date of instruction received by the Bondholders' Representative (as the case may be), the Security Trustee shall be entitled to appoint a trust corporation as Security Trustee under this Agreement and any other Bond Document.

Upon the successful appointment of a successor or replacement Security Trustee and the respective acceptance of such appointment by such successor or replacement Security Trustee, the Security Trustee shall be discharged from its obligations under this Agreement, provided that the rights and obligations of the Security Trustee shall continue until the appointment of the successor or replacement Security Trustee has become effective and the Security Interests have been transferred to the new Security Trustee. *For the avoidance of doubt:* None of the provisions set out herein shall affect the right of the Security Trustee to resign for good cause with immediate effect.

## **20. Information**

The Issuer undertakes to provide the Security Trustee without undue delay (but in any event no later than 5 Business Days of receipt of such a written request) upon its reasonable request with any information, material or document which the Security Trustee requires in order to be able to fulfil its function as Security Trustee pursuant to this Agreement and the other Bond Documents.

## **21. Stamp Duties**

The Issuer shall, to the extent required and permitted by the laws of England and Wales, pay all stamp duties, registration, documentary and other similar fees, duties or taxes (including interest and penalties thereon) (if any) payable on or arising out of or in consequence of:

- (a) the creation of the Security constituted by or pursuant to this Agreement; and
- (b) the execution and delivery of this Agreement and enforcement of its provisions or the Security and documents executed pursuant hereto and the other Bond Documents.



## **22. Miscellaneous**

### **22.1 Changes and amendments**

Changes and amendments to and waivers under this Agreement including this Clause 22.1 shall be made in writing and signed by each of the Parties (and in notarial form if required by law).

### **22.2 Language of this Agreement**

This Agreement is made in the English language. For the avoidance of doubt, the English language version of this Agreement shall prevail over any translation of this Agreement.

### **22.3 No Waiver**

No failure or delay by the Security Trustee and/or the Bondholders to exercise any right, power or remedy under this Agreement will operate as a waiver thereof nor will any single or partial exercise or waiver of any right, power or remedy. The remedies provided in this Agreement are cumulative and are not exclusive of any remedies provided by law.

### **22.4 Notices and their Languages**

(a) All notices, requests, demands or other communications to or upon the respective Parties hereto shall be given or made in the English language by letter, fax, email or by mail to the Party to which such notice, request, demand or other communication is required or permitted to be given or made under this Agreement and (as applicable) addressed to the addresses as set out herein or as each Party shall inform the respective other Party in writing from time to time. Any such notice, request, demand or other communication given by letter, fax, email or mail shall be deemed to have been duly given:

- (i) in the case of delivery by hand, when delivered;
- (ii) in the case of email or facsimile, at the time of transmission; or
- (iii) in the case of pre-paid courier by an internationally recognised courier service, at 12.00 p.m. (London time) on the second Business Day following the date of posting,

provided that (x) in each case where delivery by hand or email occurs after 5:00 p.m. (London time) on a Business Day or on a day which is not a Business Day, service shall be deemed to occur at 9:00 a.m. (London time) on the next following Business Day and (y) in the case of communications sent by email to the Security Trustee, such communications will take effect upon written confirmation of receipt from the Security Trustee (for the avoidance of doubt an automatically generated “received” or “read” receipt will not constitute written confirmation).

(b) Any communications required or permitted under this Agreement will be made using the following notice details:

If to the Security Trustee, to:

**The Law Debenture Trust Corporation p.l.c.**  
8th Floor, 100 Bishopsgate  
London EC2N 4AG  
United Kingdom

Attn:	Trust Management Ref TC 204381
Email:	
Fax.:	+44 (0)20 7606 0643

If to the Issuer, to:

**Fidelity Exchange Traded Products GmbH**  
Hohe Bleichen 18  
20354 Hamburg  
Germany

Attention:

E-mail:

[REDACTED]

## **23. Entire Agreement**

This Agreement contains the whole agreement between the Parties relating to the subject matter of this Agreement at the date of this Agreement.

## **24. Governing Law and Jurisdiction**

### **24.1 Governing law**

This Agreement and any non contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with English law.

### **24.2 Jurisdiction**

Each of the Issuer and the Security Trustee irrevocably agrees that the courts of England shall have exclusive jurisdiction to hear and determine any suit, action or proceedings, and to settle any disputes, which may arise out of or in connection with this Agreement or any non contractual obligations arising out of or in connection with this Agreement ("**Proceedings**") and, for such purposes, irrevocably submits to the jurisdiction of such courts.

### **24.3**

[REDACTED]

## **Schedule 1**

### **List of Pre-approved Administrators**

**Brown Brothers Harriman Fund Administration Services (Ireland) Limited**, 30 Herbert Street,  
Dublin 2, Ireland

## **Schedule 2**

### **List of Generally Accepted Regulatory Regimes for Administrators**

#### **1. Regulated by the Central Bank of Ireland**

## Schedule 3

### Issuer's Certificate regarding appointment of Administrator

From: Fidelity Exchange Traded Products GmbH

To: The Law Debenture Trust Corporation p.l.c. as Security Trustee

Date: [●]

#### Security Trust Agreement dated 10 February 2022 – Issuer's Certificate regarding appointment of Administrator

We make reference to the security trust agreement relating to the 10,000,000,000 bonds secured by Bitcoin, ISIN XS2434891219, dated 10 February 2022 between, inter alios, Fidelity Exchange Traded Products GmbH as issuer and The Law Debenture Trust Corporation p.l.c. as Security Trustee (the "**Agreement**"). This is the Issuer's certificate for the purposes of Clause 9.3 (*Appointment of the Administrator*) of the Agreement.

Defined terms used in this certificate shall have the meaning as set out in the Agreement.

We propose the following entity to be appointed as Administrator (the "**Proposed Administrator**"):

Full legal name: [●]

Address: [●]

Registration no. [●]

Attention: [●]

E-Mail: [●]

We confirm that, to the best of our knowledge, the Proposed Administrator:

- (a) [is listed on the List of Pre-approved Administrators appended to the Agreement as Schedule 1] AND/OR [holds regulatory permission(s) listed on the List of Generally Accepted Regulatory Regimes for Administrators appended to the Agreement as Schedule 2] AND/OR [has been approved by the Bondholders or [notice from the Bondholders' Representative dated [date]], a copy of which is enclosed herewith.]
- (b) has experience and capacity (including and not limited to legal capacity and access to all necessary information sources) to perform its functions;
- (c) is listed on the List of Pre-approved Administrators or is otherwise sufficiently independent from the Issuer, or there are satisfactory measures in place to mitigate any potential conflict of interest arising from any connection to the Issuer;
- (d) is legally required pursuant to its agreement with the Issuer to verify Issuer's ongoing compliance with (i) the covenant set out in paragraph (3) (*Deposited Cryptocurrency*) of section 11 (*Covenants*) of the Terms and Conditions and (ii) the obligation of the Issuer to transfer Bonds to a subscribing party once the appropriate subscription price was paid; and
- (e) has the power to stop, prevent or veto (i) any instructions issued by the Issuer to the Depo Bank with respect to the Issuer-Owned Bonds and (ii) instructions issued by the Issuer to the Depositary with respect to the Deposited Cryptocurrency, pursuant to an account authorisation, account control agreement, the provision of sole signing rights or any other agreement or arrangement between the Issuer, the Depo Bank or the Depositary and the Administrator (as

applicable), and such power to stop, prevent or veto any transaction cannot be removed from the Administrator without the consent of the Security Trustee.

Yours sincerely

**Fidelity Exchange Traded Products GmbH**

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

Name: \_\_\_\_\_

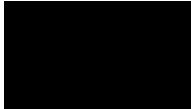
Title: \_\_\_\_\_

Signatures

**Each of the Parties has caused this Agreement to be executed and delivered as a deed by its duly authorized officer as of the date first set forth above.**

**The Security Trustee for and on behalf of the Secured Creditors**

**Executed as a Deed for and on behalf of The Law Debenture Trust Corporation p.l.c. by:**



**Director**



**Representing Law Debenture Corporate Services Limited, Secretary**

**The Issuer**

**Fidelity Exchange Traded Products GmbH**

By: 

Name: 

Title: \_\_\_\_\_