

SFA TALF Customer Agreement

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For use in transactions under the Federal Reserve Bank of New York's
Term Asset-Backed Securities Loan Facility ("TALF")

This SFA TALF Customer Agreement has been developed by SFA members, principally in consultation with broker-dealers and investors, for use by market participants entering into TALF transactions. The purpose of this document is to serve as a template for TALF Customer Agreements entered into by TALF Agents and TALF Borrowers. The development of this template was motivated by broad member interest in streamlining the transaction documentation process.

This form of agreement represents the majority of member views for most circumstances, but please note that modifications for certain operational, institutional, and/or other considerations that are transaction specific may be warranted. In order to inform users of this template, SFA provides guidance throughout the document with bracketed items and explanatory footnotes.

This is not intended to be legal advice and is strictly for general informational purposes only and shall not be relied on by any third party as legal advice. If you have received this document, and have questions about details applicable to you, your business, or a particular transaction, you should consult with your legal counsel. Transaction parties should consult with legal, tax, accounting and other counsel to determine the most appropriate provisions given the specifics of each transaction and transaction party and the final determination as to the agreement executed is within the sole purview of each party.

The publication of this document by Structured Finance Association (SFA) does not mean that any or all of the opinions or recommendations herein have been adopted or endorsed by SFA and/or any specific SFA member; does not create any legal obligation of SFA and/or specific SFA member; does not create any legal rights of any person; does not constitute any statement as to materiality of any matter for any purpose; and is not intended to express any opinion or interpretation as to any provision. SFA members are neither required to subscribe to nor obligated to adopt any provisions contained herein.

CUSTOMER AGREEMENT¹

dated as of [____], 2020

between

**[INSERT NAME OF DEALER]
as Dealer,**

**[INSERT NAME OF BORROWER]
as Borrower**

**[INSERT NAME OF INVESTMENT MANAGER (IF ANY)]²
[as Investment Manager]**

[and]

**[INSERT NAME OF GUARANTOR (IF ANY)]
[as Guarantor]**

¹ This form of Customer Agreement is designed by the Structured Finance Association ("SFA") as a template to be used by broker-dealers and investors in documenting an investor's engagement of a broker-dealer to act as its agent under the Master Loan and Security Agreement pursuant to the Federal Reserve Bank of New York's Term Asset-Backed Securities Loan Facility.

² Due to the importance FRBNY has placed on the Investment Manager in the case of fund borrowers under the TALF Program, some broker dealers have indicated that they would prefer to include the Investment Manager as a direct party to this Agreement when the Borrower is an investment fund, and for the Investment Manager to agree to the same representations and covenants as the Borrower.

Some investor participants, however, may view it as not appropriate to include the Investment Manager as a party to this Agreement or prefer to limit the scope of the provisions included in this Agreement that are applicable to the Investment Manager because the terms of the MLSA place the obligations on the Borrower to determine its own eligibility.

The broker-dealers and investors may have different views on the matter and SFA encourages the parties to work through these provisions bilaterally prior to executing a final Agreement based on the specific circumstances including, but not limited to: the Investment Manager's relationship with the Borrower such as, for example, the extent to which the investment manager is affiliated with, or has otherwise formed, the borrower or the degree of autonomy the Investment Manager has over the activities of the Borrower.

CUSTOMER AGREEMENT

This CUSTOMER AGREEMENT (this “Agreement”) dated as of [____], 2020 is among [_____] (“Insert Name of Dealer”), acting as agent (in such capacity, “Dealer”), [_____] as borrower (“Borrower”), [_____] as investment manager of Borrower (“Investment Manager”), [and [_____] as guarantor (“Guarantor)]. Capitalized terms used but not defined herein shall have the meanings assigned to them in the Master Loan and Security Agreement for the Federal Reserve Bank of New York’s Term Asset-Backed Securities Loan Facility (“TALF”) with TALF II LLC, as Lender, as supplemented by the **TALF Standing Loan Facility Procedures** and as modified from time to time (the “MLSA”).

1. PARTICIPATION; BORROWING REQUEST.

(a) Borrower hereby requests that Dealer act as **TALF Agent** for Borrower under the MLSA from time to time in respect of a particular **Loan**³ described in a request substantially in the form of Exhibit A hereto (each a “Borrowing Request”) delivered to Dealer no later than 5 p.m., New York City time, five Business Days prior to the related Loan Subscription Date. Dealer acknowledges that Borrower may use other TALF Agents in connection with Borrower's participation under TALF.

(b) After receiving a Borrowing Request from Borrower, Dealer shall notify Borrower as soon as reasonably practicable thereafter whether it intends to include such Borrowing Request in the Loan Request for the related **Loan Subscription Date** (which, for the avoidance of doubt, Dealer may decline to include in its sole discretion), and such inclusion shall evidence Dealer's agreement to act as TALF Agent for Borrower under the MLSA in respect of such Loan. For the avoidance of doubt, if Dealer does not include a Borrowing Request from Borrower in the Loan Request for the related **Loan Subscription Date**, Borrower shall be entitled to submit such Borrowing Request with another TALF Agent in accordance with the MLSA. If Borrower is allocated less than expected of an Item of Collateral that is part of a new issuance, Borrower may submit to Dealer a revised Borrowing Request no later than 12 p.m., New York City time, on the seventh Business Day prior to the related **Loan Closing Date**.

(c) With respect to each Loan described in a Borrowing Request which Dealer has notified Borrower that it intends to include in the Loan Request for the related Loan Subscription Date (unless Lender, FRBNY or Custodian has indicated that such Loan will not be made), Borrower shall deliver or cause to be delivered to Dealer or its designee (with confirmation to Dealer of delivery to such designee) the information and amounts set forth on Exhibit F not later than the time set forth for such information on Exhibit F, which Dealer shall then deliver or cause to be delivered to Custodian, **Lender** and/or **FRBNY**, as applicable, as required by the MLSA. If a Borrowing Request relates to **Collateral** that is being underwritten and sold to Borrower by [Insert Name of Dealer] or an **Affiliate** thereof in an initial issuance, Dealer shall submit the related **Offering Materials** and **Sales Confirmation** to Custodian, Lender and/or FRBNY, as applicable, in accordance with the MLSA. Upon receipt of the related **Confirmation** under the MLSA, Dealer shall promptly provide a copy of such Confirmation to Borrower.

³ In this form, capitalized terms defined in the MLSA are indicated in **red** upon their first use.

2. AUTHORIZATION. Borrower hereby authorizes:

(a) Dealer to execute and deliver on its behalf the **Lending Agreement** in connection with TALF and to bind it to the terms of the **Lending Agreement** and to grant on behalf of Borrower a security interest in the Collateral for each Loan to be entered into by Borrower through Dealer, and Borrower represents that (x) it has the power to so authorize Dealer and (y) it has taken all necessary action to authorize such execution and delivery by Dealer;

(b) Dealer to act as its agent in connection with all Loans to be borrowed by it through Dealer pursuant to the MLSA and with the pledge of Collateral to secure such Loans, and authorizes Dealer to deliver notices and instructions to Lender, FRBNY, Custodian and **Administrator** on its behalf in connection with the foregoing, and Borrower acknowledges that the recipients of such notices are entitled to rely thereon;

(c) Dealer to receive on its behalf notices and instructions from Lender, FRBNY, Custodian and Administrator that relate to Loans made to, or Collateral pledged by, Borrower through Dealer pursuant to the MLSA or that otherwise relate to any Obligation of Borrower incurred by it through Dealer under the MLSA, and Dealer agrees to promptly provide to Borrower copies of any such notices and instructions;

(d) Dealer to provide any information obtained pursuant to this Agreement to Lender, FRBNY, Custodian and Administrator upon request; and

(e) Dealer to perform all other acts that Dealer is required to perform on Borrower's behalf under the MLSA.

3. REPRESENTATIONS AND WARRANTIES.

(a) Each of Dealer, Borrower, [Investment Manager] and Guarantor represents and warrants to each other party with respect to itself, as follows:

(i) (1) it has the power and authority, and the legal right, to make, deliver and perform its obligations under this Agreement; (2) it has taken all necessary organizational action to authorize the execution, delivery and performance of this Agreement; (3) no consent or authorization of, filing with, notice to or other act by or in respect of, any governmental authority or any other Person is required in connection with the execution, delivery, performance, validity or enforceability of this Agreement; and (4) it has duly executed and delivered this Agreement;

(ii) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and is not in violation of any laws or regulations in any respect which could have any material adverse effect upon the validity, performance or enforceability of any of the terms of the MLSA or this Agreement;

(iii) its execution and delivery of this Agreement and its performance of its obligations hereunder and, in the case of Borrower, the MLSA will not contravene, or constitute a default under, (A) any provision of applicable law or regulation, (B) its articles or certificate of incorporation or bylaws or other organizational or formation documents or (C) any material agreement, judgment, injunction, order, decree or other instrument binding upon it or any of its property; and

(iv) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

(b) [Each of] Borrower [and Investment Manager] represents and warrants as follows, and such representations and warranties shall be deemed to be continuing as long as Borrower shall have any **Obligations** outstanding in respect of Loans requested by Dealer on behalf of Borrower hereunder:

(i) all representations, warranties and certifications made or deemed made by Borrower under or in connection with the MLSA are true and correct;

(ii) this Agreement is effective to give Dealer the right to grant to Lender and Custodian on behalf of Borrower a security interest in any Collateral for Loans requested by Dealer on behalf of Borrower subject to the terms and conditions of the MLSA;

(iii) all written information (other than Offering Materials) delivered by it to Dealer for delivery to Lender, FRBNY, Custodian or Administrator pursuant to the MLSA is accurate and complete in all material respects and there has been no material change in such information since the date such information was delivered that has not been communicated in writing to Dealer;

(iv) at the time of delivery, the statements or information furnished by Borrower [and Investment Manager] to Dealer in connection with (1) Dealer's **Required AML Program, Customer Review Program** and **Conflicts of Interest Plan**⁴ and (2) Dealer's tax-related obligations under the MLSA, are true and correct in all material respects;

(v) [none of] Borrower[, Investment Manager or Guarantor] nor any of their respective subsidiaries, affiliates, shareholders, directors, officers, employees, agents, investment managers or representatives has taken or will take any action in furtherance of an offer, payment, promise to pay, or authorization or approval of the payment or giving of money, property, gifts or anything else of value, directly or indirectly, to any person to improperly influence official action by that person for the benefit of Borrower or its subsidiaries or affiliates, or to otherwise secure any improper advantage in connection with this Agreement;

(vi) Borrower and its subsidiaries [and Investment Manager] have conducted and will conduct their businesses in compliance with the Anti-Corruption Laws⁵, the Anti-

⁴ For example, providing Dealer with information regarding prohibited credit hedges.

⁵ "**Anti-Corruption Laws**" means, collectively (a) the U.S. Foreign Corrupt Practices Act of 1977, as amended, (b) the UK Bribery Act 2010, as amended, and (c) any other applicable law, rule, regulation, order, decree or directive having the force of law and relating to bribery or corruption.

Money Laundering Laws⁶ and Sanctions⁷, and no investigation, inquiry, action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Borrower or any of its subsidiaries [or Investment Manager] with respect to the Anti-Corruption Laws, the Anti-Money Laundering Laws or Sanctions is pending or, to the knowledge of the Borrower, threatened;

(vii) Borrower and its subsidiaries[, Investment Manager] and affiliates have instituted and maintained and will continue to maintain policies and procedures reasonably designed to promote and achieve compliance with the Anti-Corruption Laws, the Anti-Money Laundering Laws, Sanctions and with the representations and warranties contained or incorporated herein;

(viii) None of Borrower[, Investment Manager or Guarantor] nor any of their respective Control Persons, sponsors, subsidiaries, affiliates, shareholders, investors, directors, officers, employees, agents or representatives, is an individual or entity that is, or is owned or controlled by one or more of such persons that are: (i) the target or subject of Sanctions (as "Sanctioned Person"); or (ii) located, organized or resident in a country or territory that is, or whose government is, the subject of Sanctions broadly prohibiting dealings with such government, country or territory (including, without limitation, Crimea, Cuba, Iran, North Korea, and Syria) (a "Sanctioned Country");

(ix) Borrower [(A)] is an **Eligible Borrower** [and (B) has significant operations in and a majority of its employees in the United States as defined pursuant to the **TALF Standing Loan Facility Procedures**⁸];

(x) as of the date of any Borrowing Request, neither Lender nor FRBNY has previously rejected a request to enter into any Loan under TALF (other than a rejection based solely on Lender's or FRBNY's discretion to reject any Collateral that was to have secured any such Loan) from Borrower or[, to Borrower's knowledge (after reasonable due diligence and investigation),] any holder of an ownership interest in Borrower;

(xi) Borrower (A) has received a copy of the MLSA and agrees to the terms thereof, (B) has had full access to all such documents and information (including any financial information) as it deems necessary to review in order to agree to the terms of the

⁶“Anti-Money Laundering Laws” means laws, rules, regulations and sanctions, state and federal, criminal and civil that: (i) limit or prohibit the use of and/or seek the forfeiture of proceeds from illegal transactions; (ii) require identification and documentation of the parties with whom a Financial Institution conducts business; or (iii) are designed to disrupt the flow of funds to terrorist organizations. Such laws, rules, regulations and sanctions shall be deemed to include applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the Bank Secrecy Act of 1970, as amended, the USA PATRIOT Act of 2001, as amended, and the Money Laundering Control Act of 1986, as amended, including the laws relating to prevention and detection of money laundering under 18 USC Section 1956 and 1957.

⁷ “Sanctions” means any economic or trade sanctions or restrictive measures enacted, administered or enforced by the United States Government (including the U.S. Department of Treasury's Office of Foreign Assets Control and the U.S. Department of State), the United Nations Security Council, the European Union, Her Majesty's Treasury, or any other relevant sanctions authority.

⁸ Note to draft: Insert bracketed text only if Borrower is not organized as an investment fund. If Borrower is an investment fund, we refer to the representation and warranty in Section 3(b)(xvi) with respect to the Borrower's investment manager.

MLSA, and (C) is a sophisticated investor in the market for securities that may be eligible for TALF and has made, independently and without reliance on Dealer, its own independent investigation of TALF, the Loans requested by Dealer on behalf of Borrower pursuant to the MLSA and the creditworthiness of the Items of Collateral for such Loans;

(xii) with respect to each Item of Collateral securing any Loan made to Borrower:

(a) Borrower is not an Affiliate of any applicable broker-dealer **Market Intermediary** and, to the best of Borrower's knowledge after diligent inquiry in the case of an Item of Collateral that has been issued prior to the applicable **Loan Closing Date**, none of Borrower's **Affiliates** directly sold all or any portion of such Item of Collateral to any such Market Intermediary;

(b) Borrower's agreement to purchase any such Item that is **Seasoned Collateral** was made on an arm's-length basis within in the 30-day period preceding the applicable **Loan Subscription Date**;

(c) the conditions to the settlement of Borrower's purchase of such Item of Collateral did not and do not include the performance of any material obligation on the part of either party, except for the payment of the purchase price and delivery of such Item of Collateral, and the terms of the purchase are to the effect that Borrower shall, upon such payment, acquire all of the right, title and interest in and to such Item of Collateral and assume the risks of the ownership thereof;

(d) the purchase price payable by Borrower for such Item of Collateral (x) consists only of cash in the amount stated on the applicable Sales Confirmation, (y) is in an amount not less than \$1,000,000, and (z) does not reflect any economic arrangement other than the purchase of such Item of Collateral;

(e) [neither] Borrower [nor Investment Manager] has [not] received and is not entitled to receive, directly or indirectly, from any Person any payment, forgiveness of debt, loan, extension of credit or other consideration or financial accommodation in exchange for and in consideration of Borrower's agreement to purchase such Item of Collateral; and such purchase is not being made in satisfaction of a pre-existing obligation of Borrower[, Investment Manager] or any of [its/their] Affiliates to purchase or repurchase such Item of Collateral;

(f) prior to and after the applicable **Loan Closing Date**, [neither] Borrower [nor Investment Manager] will [not] have engaged, nor will [it/they] engage at any time while Borrower has **Obligations** outstanding, in any **Credit Hedge** in relation to such Item of Collateral; provided, that, in the case of a **Permitted Loan and Collateral Transfer**, the representations and warranties set forth in this Section 3(b)(xii) shall not be required to be made by Borrower with respect to its purchase of the Collateral that is the subject of the **Permitted Loan and Collateral Transfer**, but (x) the successor Borrower under such Loan and its investment manager, if any, shall have liability for the representations and warranties made by the predecessor Borrower [and Investment Manager] in this Section 3(b)(xii) as fully as if such successor Borrower had been the predecessor Borrower and had itself made such representations and warranties when made by

the predecessor Borrower, and such liability shall survive the effectiveness of such **Permitted Loan and Collateral Transfer**, and (y) any further representations and warranties required by Lender as specified in Section 19.3 of the MLSA shall be true and correct; and

(g) each such Item of Collateral is, at the time the related Loan is made to or assumed by Borrower, **Eligible Collateral**;

(xiii) no statement or information contained in the MLSA, this Agreement or any other document, certificate, or statement furnished by it to the Lender, FRBNY, Custodian or Administrator or any other party hereto (other than statements or other information contained in **Offering Materials**) for use in connection with the transactions contemplated by the MLSA and this Agreement, on and as of the date when furnished, is untrue as to any material fact or omits any material fact necessary to make the same not misleading;

(xiv) without limiting the generality of Section 3(b)(ix) above, Borrower:

(1) is unable to secure adequate credit accommodations from other banking institutions as of the date that any Loan is made to or assumed by it,

(2) is not “insolvent” and is not borrowing for the purpose of lending the proceeds to a **Person** that is “insolvent” [(for purposes of paragraph B(ii) of section 13(3) of the Federal Reserve Act and section 201.4(d)(5)(iii) of the Board’s Regulation A)]⁹; it being understood that, for this purpose, Borrower is “insolvent” if (A) it is in bankruptcy, resolution under Title II of Public Law 111-203 (12 U.S.C. 5381 et seq.) or any other Federal or State insolvency proceedings, (B) it is generally not paying its undisputed debts as they become due during the 90 days preceding any date of borrowing under the TALF program; (C) the Board or the FRBNY otherwise determines that Borrower is insolvent or (D) it has an amount of capital that is unreasonably small in relation to its business]¹⁰,

(3) is not a “covered entity” (as defined in section 4019(a)(2) of the CARES Act), and

(4) is a “U.S. company” for purposes of the **TALF Standing Loan Facility Procedures**;

(xv) the certifications made by Borrower and received by Dealer in the form set forth in Appendix 2B and Appendix 2C attached to the MLSA are true, accurate and complete;

⁹ This rep matches that required by the MLSA.

¹⁰ This alternate formulation was proposed on behalf of Dealers. SFA specifically highlights this language to draw your attention as it has either (a) not been previously reviewed/discussed by either the broker-dealers and/or the investors or (b) our members remain unable to reach consensus. Due to the late stage of the SFA process, if we do not reach consensus within the very limited time remaining we will footnote that this provision should be reviewed and negotiated by the individual parties to the Customer Agreement.