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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	Chapter 11
Genesis Global Holdco, LLC, *et al.*,	Case No. 23-10063 (SHL)
Debtors.[1]	Jointly Administered
	Re: Docket Nos. 989, 1202, 1238, and 1257

OMNIBUS MEMORANDUM OF POINTS AND AUTHORITIES OF THE AD HOC GROUP OF GENESIS LENDERS IN SUPPORT OF CONFIRMATION OF THE DEBTORS' AMENDED JOINT CHAPTER 11 PLAN

[1] The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's tax identification number (as applicable) are: Genesis Global Holdco, LLC (8219); Genesis Global Capital, LLC (9564); and Genesis Asia Pacific Pte. Ltd. (2164R). For the purpose of these Chapter 11 Cases, the service address for the Debtors is 250 Park Avenue South, 5th Floor, New York, NY 10003.

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The Ad Hoc Group of Genesis Lenders (the "Ad Hoc Group") hereby submits this memorandum of points and authorities (this "Memorandum") (i) responding to (a) *Digital Currency Group, Inc. and DCG International Investments Ltd.'s Objection to Confirmation of the Debtors' Amended Plan* [ECF No. 1257] (the "DCG Objection") filed by Digital Currency Group, Inc. and DCGI (collectively, "DCG"), (b) the *Genesis Crypto Creditors Ad Hoc Group's Objection to Confirmation of the Amended Joint Chapter 11 Plan of Genesis Global Holdco, LLC, Genesis Global Capital, LLC, and Genesis Asia Pacific Pte. Ltd.* [ECF No. 1238] (the "Crypto AHG Objection") filed by the Genesis Crypto Creditors Ad Hoc Group (the "Crypto AHG"), and (c) the *Objection of the United States Trustee to the Confirmation of the Debtors' Amended Joint Chapter 11 Plan* [ECF No. 1202] (the "UST Objection") filed by the Office of the United States Trustee for Region 2 (the "UST"), and (ii) in support of confirmation of the *Debtors' Amended Joint Chapter 11 Plan* [ECF No. 989] (the "Plan")[2] filed by the debtors and debtors-in-possession (collectively, the "Debtors") in the above-captioned chapter 11 cases (the "Chapter 11 Cases").[3] In support of this Memorandum,[4] the Ad Hoc Group respectfully states as follows:

PRELIMINARY STATEMENT

The nature of the Debtors' assets and the claims asserted against such assets are complex, and present unique questions of fact and law. But, the question posed by the DCG Objection is comparatively simple: does the priority scheme of the Bankruptcy Code subordinate equity to *all*

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[2] Capitalized terms used but not defined herein shall have the meanings given to them in the Plan.

[3] The Ad Hoc Group also filed the *Reservation of Rights of the Ad Hoc Group of Genesis Lenders to Confirmation of the Debtors' Amended Joint Chapter 11 Plan* [ECF No. 1240] (the "AHG ROR"). As set forth therein, the AHG ROR relates solely to the Plan's release of the Debtors' employees, officers, and directors, and the Ad Hoc Group supports confirmation of an amended Plan with no such release.

[4] The Ad Hoc Group acknowledges that other responses and objections to confirmation of the Plan have been interposed. The Ad Hoc Group hereby joins in and supports the replies and memoranda in support of the Plan by the Debtors and the UCC filed contemporaneously herewith, except with respect to the Debtors' position regarding releases as described below.

contractual rights of creditors, or just a subset thereof? The answer, developed across decades of caselaw, is equally clear: creditors are entitled to the *full* benefit of their bargain before subordinated creditors or equity holders may recover on their claims and interests—a principle reflected across the Bankruptcy Code and caselaw. It is the reason an oversecured creditor can charge and collect fees, postpetition interest, and other damages against its collateral prior to any such excess value flowing to unsecured creditors. It is also why unsecured creditors may recover postpetition interest before subordinated creditors and interest holders receive any recovery.

The unique and complex nature of the Debtors' assets and claims, and their constantly-shifting valuations, do not override bedrock principles of the Bankruptcy Code: the next rung of the waterfall cannot recover until the rung above it has received the full compensation to which it is legally entitled pursuant to its contract.

With the complex nature of the Debtors' assets and claims, and a multitude of competing interests, concerns, and viewpoints as to the appropriate valuation methodology to apply, the Debtors and their creditors, including those in the Ad Hoc Group, engaged in months of arms'-length, hard-fought negotiations to reach the compromise represented by the Distribution Principles. The Distribution Principles delicately balance the interests and litigation positions of the Debtors, creditors holding claims denominated in U.S. Dollars ("USD"), and creditors holding claims denominated in Digital Assets. None of the parties may be perfectly content with the outcome, and each subset of creditors continues to hold strong views regarding the concessions ultimately reached. But, the difficult negotiations were worth the time and effort, resulting, as evidenced by the results of the Plan solicitation process, in overwhelming support from every creditor constituency. *See Declaration of Alex Orchowski of Kroll Restructuring Administration*

LLC Regarding the Solicitation of Votes and Tabulation of Ballots Cast on the Debtors' Amended Chapter 11 Plan [ECF No. 1196] (the "Voting Declaration").

DCG's opportunistic objection seeks to take advantage of the complex nature of the Debtors' estates to pervert the purposes of the Bankruptcy Code. By adopting DCG's construct, a parent company—one alleged, not only by the Debtors and their creditors, but also, by multiple governmental regulatory bodies, including the Securities and Exchange Commission (the "SEC") and Office of the New York Attorney General (the "NYAG"), to have defrauded the Debtors' creditors—can drain its subsidiary of resources through improper transfers of assets, reneging repeatedly on the repayment of undisputed loans owed in excess of $600 million, implementing a blockade of withdrawals and payments on ordinary course obligations, causing havoc in the marketplace, forcing a bankruptcy filing in advance of a "bull run" on the Debtors' assets, and then attempting to capture the entirety of the increase in value generated by creditors' loaned assets, and leaving those same creditors holding the bag, as empty as it would be. This simply cannot be, and was not, Congress' intent.

Even if DCG were correct that section 502(b) of the Bankruptcy Code requires creditors to turn over any value generated by their loaned assets to the perpetrator of their fraud, DCG is not harmed by the Distribution Principles. First, DCG has no standing to raise its objection to the Distribution Principles because there are billions of dollars of asserted governmental penalty claims which stand between DCG and any recovery. DCG has not objected to or even addressed the amount of such claims, and the analysis propounded by Mr. Verost, DCG's financial advisor, with respect to claim recoveries completely ignores the subordinated claims as if they did not exist.

In contrast to DCG, the subordinated creditors, the only true economic parties potentially impacted by the Distribution Principles if the DCG Objection were correct, have not objected to

the Plan or the Distribution Principles. Indeed, some have settled their claims and agreed to support confirmation of the Plan and the Distribution Principles embedded therein. This includes, most notably, the SEC and the NYAG, which have agreed to claims subordinated in payment to all general unsecured creditors under the Plan. Furthermore, the NYAG has agreed to size its claim by reference to the damages suffered by creditors from the fraud perpetrated upon them by the Debtors and DCG. *See Stipulation and Consent to Judgment* [ECF No. 1275, Ex. C] (the "NYAG Settlement"). Specifically, the NYAG's claim is to be allowed in the amount equivalent to the difference between the in-kind value of all creditors' claims and the value recovered by creditors. NYAG Settlement ¶ 7. Moreover, understanding the absolute harm caused by DCG and the readily apparent inequity resulting therefrom, the NYAG has agreed to establish and contribute all recoveries to a victims' fund to distribute recoveries on its subordinated claim to general unsecured creditors in accordance with the Distribution Principles. *Id.* ¶ 9.

The Ad Hoc Group and the Debtors' other creditors are all victims of DCG's fraud. They are entitled to recover the full amount they are owed pursuant to their valid and enforceable contracts before DCG receives any value. While there may have been disagreement among the creditors regarding the valuation of certain assets and claims, the Ad Hoc Group, representing creditors holding claims of all varieties (in the aggregate amounts of greater than two-thirds of all general unsecured claims), the Dollar Creditor Group, representing a subset thereof, and the Official Committee of Unsecured Creditors (the "UCC"), a fiduciary for all creditor constituencies, worked together to develop a middle-ground methodology for the distribution of assets until all creditors have recovered their full contractual entitlements, after which any excess value flows to subordinated claims and, ultimately, equity interest holders, in accordance with the dictates of the Bankruptcy Code. The Distribution Principles constitute a hard-fought compromise and

settlement among the various creditor constituencies and the estate as to the flow of distributions under the Plan, but do not have any impact on creditor entitlements to recover in full on account of their contractual obligations. This compromise and settlement should be approved pursuant to Bankruptcy Rule 9019, the DCG Objection should be overruled, and, as a result, subject to the AHG ROR, the Plan should be confirmed in accordance with the provisions of section 1129 of the Bankruptcy Code.

RELEVANT BACKGROUND

A. Genesis and its Customer Relationships

For years prior to the Petition Date, the Debtors offered certified participants, among other services, the opportunity to lend and borrow fiat and cryptocurrency assets pursuant to "form" master borrow agreements and loan term sheets issued thereunder. The Debtors periodically advertised lending and borrowing tables delineating the interest rates at which they would be willing to borrow for various cryptocurrency asset classes (i.e., BTC, ETH, and many others) for certain periods of time (ranging from open-term, callable on demand by either party, to fixed term loans up to one year). Accordingly, the term sheets underlying the creditors' claims vary between claims that matured pre-petition, and, but for the automatic acceleration due to the commencement of the Chapter 11 Cases, others were due to mature during these Chapter 11 Cases or were open-term in length. The Debtors' purported business model was simple (in theory)—borrow fiat and cryptocurrency from various creditors, and loan those assets in large quantities to other parties at higher interest rates, profiting from the difference in yield between the two. To become a certified participant in the Debtors' lending and borrowing program, creditors were required to submit documentation evidencing their financial status as an accredited investor and high net worth individual or institution, thereby meeting certain elevated asset and loan thresholds, including

holding assets equal to or greater than $10 million and lending at least 100 Bitcoin, 1,000 Ethereum, or $2 million USD in cash or stablecoins.

The Debtors touted their status as regulated and licensed entities operating in the State of New York[5] and provided lenders with direct insight into the Debtors' lending book and balance sheet. In the years prior to the Petition Date, many of the Debtors' customers felt fortunate to be among the select group of certified lenders to what customers then perceived to be a reliable and trustworthy counterparty. Ultimately, that trust proved to be sorely misplaced.

B. The Fraud Perpetrated on Creditors by the Debtors and DCG

In contrast to their external representations to their lenders, the Debtors' loan book was highly concentrated among a small handful of counterparties and was not overcollateralized. From December 2020 through September 2022, the Debtors' collateral coverage ratio varied between 60-90%.[6] One of the Debtors' largest borrowers at this time was cryptocurrency hedge fund Three Arrows Capital ("3AC"). 3AC was permitted to borrow billions of dollars in fiat and cryptocurrency assets from the Debtors on an undercollateralized basis.[7]

In May 2022, LUNA and TerraUSD collapsed, causing significant disruption in the cryptocurrency markets. Shortly thereafter, 3AC commenced liquidation proceedings and its founders fled. 3AC had approximately $2.4 billion in loan obligations outstanding to the Debtors and, by the time the Debtors foreclosed on their collateral, the value of the collateral was

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5 *See Declaration of A. Derar Islim in Support of First Day Motions and Applications in Compliance with Local Rule 1007-2* [ECF No. 17] ("Islim FDD"), ¶¶ 9-10 (Genesis Global Capital, LLC "is registered as a Money Services Business with the Financial Crimes Enforcement Network" and Genesis Asia Pacific Pte. Ltd. "has received an In-principle Approval for a Major Payment Institution license under the Payment Services Act 2019 by the Monetary Authority of Singapore").

6 *See The People of the State of New York v. Gemini Trust Co., et al.,* Case No. 452784/2023 filed in the Supreme Court of the State of New York, County of New York (the "NYAG Complaint"), ¶ 73.

7 *See* Islim FDD, ¶¶ 31–32.

approximately $1.2 billion, leaving a $1.2 billion deficit that blew a crater in the Debtors' balance sheets and left them insolvent.[8]

Instead of acknowledging their insolvency, the Debtors and DCG, which already owed the Debtors hundreds of millions of dollars in unsecured loans, conspired to falsely represent the Debtors' capital structure and financial circumstances.[9] "For example, on June 15 and June 17, [the Debtors], [Barry] Silbert, [Michael] Moro, and/or DCG published tweets claiming the [Debtors'] balance sheet was 'strong,' that [the Debtors were] functioning 'normally,' and that [they] had 'shed the risk and moved on.'"[10] None of those statements were accurate, and each were designed to both prevent or avoid withdrawals from current lenders and to attract new lenders to try and maintain what little liquidity the Debtors had to continue to kick the can down the road.[11]

The Debtors typically reported quarterly financials. With the end of the financial reporting quarter approaching quickly, DCG devised a plan to conceal the Debtors' insolvency. "On June 30, 2022—the last day of the financial reporting quarter—[Michael] Moro and [Barry] Silbert executed an illiquid promissory note under which DCG agreed to pay Genesis [Global] Capital $1.1 billion *in a decade* at only a 1% per annum interest rate (the "Promissory Note") to purportedly backstop losses from the [3AC] loans. DCG never made principal or interest payments under the Promissory Note and the structural hole [in the Debtors' balance sheet] remained unchanged."[12]

Following the execution of the Promissory Note, the Debtors and DCG continued issuing public statements and communicating privately with lenders that DCG had "assumed the

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8 *Id.*
9 NYAG Complaint at ¶ 9.
10 *Ibid.*
11 NYAG Complaint at ¶ 9.
12 *Id.*, ¶ 10.

liabilities" and "absorbed the loss" relating to 3AC. Of course, DCG did no such thing. Instead, DCG replaced the undercollateralized, but callable-at-will, short-term loans to 3AC with an entirely uncollateralized illiquid obligation payable only in 10 years, with 1% per annum interest payable in kind at DCG's election.[13] To continue attracting investment from lenders, the Debtors sent many lenders financial reports which listed the Debtors' assets and liabilities. Among their assets was the Promissory Note, falsely listed as a "Current Asset" (i.e., an asset that could be reduced to cash within one year). Without this Promissory Note as a "Current Asset," the Debtors' severe liquidity constraints would have become apparent to current and prospective lenders. Instead, this information was concealed and obfuscated.

C. The November 2022 Freeze of Withdrawals and Formation of the Ad Hoc Group

In early November, FTX Trading and Alameda Research collapsed, causing another wave of turmoil in the cryptocurrency markets. Following the collapse, the Debtors received calls on their open-term loan commitments totaling approximately $827 million.[14] Given the Debtors' pre-existing structural hole in their balance sheet, which had been hidden from the public, the Debtors did not have the liquidity to satisfy the calls on their loan obligations. As a consequence, on November 16, 2022, the Debtors announced they were freezing all lending and borrowing activities, and no loan call requests, withdrawal requests, or other transaction requests would be honored. The Debtors also ceased making both USD and Digital Asset interest payments to their lenders as required by the MBAs.[15]

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13 *Id*., ¶ 10.

14 Islim FDD, ¶ 37.

15 The MBAs provide that a "Loan Fee," accruing from the date on which loaned digital currency or U.S. Dollars was transferred to GGC, accrues on a daily basis based on all outstanding loaned digital currency or U.S. Dollars, and is payable on a monthly basis. *See* MBA § III.

Shortly thereafter, the Ad Hoc Group was formed and retained Proskauer to represent the lenders' interests in connection with restructuring and repaying the Debtors' obligations to their lenders. Since that time, as the Court is aware, the Ad Hoc Group has grown to represent creditors holding approximately $2.5 billion in claims against Genesis Global Capital, LLC ("GGC"), including majorities in amount of asserted USD, Bitcoin, and Ethereum claims against GGC. The Ad Hoc Group's members each loaned USD or Digital Assets to the Debtors pursuant to substantially identical master borrow agreements ("MBAs"), a sample of which is attached hereto as **Exhibit A**.[16] Following the freeze of withdrawals and loan repayments by GGC, the Ad Hoc Group began negotiating with the Debtors, DCG, and Gemini Trust Company, LLC ("Gemini") regarding a potentially consensual holistic restructuring of the claims asserted against the Debtors.

Initially, the Ad Hoc Group was formed with the goal of working with the Debtors to avoid bankruptcy and establish a process for the full repayment of creditors' loans and the maximization of creditor recoveries and the return of lenders' Digital Assets and fiat currency loans. At the outset of these Chapter 11 Cases, the Ad Hoc Group's efforts resulted in a non-binding term sheet providing for a proposed compromise and settlement of the claims and causes of action held by the Debtors' estates against DCG. Shortly thereafter, and following the appointment of the UCC, critical additional diligence information was obtained from the Debtors and DCG, which information led the Ad Hoc Group and the UCC to determine that proceeding with the transaction proposed by the term sheet was not viable.

Thereafter, the parties resumed negotiations and the Ad Hoc Group continued to pursue a value-maximizing transaction that would provide (a) significant in-kind recoveries through an

[16] Realizing the importance and role of the Ad Hoc Group, by letter agreement, dated January 3, 2023, a copy of which is annexed hereto as **Exhibit B**, and as is customary in a restructuring, the Debtors agreed to pay all fees and expenses incurred by the Ad Hoc Group.

initial distribution, including the proceeds of the approximately $630 million in loans payable by DCG to GGC by no later than May 11, 2023 (and which were initially due in November 2022 prior to being unilaterally extended by DCG) (the "DCG Loans"), (b) value in exchange for the release of any estate claims against DCG and its directors and officers on account of preference claims potentially valued in the hundreds of millions of dollars, fraud, alter ego liability, and more, (c) a restructuring of the $1.1 billion Promissory Note due in 2032, and (d) additional long-term in-kind recoveries to creditors. While the parties continued negotiating under the auspices of Court-ordered mediation, DCG defaulted on its obligations to pay the DCG Loans, which heightened the Ad Hoc Group's concerns about the parties' ability to reach a consensus.

Nevertheless, the Ad Hoc Group continued to participate in mediation and informal discussions with DCG, the Debtors, and the UCC, with the goal of developing a chapter 11 plan that either provided for fair value from DCG in resolution of the claims asserted against it, or enabled the estates to pursue litigation. However, on August 29, 2023, the Debtors terminated mediation and filed the *Public Update on Plan Discussions* [Docket No. 625], disclosing the terms of an agreement in principle reached among the Debtors, DCG, and the UCC. The Ad Hoc Group believed that the plan proposed by such agreement was unconfirmable, and continued to negotiate with parties in interest to develop a confirmable plan that was in the best interest of creditors.

Ultimately, the Ad Hoc Group delivered a letter to the Debtors with respect to its position on the agreement in principle, making clear that its constituents would not support such a concept and that, as a consequence, the votes were simply not attainable to confirm any such chapter 11 plan. When it became clear that no alternative agreement would be reached with DCG, the Ad Hoc Group worked with the Debtors and UCC to develop a "No Deal Plan" providing for the distribution of assets to creditors and the commencement of litigation against DCG.

On November 28, 2023, members of the Ad Hoc Group holding approximately $2.5 billion in claims entered into that certain *Plan Support Agreement (No Deal)* [ECF No. 1008] (the "PSA") with the Debtors and the UCC. The PSA obligated its parties to file, support, and consummate a chapter 11 plan embodying the Distribution Principles, which were heavily-negotiated among the parties, as well as other creditor representatives, and provide the mechanics for the distribution of assets to creditors pursuant to the Plan. Also on November 28, 2023, the Debtors filed the Plan, reflecting the parties' settlements pursuant to the PSA. As noted above, the Plan has been virtually universally accepted. It has received the support of greater than 80% in both number and amount of every voting class, totaling over $3 billion in claims against the Debtors voting to approve the Plan. The Plan is opposed only by DCG, the UST, BAO Family Holdings LLC, SOF International, LLC, and the Texas State Securities Board.[17] This Memorandum addresses only the objections filed by DCG, the Crypto AHG, and the UST and relies upon and joins in the replies filed by the Debtors and the UCC with respect to those and other objections, except with respect to the Debtors' positions regarding releases as described below.[18]

ARGUMENT

A. The Distribution Principles Should Be Approved Pursuant to Bankruptcy Rule 9019

The Distribution Principles are a settlement resulting from extensive negotiations among the Ad Hoc Group, the UCC, the Dollar Creditor Group, and the Debtors that reflect a compromise among digital currency and USD creditors, establishing the mechanics for claim valuation, allocation and distribution of estate assets, and resolving other complex contested issues among

[17] While other parties, including the Crypto AHG have filed reservations of rights or objections to certain aspects of the Plan, they do not object to confirmation of the Plan itself or its general construct. *See,* e.g., Crypto AHG Objection, ¶ 11 ("To be clear, the CCAHG does not object to confirmation of the Plan.").

[18] Pursuant to the AHG ROR, the Ad Hoc Group reserved its rights to supplement the AHG ROR and make arguments with respect to the Plan's releases at confirmation. As set forth in Section E below, the Ad Hoc Group reserves its rights with respect to the releases.

creditors. On the one hand, the Dollar Creditor Group asserted, similar to DCG, that claims asserted must be "dollarized" such that creditors must recover against the estate in proportion to the Petition Date value of such creditor's claim, whether asserted in fiat currency or Digital Assets. On the other hand, creditors who loaned Digital Assets held by the Debtors, and thus caused over $1.8 billion of additional value being generated by the Debtors' estates during these Chapter 11 Cases,[19] argued they are entitled to administrative expense treatment on account of their claims and, if not, that such claims must be valued on a date other than the Petition Date as covered contracts pursuant to section 562. Ultimately, both estate fiduciaries and the vast majority of creditors agreed that to avoid such costly and lengthy litigation, which would only further reduce creditor recoveries, was in the best interests of all parties, and agreed to settle these disputes.

Bankruptcy Rule 9019 provides that a court may approve a debtor's "compromise and settlement" after notice and a hearing. Bankruptcy Rule 9019(a). Only DCG objects to the Distribution Principles. The DCG Objection should be overruled. Courts apply a deferential business judgment standard to the approval of settlements pursuant to Bankruptcy Rule 9019, which merely requires the court to ensure the settlement does not fall below the lowest point in the range of reasonableness in terms of benefits to the debtor. Courts should "canvass the issues and see whether the settlement 'fall[s] below the lowest point in the range of reasonableness'" when determining whether to approve a settlement pursuant to Bankruptcy Rule 9019. *In re W.T. Grant Co.*, 699 F.2d 599, 608 (2d Cir. 1983) (quoting *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972)). The approval of a settlement is within the court's broad discretion, which "discretion should be

[19] *Compare Notice of Filing Cash and Coin Report* [ECF No. 141] (reporting approximately $1.1 billion in cash, digital assets, and shares held in brokerage accounts as of the Petition Date) *with Notice of Filing Cash and Coin Report* [Docket No. 1214] (reporting approximately $2.9 billion in cash, digital assets, and shares held in brokerage accounts as of December 31, 2023).

exercised in light of the general public policy favoring settlements." *In re Hibbard Brown & Co., Inc.*, 217 B.R. 41, 46 (Bankr. S.D.N.Y. 1998). Settlements are favored by courts, and they will rarely be set aside. *See Nellis v. Shugrue*, 165 B.R. 115, 123 (S.D.N.Y. 1994) ("[T]he general rule [is] that settlements are favored and, in fact, encouraged.").

Courts in the Second Circuit apply an eight-factor test to determine whether a proposed settlement is within the 'range of reasonableness' sufficient for its approval:

> (1) the probability of success in litigation, with due consideration for the uncertainty of fact and law; (2) the difficulties in collecting any litigated judgment; (3) the complexity and likely duration of the litigation and any attendant expense, inconvenience, and delay; (4) the proportion of creditors who do not object to, or who affirmatively support, the proposed settlement; (5) the competence and experience of counsel who support the settlement; (6) the relative benefits to be received by members of any affected class; (7) the extent to which the settlement is truly the product of arm's-length bargaining and not the product of fraud or collusion; and (8) the debtor's informed judgment that the settlement is fair and reasonable.

In re Purofied Down Prods. Corp., 150 B.R. 519, 522 (S.D.N.Y. 1993). The Ad Hoc Group respectfully submits that each of the above factors either weighs in favor of approval of the Distribution Principles or is inapplicable to the current circumstances.

Probability of Success in Litigation, Complexity, and Likely Cost/Duration. The Distribution Principles settle complex, unprecedented issues between Digital Asset creditors, USD creditors, and the Debtors. Digital Asset creditors initially sought full in-kind recoveries, while USD creditors sought to receive distributions of USD as soon as possible. The Distribution Principles reflect a compromise that is supported by the vast majority of USD and Digital Asset creditors—USD creditors will receive near-term distributions, funded in party by the monetization of certain Digital Assets, and Digital Asset creditors will receive "in-kind" distributions to the maximum extent possible. The Distribution Principles adhere to section 502 of the Bankruptcy Code by applying pro rata recoveries to creditors based on the "dollarized" values of their claims. Further, general unsecured creditors are entitled to receive up to 100% of the assets underlying

their claims, and postpetition interest is not payable until all general unsecured creditors have received such recovery; provided that, if USD creditors do not receive such recovery within two years, all general unsecured creditors will be entitled to interest. Absent agreement among creditors on mechanics for the distribution of the Debtors' assets and valuation methodologies regarding creditors' claims, there certainly would have been extensive, complex litigation regarding the distribution of assets. Among the disputes that would have arisen are disputes regarding the nature of the Debtors' contracts with creditors and the loaned assets thereunder, the impact of sections 502, 562, and other provisions of the Bankruptcy Code, and more. These are complex, unprecedented, disputes where the outcome for either party is unknown and would be heavily litigated at great cost. Significant uncertainty regarding the likelihood of success in litigation weighs towards approval of a settlement. *See In re Chemtura Corp.*, 439 B.R. 561 (Bankr. S.D.N.Y. 2010) (holding the first factor of the *Purofied* test satisfied where conflicting caselaw made the outcome of litigation uncertain); *In re Adelphia Commc'ns Corp.*, 327 B.R. 143, 160 (Bankr. S.D.N.Y. 2005) (approving settlement where "[the Debtor] faces litigation risks of extraordinary magnitude" and "[t]he Settlement Agreements provide the Debtors with certainty"). Litigation would simply prolong these chapter 11 cases and, given the extensive projected cost of litigating such disputes and any potential appeals arising therefrom, severely deplete estate assets with no resulting benefit to creditors. For these reasons, the Ad Hoc Group submits the Distribution Principles satisfy factors 1 and 3 of the *Purofied* test.

Extent of Creditor Support. After months of negotiations, the Distribution Principles were agreed upon among the parties, and, after the Plan being submitted for a vote by the creditors, are supported by the vast majority of every class of cryptocurrency and USD creditors, avoiding the need for protracted litigation on the aforementioned complex issues. The settlement embodied by

the Distribution Principles, as incorporated into the Plan, has received the affirmative vote of greater than 80% of every single voting class. The Distribution Principles are opposed only by DCG, a small creditor and the Debtors' equityholder which is not entitled to any recovery on account of such equity for the reasons explained below, and which opposes the Distribution Principles in an opportunistic attempt to further usurp assets lent to the Debtors by creditors and to back out of its obligations to finally pay the $1.1 billion promissory note it fraudulently advertised as having been paid over 18 months ago. Accordingly, the Distribution Principles satisfy factor 4 of the *Purofied* test.

Competence of Counsel and Arms'-Length Negotiations. The Distribution Principles are the result of months of arms'-length negotiation among multiple parties with competing interests and different perspectives on the application of the law, and negotiated heavily to reach a compromise acceptable to all parties. Involved in these negotiations were counsel to the Debtors, the Ad Hoc Group, the UCC, and the Dollar Creditor Group, each of which have been intimately involved in these proceedings and has extensive bankruptcy and litigation experience. There is no dispute that the Distribution Principles were negotiated by competent and experienced counsel, and, therefore, the Distribution Principles satisfy factors 5 and 7 of the *Purofied* test. And, given the Debtors' support and involvement in the negotiations, and the inclusion of the Distribution Principles in the Plan, factor 8 is satisfied as well.

Benefits to Affected Creditors. Going into these negotiations, creditors held staunch views as to the applicable law, the valuation of claims based on different asset classes, and entitlement to the appreciation of the assets held by the Debtors' estates. At the extremes, the Dollar Creditor Group argued for all claims to be "dollarized" as of the Petition Date and an entitlement to share equally in any post-petition interest thereafter. Meanwhile, many creditors with claims

denominated in cryptocurrency argued, among other things, that they were entitled to receive distributions based on claims valued as of any given distribution date, and to recover in full in-kind based on coin quantity at the same rate as all other creditors. Still others claimed an entitlement to administrative expense priority on account of the appreciation of the assets held by the Debtors during these Chapter 11 Cases because all appreciation was the result of such creditors having lent their cryptocurrency to the Debtors prepetition. At the end of the negotiation, the parties brokered an agreement to compromise the extreme positions held by the various creditor constituencies and to reflect the principles and purposes of the Bankruptcy Code. The Distribution Principles provide for all creditors to recover *pro rata* in accordance with the Petition Date (i.e., dollarized) value of their claims, while maintaining the ability for cryptocurrency-denominated creditors to recover the full amount of coins underlying their claims on a subsequently staggered basis. There is no question that the Distribution Principles benefit the Debtors' estates and their stakeholders given this compromise. Additionally, approval of the Distribution Principles will enable the Debtors to emerge from chapter 11 and begin to make distributions to creditors who have been awaiting the return of their loaned assets since November 2022. The Ad Hoc Group respectfully submits that the Distribution Principles satisfy factor 6 of the *Purofied* test.

For these reasons, the Distribution Principles are a reasonable settlement among creditors and should be approved by this Court pursuant to Bankruptcy Rule 9019.

B. The DCG Objection to the Distribution Principles Should be Overruled.

The DCG Objection is merely an extension of its remorseless effort to seize the Debtors' assets and value to the detriment of creditors which it misled, and should be overruled for multiple reasons. First, DCG lacks standing to challenge the Distribution Principles. To establish standing, DCG must demonstrate it has a stake in the outcome. *See In re Drexel Burnham Lambert Group,*

Inc., 138 B.R. 717, 721 (Bankr. S.D.N.Y. 1992) (holding that, where equity was worthless, equityholder had no stake in a settlement of a controversy between creditors). Only parties adversely affected by a plan may raise an objection to confirmation. *See In re Johns-Manville*, 68 B.R. 618, 623 (Bankr. S.D.N.Y. 1986). It is undisputed that tens of billions of dollars in Claims—far in excess of the Debtors' assets—have been asserted by governmental units. No party in interest, including DCG, has objected to such claims and, accordingly, they are deemed allowed pursuant to section 502(a) of the Bankruptcy Code and are entitled to a recovery before any value may flow to DCG. Therefore, DCG has no economic interest and lacks standing to object to the Distribution Principles.

Even if DCG maintains standing to object to the Distribution Principles, which it does not, the DCG Objection fails. *First*, DCG asserts the Debtors are solvent and that, as a result, DCG should be entitled to receive the full benefit of all cryptocurrency appreciation during these Chapter 11 Cases, ***while the creditors who lent those assets receive less than half of what they are owed***. DCG is incorrect, and the Distribution Principles appropriately provide for the repayment of creditors' claims within the confines of the Bankruptcy Code (after application of pro rata recoveries based upon dollarized values), specifically allocating any excess value in accordance with the priority structure of the Bankruptcy Code—first to subordinated creditors, and next to equity. *Second*, DCG objects to the inclusion of post-petition interest in the Distribution Principles, and the rate at which such interest is calculated. The Distribution Principles only provide for the payment of post-petition interest if the estate is somehow solvent, as required by the Bankruptcy Code, and many courts have approved the application of contract interest rates under such circumstances. *Third*, regardless of the merits of DCG's argument that section 502(b)

of the Bankruptcy Code provides for an automatic cap on recoveries (which is incorrect), DCG's argument is moot as a result of the NYAG Settlement.[20]

1. The Distribution Principles Pay Creditors Only up to Their Contractual Entitlements.

The DCG Objection to the Distribution Principles hinges entirely on its bare assertion that the Debtors are solvent and are paying creditors more than they are owed on account of their Claims. Neither assertion is correct.

a. The Debtors Are Insolvent

DCG asserts, without any analysis or support for its statements (including the Verost Declaration (Docket No. 1281) being devoid of any substance), that the Debtors' estates are solvent. DCG's unsupported statements do not make it so. The unfortunate reality is the complete opposite: creditors are not going to be repaid the full amount of assets they are owed unless and until the estate recovers on its Retained Causes of Action against DCG for, among other things, fraud and alter ego liability. DCG's unsupported statements, which are merely attempts to pervert the bankruptcy process to siphon *even more* value than it already has from creditors, are insufficient to rebut the estates' deep insolvency.

Section 101(32) of the Bankruptcy Code defines "insolvency" as a "financial condition such that the sum of such entity's debts is greater than all of such entity's property, at a fair valuation." 11 U.S.C. § 101(32). Determining solvency is a matter of valuation—the values of assets and liabilities are used to evaluate a debtor's solvency. *See In re Ames Dept. Stores, Inc.*, 450 B.R. 24, 31 (Bankr. S.D.N.Y. 2011) ("As the statutory definition of insolvency makes clear,

[20] DCG also objects on certain other grounds, including that the Plan is not offered in good faith in violation of section 1129(a)(3) of the Bankruptcy Code, that the Debtors have violated their fiduciary duties to DCG, and that the Plan impermissibly alters DCG's equity holder rights. While this Memorandum does not address those arguments, the Ad Hoc Group believes such arguments are meritless and joins in the confirmation brief and replies to objections that will be filed concurrently herewith by the Debtors and the UCC.

establishing solvency requires evidence of the value of Ames' assets and liabilities . . . *at a fair market value*.") (emphasis in original); *In re Dressel Assocs., Inc.*, 536 B.R. 158, 164 (W.D. Pa. 2015) (citing *Mellon Bank, N.A. v. Metro Commc'n, Inc.*, 945 F.2d 635, 648 (3d Cir.1991)) ("[The definition of solvency set forth in section 101(32)(A)] is referred to as the 'balance sheet test,' and a debtor's assets and liabilities are to be 'tallied at a fair valuation.'"); *In re World Mktg. Chi., LLC*, 574 B.R. 670, 679 (Bankr. N.D. Ill. 2017) (recognizing insolvency is a question of fact and noting the valuation of assets and liabilities for the purpose of performing the insolvency analysis should be determined by expert testimony or recent appraisals).

DCG argues that, for purposes of solvency, the Debtors' assets should be valued at their current market prices, while their liabilities should be valued as of the Petition Date, focusing on section 502(b) of the Bankruptcy Code. However, DCG ignores that section 502(b) follows, and is predicated upon section 502(a) of the Bankruptcy Code, which provides that all claims for which there is a filed proof of claim are "deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a). Neither DCG, nor any other party in interest, has objected to the vast majority of claims filed in these Chapter 11 Cases, which claims were filed on an in-kind basis.[21] Moreover, neither DCG nor any other party in interest has objected to the tens of billions of dollars of asserted government penalty claims filed on account of the Debtors' and DCG's fraudulent conduct.[22] There is no argument the Debtors' estates are solvent in the face of the colossal magnitude of these Claims, each of which is deemed *prima facie* valid and will recover in advance of equity holders.

[21] While numerous omnibus claim objections have been interposed, they have been non-substantive in nature and dedicated to cleaning up the claims registry.

[22] *See, e.g.*, Claim numbers 882, 883, and 884 (each asserted in the amount of approximately $8.6 billion); Claim numbers 855, 856, and 857 (each asserted in the amount of $1.1 billion); Claim numbers 842 and 843 (each asserted in the amount of $960 million); Claim numbers 880 and 881 (each asserted in the amount of approximately $588 million)

Further, even if DCG had objected to all of these governmental Claims, which it has not, the Debtors are still insolvent. Section 502(b) speaks to the allowance of *claims,* while section 101(32), which defines solvency, refers to *debts*. Section 502(b) provides, in relevant part, that, if an objection to a claim is made, the court "shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition." 11 U.S.C. § 502(b). As the Court is aware, claims may be allowed in amounts that differ from contractual debts or liabilities. For purposes of solvency, the proper analysis turns on the Debtors' liabilities, rather than the allowed amounts of claims. It is clear the Debtors are obligated to pay their lenders the amount of digital assets or USD that were loaned pursuant to the MBAs and associated term sheets.

The Third Circuit has held section 502(b) does not require discounting claims to their petition date value. In *In re Oakland Homes Corp.*, the Third Circuit explained: "[v]iewed against the remainder of the Bankruptcy Code, 'amount of such claim . . . as of the date of the filing of the petition' simply does not clearly and unambiguously require discounting a claim to present value. Rather, 'the *full face amount* of a debt instrument is the *proper amount of claim* in a bankruptcy case' where, as here, original issue discount is not at issue." 449 F.3d 588, 596–97 (3d Cir. 2006) (quoting 4–502 Collier on Bankruptcy ¶ 502.03 (5th rev. ed. 2005)). The Third Circuit focused on the Bankruptcy Code's use of the word "amount," rather than "value," in section 502(b). The court rejected an argument that "amount . . . as of the date of the filing of the petition" requires a present value calculation to be performed on the amount of the claim as of the petition date. The court explained: "where the Bankruptcy Code intends a court to discount something to present value, the Code clearly uses the term "value, as of" a certain date. *See, e.g.,* 11 U.S.C. §§ 1129 ("value, as of the effective date of the plan"), 1173 (same), 1225 (same), 1325 (same), 1328 (same)." Accordingly, the Third Circuit concluded: "Viewing the Bankruptcy Code holistically,

we cannot say that the language of 11 U.S.C. § 502(b) clearly and unambiguously requires the same discounting to present value as is required in other sections of the Code." *Id*. at 698 ("The relevant date for *all determinations of present value* required by the Code is the 'effective date' of the plan.") (quoting 7–1129 Collier On Bankruptcy ¶ 1129.06).

To evaluate the Debtors' solvency, the Court must look to the face amount of the Debtors' liabilities—the amounts of Digital Assets and USD owed pursuant to the MBAs—rather than the Petition Date values of such digital assets. To do otherwise would mean valuing assets and liabilities with different methodologies, resulting in a skewed view of the solvency of the Debtors, which clearly do not have sufficient assets to perform their obligations under the MBAs. *See In re Winstar Commc'ns, Inc.*, 348 B.R. 234, 278 (Bankr. D. Del. 2005) ("Absent some unusual circumstances not applicable here, the insolvency test anticipates that liabilities will be valued at their face value."). Although courts have recognized that the increase in value of property subject to market fluctuations can lead to a debtor's solvency, those cases involve only *assets* that fluctuate in value, not liabilities, which are denominated in USD. *See In re Ultra Petroleum Corp.*, 624 B.R. 178, 181 (Bankr. S.D. Tex. 2020) (explaining that as a result of a postpetition increase in natural gas prices, the debtors "became massively solvent"). Here, where the Debtors' liabilities are denominated in cryptocurrency rather than USD, it is not appropriate to find the Debtors to be solvent based on a fluctuation in the U.S. Dollar value of the Debtors' assets (which assets are the product of creditors' lent fiat and cryptocurrency) without similarly applying such effect to the Debtors' liabilities. The Debtors' liabilities pursuant to the MBAs exceed their assets and the Debtors are unable to fulfill their obligations under the MBAs.

DCG references Judge Dorsey's recent decision in *In re FTX Trading Ltd.,* which valued certain cryptocurrency claims as of the petition date, in asserting that creditors cannot receive the

full in-kind distributions they are entitled to and their recovery must be capped at the Petition Date values of their digital assets. *See* DCG Obj. ¶ 40 (citing *In re FTX Trading Ltd.*, No. 22-11068 (JTD) Bankr. D. Del.) (Jan. 31, 2024 Hr'g Tr.) (the "FTX Transcript") at 14:23-25). However, DCG's reliance on *FTX* is misplaced. In *FTX*, in the context of a motion seeking to estimate the value of asserted claims, the court held estimation of *all* claims was appropriate because the value of such claims could not be determined through the ordinary claims allowance process without undue delay. FTX Transcript at 130:10-12. Unlike the instant case, in *FTX*, the Debtors (and not an out-of-the-money equity holder) sought to estimate over two million unliquidated claims asserted against the debtors for claims administration purposes, and the court's decision was premised on a finding that a claims allowance process would require an inordinate amount of time and expense. *Id*. at 84:8-9, 129:20-22, 130:13-16.

A motion to estimate claims is made pursuant to section 502(c) of the Bankruptcy Code, which provides, in relevant part, that "[t]here shall be estimated for purpose of *allowance under this section* any contingent or unliquidated claim, the fixing or liquidation of which . . . *would unduly delay the administration of the case*." 11 U.S.C. § 502(c)(1) (emphasis added). Section 502(a), in turn, provides that a claim is deemed allowed unless a party in interest objects, and section 502(b) provides that, if such an objection to a claim is made, the court shall determine the amount of such claim in U.S. Dollars as of the petition date and shall allow the claim in that amount. *See* 11 U.S.C. §§ 502(a), 502(b). Accordingly, a claims estimation proceeding under section 502(c) of the Bankruptcy Code, which provides only for estimation of a claim "under this section," is analogous to sections 502(a) and (b), which provide for allowance of a claim as-filed unless an objection is made.

DCG has made no request to estimate claims, and has not objected to any claims. Further, the Ad Hoc Group lenders' claims are not contingent or unliquidated, and estimation is not required to avoid delay in the administration of the case, as is required for estimation pursuant to section 502(c). Unlike *FTX*, which involved millions of unliquidated customer claims, the claims at issue here are limited in number and supported by loan documentation providing for the return of lenders' digital assets in-kind. There is no basis to estimate creditors' claims pursuant to section 502(c) and, as is explained above, section 502(b) is inapplicable because no objection to the claims has been raised. DCG's reliance on *FTX* is simply an attempt to leverage a recent cryptocurrency case for its benefit, ignoring the fact that the context and applicable law are entirely distinct. Accordingly, *FTX* does not require the valuation of the Debtors' liabilities as of the Petition Date.

For the foregoing reasons, the Debtors are insolvent.

2. Even if the Debtors Were Solvent, DCG Cannot Receive any Recovery Until Creditors Are Paid in Full in Accordance with the Distribution Principles

It is a fundamental principle of bankruptcy law that equityholders cannot receive any recovery until creditors have been paid in full. *See* 11 U.S.C. 1129(b)(2). Even if the Debtors were solvent, creditors must receive their full bargained-for rights, including amounts above their petition date claim, prior to any distribution to equity. In a solvent debtor case, the "fair and equitable" requirement for confirmation and the absolute priority rule require that "absent compelling equitable considerations," a chapter 11 plan must pay creditors in full, in accordance with their prepetition rights, including all of their contractual rights. *See In re Dow Corning Corp.*, 456 F.3d 668, 679 (6th Cir. 2006). This means full payment of each claim, including amounts above the petition date value of the claim, including, for example, post-petition interest at the contractual rate, attorneys' fees, and any other damages under the prepetition contracts which give rise to such claims. *See id.* at 678, 680, 683. "[A]bsent compelling equitable considerations, when

a debtor is solvent, it is the role of the bankruptcy court to enforce the creditors' contractual rights." *In re Ultra Petroleum*, 943 F.3d 758, 765 (5th Cir. 2019).

When a debtor is solvent, allowing a recovery to equity without paying creditors in full creates a windfall to equity, at the creditors' expense. Creditors must be made whole in accordance with their *bargained-for rights* before any value can flow to equity. *See In re PG&E Corp.*, 46 F.4th 1047, 1054 (9th Cir. 2022) ("Without a solvent-debtor exception, a solvent bankrupt could reap a windfall at their creditors' expense, pocketing 'money which the debtor had promised to pay promptly to the creditor.'"); *In re Sultan Realty, LLC*, 2012 WL 6681845 at *7 (Bankr. S.D.N.Y. Dec. 21, 2012). ("Reducing the contract interest payable by a solvent debtor would unfairly grant a windfall to its equity."). Holding otherwise would "run counter to a 'monolithic mountain of authority,' developed over nearly three hundred years in both English and American courts, holding that a solvent debtor must make its creditors whole." *In re Ultra Petroleum Corp.*, 624 B.R. 178, 200 (Bankr. S.D. Tex. 2020), *aff'd*, 51 F.4th 138 (5th Cir. 2022).

Courts are reluctant to undo negotiated contractual provisions related to payment to creditors in a solvent debtor case. *See In re Gen. Growth Properties, Inc.*, 2011 WL 2974305, at *4 (Bankr. S.D.N.Y. July 20, 2011) ("Courts in this and other circuits have been reluctant to modify private contractual arrangements imposing default interest rates—particularly in cases involving a solvent debtor."); *In re Ultra Petroleum Corp.*, 624 B.R. 184 ("Awarding the contractual default rates is consistent with the underlying principle of the solvent-debtor exception, that creditors must be paid what they are owed under the contract before the debtor may receive a windfall"); *In re Sultan Realty LLC*, 2012 WL 6681845 at *7 (Bankr. S.D.N.Y. Dec. 21, 2012) (acknowledging that while the contractual default interest rate was four times the non-default rate, it was nevertheless the appropriate rate under the contract).

Here, creditors' contractual rights are clear—***the MBAs provide that the Debtors must return digital assets and U.S. Dollars to their lenders***. There is no provision in the MBAs that would permit the payment of the USD value of any digital asset, it must be returned in-kind. If the Court finds the Debtors are solvent (which they are not), then the Court cannot override creditors' contractual rights and provide a windfall to DCG. That courts have primarily addressed this issue in the context of payment of postpetition interest, fees, and other contractual damages does not mean the same principles do not apply here. It is clear that, in a solvent debtor case, creditors are entitled to receive the full benefit of their bargain with the debtor, including recovery above the arbitrarily-selected petition date value of their claims. *See, e.g.*, *In re Ultra Petroleum Corp.*, 624 B.R. at 201 (holding that in a solvent debtor case creditors are entitled to postpetition interest). Creditors must receive the Digital Assets they are entitled to under the MBAs before there can be any recovery to DCG. To hold otherwise would interfere with the purposes of the Bankruptcy Code and create perverse incentives for controlling equityholders of companies with volatile assets and liabilities to file bankruptcy upon any downturn and get a free option—either asset values increase and equity can exclusively reap all rewards, or asset values decrease and only creditors' recoveries are impaired. No court of equity should countenance this argument.

Accordingly, until the Debtors' lenders receive the full benefit of their bargain pursuant to the MBAs and other creditors are paid in full, there can be no recovery to DCG. The DCG Objection should be overruled.

C. The Crypto AHG Objection Should be Overruled

The Crypto AHG was formed in November 2023 and represents nine creditors holding approximately $112 million in petition date value claims, largely denominated in Bitcoin.[23] The majority of the Crypto AHG's members are former members of the Ad Hoc Group, who believed the delicate balance and compromise embodied within the Distribution Principles undervalued their Claims. The Crypto AHG does not object to the Plan as a whole, but complains that its creditors deserve preferential treatment on account of their substantially identical MBAs. Crypto AHG Obj., ¶ 19. Specifically, the Crypto AHG asserts (a) entitlement to treatment as an administrative expense claim, and (b) entitlement to an increased *pro rata* share pursuant to the Distribution Principles because their Claims allegedly arise under section 562 of the Bankruptcy Code. Interestingly, these two arguments are completely contradictory. On the one hand, the Crypto AHG argues that the automatic renewal of its contracts (a term that is in every single MBA) renders such MBA a postpetition contract entitled to administrative expense treatment. Crypto AHG Obj., ¶ 20. On the other hand, the Crypto AHG argues that the MBAs are prepetition contracts being rejected by the Debtors. Crypto AHG Obj., ¶ 27. Both arguments are incorrect. Contrary to the Crypto AHG's assertions, (a) automatic renewal provisions of debtor contracts do not convert prepetition claims into post-petition administrative obligations, and (b) the Debtors' MBAs, which are loan agreements between the Debtors and their creditors, are not executory contracts subject to section 562 of the Bankruptcy Code and are not being rejected.

Nonetheless, recognizing the stark differences in treatment between creditors proposed by the Dollar Creditors Group and creditors holding cryptocurrency Claims, the Ad Hoc Group,

[23] *Second Amended Verified Statement Pursuant to Bankruptcy Rule 2019 of the Genesis Crypto Creditors Ad Hoc Group* [ECF No. 1079].

Debtors, and UCC settled such disputes among the vast majority of creditors, as supported by the affirmative votes of 15,545 creditors, including approximately 94% in number and over 99% in amount of BTC Claims.[24] The Ad Hoc Group strongly supports the consensual resolution and believes it is in the best interests of all creditors. Regardless of whether the Distribution Principles are approved, however, the Crypto AHG Objection is misguided and should be overruled.

1. The Crypto AHG Claims are not Entitled to Administrative Expense Treatment

The Crypto AHG asserts entitlement to treatment as an administrative expense, claiming the contracts automatically renewed postpetition. Of course, the same is true of every creditor who has an MBA with the Debtors as well, as recognized by the Crypto AHG. *See* Crypto AHG Obj., ¶ 13 ("Genesis claims these were bespoke agreements, but in reality, many investors accepted the form contracts Genesis initially offered."). Moreover, the Crypto AHG offers no support for its claims that the mere automatic renewal of a contract postpetition renders prepetition claims arising under such contract administrative in nature. Rather, courts are clear that is not the case. *See, e.g.*, *In re Windstream Holdings, Inc.*, 634 F.Supp.3d 99, 107-08 (S.D.N.Y. 2022) ("an automatically renewing [contract], requiring notice of termination, would be an executory contract subject to the automatic stay.") (citing *In re Country Club Estates at Aventura Maint. Ass'n*, 227 B.R. 565, 568 (Bankr. S.D. Fla. 1998) ("This court adopts the majority position that a contract which is renewed pursuant to an automatic renewal provision is merely a continuation of the original contract . . . the renewal period constitutes a continuation of the original prepetition contract . . . .").

This is unsurprising, of course. Had the Crypto AHG believed its members' contracts were postpetition agreements as a result of such renewals, and thus no longer subject to the automatic

[24] Voting Declaration, Ex. A. Notably, despite the Crypto AHG's $108 million in BTC-denominated Claims, the Plan was curiously only rejected by less than $9 million in BTC-denominated Claims.

stay, the Crypto AHG would have asserted its rights thereunder to close out its members' loans and recover their assets in-kind (plus interest) from the estate. It did not, because it could not.

The Crypto AHG seemingly asserts that the automatic renewal of its members' MBAs somehow converts their prepetition loaned assets into postpetition transactions entitled to administrative expense treatment. Crypto AHG Obj., ¶ 22. That assertion is equally incorrect. The Crypto AHG argues that its members permitted the Debtors to retain their loaned digital assets, and that the Debtors accepted such performance, entitling the members to administrative expense priority treatment. But, the Crypto AHG fails to explain what performance its members provided and what performance was accepted by the Debtors. The Crypto AHG's members did not provide any performance under the MBAs; they did not take any action with respect to the MBAs. They similarly did not "provide Genesis with the ability to retain their crypto"—that is the basic operation of the Bankruptcy Code and the automatic stay, not contractual performance. The Crypto AHG's theory would, for example, render almost every prepetition property lease claim a postpetition administrative expense claim if the bankruptcy case extends long enough for such contract to be renewed per its terms. This argument borders on frivolous, and should be overruled.

2. Section 562 of the Bankruptcy Code is Inapplicable to the Crypto AHG's Claims

Pursuant to the *Limited Stipulation and Order Between the Debtors and the Crypto Creditor Ad Hoc Group* [ECF No. 1216] (the "Crypto AHG Stipulation"), (1) "the Court may take as an established fact that the Genesis-AHG Contracts qualify as Covered Contracts for purposes of application of 11 U.S.C. § 562," and (2) "the Court may take as an established fact that no member of the Crypto Creditors Ad Hoc Group is or shall be deemed to be a [Covered Entity]" under 11 U.S.C. § 562. In reliance upon this stipulation, the Crypto AHG argues the MBAs are forward contracts that the Debtors are rejecting pursuant to the Plan, and therefore section 562 of

the Bankruptcy Code requires claims arising under the MBAs to be calculated as of the Effective Date. But, the Crypto AHG is mistaken. Section 562 is not applicable to the circumstances here.

Section 562(a) provides, in relevant part, that (a) ***if a debtor rejects*** a forward contract pursuant to section 365(a) of the Bankruptcy Code, or (b) if a covered entity liquidates, terminates, or accelerates such contract, then damages are measured as of the earlier of (1) the date of such rejection, or (2) the date of such liquidation, termination, or acceleration. *See* 11 U.S.C. § 562(a). As a preliminary matter, because the Crypto AHG has stipulated that its members are not covered entities described in section 562, only subpart (a), the rejection of such contract by the Debtors, is applicable here. *See* Crypto AHG Stipulation, ¶ 2.

Pursuant to section 365(a) of the Bankruptcy Code, a debtor may assume or reject any executory contract. *See* 11 U.S.C. § 365(a). The MBAs are not executory contracts, and therefore cannot be rejected pursuant to the Plan. Executory contracts are contracts for which "performance remains due to some extent on both sides." *See NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 n.6 (1984). "[L]oan agreements are generally not considered to be executory contracts." *In re General Growth Properties, Inc.*, 451 B.R. 323, 329 (Bankr. S.D.N.Y. 2011). This is particularly true when the only performance remaining is the repayment of the loan. *See In re Calpine Corp.*, 2008 WL 3154763 at *4 (Bankr. S.D.N.Y. 2008) (holding loan agreement was not executory when the lender had already loaned funds and was seeking to collect amounts owed by the borrower); *In re Chateaugay Corp.*, 102 B.R. 335, 347 (Bankr. S.D.N.Y. 1989) (holding obligations for the payment of money are insufficient to make an agreement executory); H.R. Rep. No. 95–595, 95th Cong., 2d Sess. 347, reprinted in 1978 U.S. Code Cong. & Admin. News, pp. 5963, 6303–04 (a "note is not usually an executory contract if the only performance that remains is repayment").

Further, any obligations that are immaterial, *de minimis*, remote, or contingent are insufficient to render a contract executory. *See In re Chateaugay Corp.*, 102 B.R. 335.

The only material outstanding obligation under the MBAs is the Debtors' obligation to return its lenders' digital assets or U.S. Dollars. Any remaining obligations of the lenders such as, for example, the obligation to indemnify GGC (*see* MBA § XXII), do not render the MBAs executory. *See id*. at 349 (holding indemnification obligations "are immaterial, *de minimis* and remote" and "[e]ven if these obligations did come to fruition, they merely require the payment of money, and are thus not executory in nature").

The Crypto AHG lists nineteen asserted obligations that render the MBAs executory. *See* Crypto AHG Obj., ¶ 54 (a)-(s). But, of the nineteen items listed, the vast majority are not obligations of either party, but rather entitlements. *See, e.g.*, *Id.*, ¶ 54 (a) ("Genesis is entitled to request a transaction from the Member."; ¶ 54 (k) "In the event Genesis requests a transaction, the Member must accept the request to enter into a Term Sheet"[25]). Indeed, only items (b) through (e), (l), (g), and (q) through (s) are obligations of either party, the majority of which are obligations of the Debtors. The only obligations of the Crypto AHG Members described are indemnification obligations and the obligation to establish a digital asset wallet if a creditor desired to be repaid in cryptocurrency, which requirement (a) has already been performed, and (b) is not an obligation that would give rise to an event of default, as the MBAs provide that, if not done, "such Loan will become an Open Loan on said Maturity Date." *See* Crypto AHG Obj., Exh. A-G, Art. II(c)(ii).

[25] To the extent the Crypto AHG misleadingly describes this term of the MBAs as an obligation of the Member, the terms of the MBA are clear that, upon receipt of a lending request from the Debtors, the lender has the option to enter into a Term Sheet or to decline to lend, and that "[i]f Lender fails to provide Borrower with an acceptance as to a particular Lending Request prior to Close of Business on the Request Day, such Lending Request shall be deemed to have been denied by Lender." *See, e.g.*, Crypto AHG Obj., Exh. A-G, Art. II(b).

Simply put, the Crypto AHG members have satisfied all of their material obligations under the MBAs by lending the digital assets underlying their claims. There is no performance due and owing to the Debtors. Accordingly, the MBAs are not executory contracts, cannot be rejected pursuant to section 365 of the Bankruptcy Code, and section 562 is therefore inapplicable.

The Crypto AHG Objection amounts to creditor-on-creditor violence, prioritizing payment in full of creditors holding Digital Assets prior to any value flowing to creditors holding fiat-denominated Claims. Further, the Crypto AHG Objection would result in the members of the Crypto AHG, whose claims arise pursuant to MBAs substantially identical to those of the Ad Hoc Group members, receiving a different, greater, recovery than all other Digital Asset creditors. There is no principled justification for the nine members of the Crypto AHG to benefit over all other creditors. Just as the Court should not countenance DCG's efforts to pickpocket creditors, so too should the Court deny the Crypto AHG's attempts to do the same. The Distribution Principles represent a fair and balanced distribution methodology among the creditors, and are supported by the vast majority of all creditors. The Crypto Group Objection should be overruled.

D. The Ad Hoc Group Restructuring Expenses Must Be Paid as an Administrative Expense

The UST and DCG argue that the Plan improperly provides for the allowance and payment of the Ad Hoc Group Restructuring Expenses as administrative expenses. However, the Ad Hoc Group has been intimately involved in the Debtors' restructuring since the Debtors froze withdrawals in November 2022 and has made a substantial contribution to these Chapter 11 Cases warranting such treatment. Accordingly, the Ad Hoc Group is entitled to payment of the Ad Hoc Group Restructuring Expenses.

Bankruptcy Code section 503(b)(3)(D) grants administrative expense priority to a claim for the "actual, necessary expenses" incurred by a creditor "in making a substantial contribution

in a case under chapter 9 or 11." 11 U.S.C. § 503(b)(3)(D). Section 503(b)(4) provides for the allowance as an administrative expense reasonable compensation for professional services rendered to a creditor entitled to recover pursuant to section 503(b)(3)(D). 11 U.S.C. § 503(b)(4).

The "substantial contribution" test is satisfied "where the services rendered have substantially contributed to an actual and demonstrable benefit to the debtor's estate, its creditors, and to the extent relevant, the debtor's shareholders." *In re United States Lines, Inc.*, 103 B.R. 427, 429 (Bankr. S.D.N.Y. 1989); *In re Best Prods. Co.*, 173 B.R. 862, 865 (Bankr. S.D.N.Y. 1994). This test is intended to promote meaningful participation by creditors in a restructuring. *See id.*; *In re Richton Int'l Corp.*, 15 B.R. 854, 855–56 (Bankr. S.D.N.Y. 1981) ("The policy aim of authorization of such compensation is to promote meaningful creditor participation in the reorganization process . . . the appropriate test of compensable services is whether they substantially contributed to the successful result."). Courts consider several factors in determining evaluating substantial contribution, including "(i) whether the services benefited a creditor, the estate itself, or all interested parties; (ii) whether the services resulted in an actual significant and demonstrable benefit to the estate; and (iii) whether the services were duplicated by the efforts of others involved in the case." *See In re AMR Corp.*, 2014 Bankr. LEXIS 3298 at *4 (Bankr. S.D.N.Y. Aug. 5, 2014); *In re McLean Indus., Inc.*, 88 B.R. 36, 38–39 (Bankr. S.D.N.Y. 1988).

The Ad Hoc Group's participation in these Chapter 11 Cases has provided a significant and demonstrable benefit to the Debtors' estates and creditors. The Debtors acknowledged this benefit and the role of the Ad Hoc Group by executing the letter agreement annexed as Exhibit "B" hereto, providing for the reimbursement of all fees and expenses. Further, the Debtors entered into the MBAs, which provide for payment of the fees and costs incurred by lenders in enforcing the MBAs. *See* MBA § XI. The members of the Ad Hoc Group relied on such commitments, and

the Ad Hoc Group has been intimately engaged in negotiations with the Debtors and other parties in interest since November 2022. Besides services discussed at length above, it drafted and developed the PSA (uniting all of the Debtors' creditor constituencies, as well as the Debtors), Plan, and Distribution Principles, which represent an almost-entirely consensual resolution with respect to the distribution of assets to creditors and are supported by the Debtors and the vast majority of every single class of creditors. The PSA and resulting Plan were extraordinary accomplishments in these Chapter 11 Cases that resolved complex disputes among Digital Asset and USD creditors, as well as the Debtors and the UCC, paving the way for confirmation of the Plan, which will allow the Debtors to emerge from chapter 11, creditors to finally begin receiving recoveries on account of their loaned assets, and litigation against DCG to commence. Additionally, the Ad Hoc Group was instrumental in relaying creditor concerns to the NYAG and brokering the NYAG Settlement, further limiting litigation costs and benefiting the entire estate. Through its efforts in negotiating and formulating the Plan, the Ad Hoc Group made a substantial contribution to these Chapter 11 Cases that benefitted the Debtors' estates and all stakeholders.[26]

The Ad Hoc Group did not duplicate the efforts of others involved in the Chapter 11 Cases and, as referenced below, sought to limit its role while deferring to others. The UCC did not represent the interests of the Ad Hoc Group, and, oftentimes, the UCC and the Ad Hoc Group took differing positions, as demonstrated by the agreement in principle entered into between the UCC,

[26] The UST argues it would be "virtually impossible" for the Ad Hoc Group to satisfy the substantial contribution standard because a prior version of the Plan conditioned the payment of the Ad Hoc Group Restructuring Expenses on members of the Ad Hoc Group holding at least $1.5 billion in claims against GGC supporting and not objecting to the Plan, asserting the payment of the Ad Hoc Group Restructuring Expenses was an inducement to support the Plan rather than payment on account of a bona fide substantial contribution. *See* U.S. Trustee Obj. at 17. However, the UST's reliance on a prior Plan, which has been amended multiple times throughout these Chapter 11 Cases, is unavailing. Regardless, the provisions of the prior Plan cited by the UST were not intended to induce support for the Plan and the Ad Hoc Group has, in fact, filed a reservation of rights with respect to the Plan. Further, for all of the reasons stated herein, the Ad Hoc Group made a substantial contribution to these Chapter 11 Cases.

Debtors, and DCG, which the Ad Hoc Group, on behalf of the majority of creditors in each Class, vehemently opposed, saving the Debtors' estates both time and significant wasted expense pursuing a plan that had no viability. The Ad Hoc Group negotiated extensively with the UCC and the Debtors to instead formulate a Plan that maximizes recoveries for all creditors.

The Ad Hoc Group Restructuring Expenses are reasonable and customary. Pursuant to section 503(b) of the Bankruptcy Code, the reasonableness of professional fees is measured based on the time, nature, extent, and value of the services rendered and whether related expenses are actual and necessary. 11 U.S.C. § 503(b). The Ad Hoc Group's professional fees and expenses satisfy the requirements of section 503(b), considering the time, labor, and skills necessary to negotiate the complex issues addressed by the Plan for well over a year. Further, the fees charged by the Ad Hoc Group's counsel are customary and consistent with fees charged to clients in similarly complex bankruptcy and non-bankruptcy cases. The fees and expenses incurred by the Ad Hoc Group since the Petition Date are only approximately 14.7% of those incurred by the Debtors, and only approximately 28.3% of those incurred by the UCC, further demonstrating the reasonableness of the Ad Hoc Group Restructuring Expenses.

In addition, the payment of fees and expenses of an ad hoc group is frequently approved in connection with a chapter 11 plan, rather than a separate motion for allowance of administrative expenses which the UST asserts is required. The Debtors' request for confirmation of the Plan and the solicitation and discovery procedures approved by this Court provided sufficient notice to all parties in interest. Specifically, the Plan provides for the payment of fees and expenses of the Ad Hoc Group pursuant to the terms and conditions of a prepetition fee reimbursement letter, which is attached hereto as Exhibit "B". *See* Plan Arts. I.A.6, II.E. Courts regularly confirm chapter 11 plans that provide for payment of creditor groups' fees, and approval of the payment of

the Ad Hoc Group Restructuring Expenses is appropriate here. *See In re Residential Cap., LLC*, 2013 WL 12161584 at *7 (Bankr. S.D.N.Y. Dec. 11, 2013) (confirming a plan that provided for payment of creditors' attorneys' fees); *In re Revlon, Inc.*, No. 22-10769 (DSJ) (Bankr. S.D.N.Y. Apr. 3, 2023) (confirming chapter 11 plan that provided for the payment of fees and expenses of three creditor groups); *In re Mallinckrodt PLC*, 639 B.R. 837, 906–07 (Bankr. D. Del. 2022) (confirming a plan that provided for payment of numerous creditor groups).

It is customary and unremarkable for debtors to agree to reimburse settling parties for professional expenses in connection with the execution of plan support agreements pursuant to which creditors undertake obligations, such as to support the plan. *See, e.g., In re Fin. Oversight & Mgmt. Bd. for P.R.*, 636 B.R. 1 (D. P.R. 2022) (confirming plan of adjustment that provided for payment of settling creditors' professional fees); *In re Indianapolis Downs, LLC*, 486 B.R. 286, 300 (Bankr. D. Del. 2013) (approving payment of professional fees of lenders party to a restructuring support agreement as actual, necessary costs of the reorganization).

Accordingly, the payment of the Ad Hoc Group Restructuring Expenses pursuant to the Plan is appropriate, and the UST Objection should be overruled.

E. The Plan Inappropriately Releases the Debtors' Employees, Officers, and Directors

The Ad Hoc Group supports the substance of the Plan for all of the reasons set forth above. However, as the Ad Hoc Group stated in the AHG ROR, the Plan contains releases of the Debtors' current and former employees, officers, and directors (the "Released Personnel") that are not in the best interests of the estates, and, at this time, cannot be justified. The Ad Hoc Group is continuing to discuss the proposed release of the Released Personnel with the Debtors, and hopes to reach a consensual resolution of this issue. The Ad Hoc Group reserves the right to raise

additional arguments at the Confirmation Hearing with respect to the scope of the releases and the consideration being provided in exchange for such releases.

CONCLUSION

For the foregoing reasons, and subject to the AHG ROR, the Ad Hoc Group respectfully requests that the Court confirm the Plan, and grant such other and further relief as is just.

Dated: February 15, 2024
New York, New York

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Counsel to the Ad Hoc Group of Genesis Lenders

Exhibit A

Master Borrow Agreement

MASTER BORROW AGREEMENT

This Master Borrow Agreement ("Agreement") is made on this 12th day of January, 2021 ("Effective Date") by and between Genesis Global Capital, LLC ("Genesis" or "Borrower"), a limited liability company organized and existing under the laws of Delaware with its principal place of business at 111 Town Square Place, Suite 1203, Jersey City, NJ 07310 and [redacted] ("[redacted]" or "Lender") an individual residing at [redacted].

RECITALS

WHEREAS, subject to the terms and conditions of this Agreement, Borrower may, from time to time, seek to initiate a transaction pursuant to which Lender will lend U.S. Dollars or Digital Currency to Borrower, and Borrower will pay a Loan Fee and return such U.S Dollars or Digital Currency to Lender upon the termination of the Loan; and

WHEREAS, Borrower intends to use any Loaned Assets under this Agreement in its Digital Currency lending business;

Now, therefore, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which hereby acknowledged, the Borrower and the Lender hereby agree as follows:

I. Definitions

"***Airdrop***" means a distribution of a new token or tokens resulting from the ownership of a preexisting token. For the purposes of Section V, an "***Applicable Airdrop***" is an Airdrop for which the distribution of new tokens can be definitively calculated according to its distribution method, such as a pro rata distribution based on the amount of the relevant Digital Currency held at a specified time. A "***Non-Applicable Airdrop***" is an Airdrop for which the distribution of new tokens cannot be definitively calculated, such as a random distribution, a distribution to every wallet of the relevant Digital Currency, or a distribution that depends on a wallet of the relevant Digital Currency meeting a threshold requirement.

"***Authorized Agent***" has the meaning set forth in Exhibit A.

"***Borrower***" means Genesis Global Capital, LLC.

"***Borrowed Amount***" refers to the value of the Loaned Assets in U.S. dollars on the Loan Effective Date.

"***Borrower Email***" means lend@genesiscap.co.

"***Business Day***" means a day on which Genesis is open for business, following the New York Stock Exchange calendar of holidays.

"***Business Hours***" means between the hours of 9:00 am to 5:00 pm New York time on a Business Day.

"***Call Option***" means Lender has the option to demand immediate payment of a portion or the entirety of the Loan Balance at any time, subject to this Agreement and in particular Section II(c)(ii).

"Close of Business" means 5:00 pm New York time.

"Collateral" is defined as set forth in Section IV(a)

"***Digital Currency***" means Bitcoin (BTC), Bitcoin Cash (BCH), Ether (ETH), Ether Classic (ETC), or Litecoin (LTC), or any digital currency that the Borrower and Lender agree upon.

"***Digital Currency Address***" means an identifier of alphanumeric characters that represents a digital identity or destination for a transfer of Digital Currency.

"Fixed Term Loan" means a Loan with a pre-determined Maturity Date, where Borrower does not have a Prepayment Option and Lender does not have a Call Option.

"***Hard Fork"*** means a permanent divergence in the blockchain (e.g., when non-upgraded nodes cannot validate blocks created by upgraded nodes that follow newer consensus rules, or an airdrop or any other event which results in the creation of a new token).

"***Lender***" means [redacted]

"***Lender Email***" means [redacted].

"***Loan***" means a request for a loan or an actual loan of Digital Currency or U.S. Dollars made pursuant to and in accordance with this Agreement and a Loan Term Sheet.

"***Loan Balance***" means the sum of all outstanding amounts of Loaned Assets, including New Tokens, Loan Fees, Late Fees, and any Earlier Termination Fee for a particular Loan.

"***Loan Documents***" means this Master Borrow Agreement and any and all Loan Term Sheets entered into between Lender and Borrower.

"***Loan Effective Date***" means the date upon which a Loan begins.

"***Loan Fee***" means the fee paid by Borrower to the Lender for the Loan.

"***Loan Term Sheet***" means the agreement between Lender and Borrower on the particular terms of an individual Loan, which shall be memorialized in an agreement as set forth in Exhibit B or in a form approved by Lender comparable therewith.

"***Loaned Assets***" means any Digital Currency or U.S. Dollar amount transferred in a Loan hereunder until such Digital Currency (or identical Digital Currency) or U.S. Dollar amount is transferred back to Lender hereunder, except that, if any new or different Digital Currency is created or split by a Hard Fork or other alteration in the underlying blockchain and meets the requirements set forth in Section V of this Agreement, such new or different Digital Currency shall be deemed to become Loaned Assets in addition to the former Digital Currency for which such exchange is made. For purposes of return of Loaned Assets by Borrower, such term shall include Digital Currency of the same quantity and type as the Digital Currency, as adjusted pursuant to the preceding sentence.

"***Maturity Date***" means the pre-determined future date upon which a Loan becomes due in full, whether by Term or Call Option.

"***Open Loan***" means a Loan without a Maturity Date where Borrower has a Prepayment Option and Lender has a Call Option.

"***Prepayment Option***" means the Borrower has the option to repay or return the Loaned Assets prior to the Maturity Date without incurring Early Termination Fees, subject to this Agreement and in particular Section II(c)(iii).

"***Term***" means the period from the Loan Effective Date through Termination Date.

"***Term Loan with Call Option***" means a Loan with a pre-determined Maturity Date where Lender has a Call Option.

"***Term Loan with Prepayment Option***" means a Loan with a pre-determined Maturity Date where Borrower has a Prepayment Option.

"***Termination Date***" means the date upon which a Loan is terminated.

II. General Loan Terms.

(a) Loans of Digital Currency or U.S. Dollars

Subject to the terms and conditions hereof, Borrower may, in its sole and absolute discretion, request from the Lender a Loan to Borrower of a specified amount of Digital Currency or U.S. Dollars, and Lender may, in its sole and absolute discretion, extend such Loan or decline to extend such Loan on terms acceptable to Lender and as set forth in a corresponding Loan Term Sheet.

(b) Loan Procedure

From time to time during the Term of this Agreement, during the hours of 9:00 am New York time to 4:00 pm New York time on a Business Day (the "Request Day"), by email directed to Lender Email (or such other address as Lender may specify in writing), an Authorized Agent of Borrower may request from Lender a Loan of a specific amount of Digital Currency or U.S.

Dollars (a "Lending Request"). Provided Lender receives such Lending Request prior to 3:00 pm New York time, Lender shall by email directed to Borrower Email (or such other address as Lender may specify in writing) to inform Borrower whether Lender agrees to make such a Loan. If Lender fails to provide Borrower with an acceptance as to a particular Lending Request prior to Close of Business on the Request Day, such Lending Request shall be deemed to have been denied by Lender.

As part of its Lending Request, Borrower shall provide the following proposed terms:

(i) Whether U.S. Dollars or Digital Currency, and if Digital Currency, the type of Digital Currency;
(ii) the amount of Digital Currency or U.S. Dollars;
(iii) whether the Loan is to be a Fixed Term Loan, a Term Loan with Prepayment Option, or an Open Loan;
(iv) the Loan Effective Date; and
(v) the Maturity Date (if a Fixed Term Loan or a Term Loan with Prepayment Option).

If Lender agrees to make a Loan in accordance with Borrower's proposed terms, Lender shall commence transmission to either (x) the Borrower's Digital Currency Address the amount of Digital Currency, or (y) Borrower's bank account by bank wire the amount of U.S. Dollars, as applicable, as such Digital Currency Address or bank wire instruction is set forth in the Lending Request on or before Close of Business on the Request Day. In the event Lender requests a modification to the proposed terms, including a proposal for a Call Option, Lender shall provide notice of such, and upon Borrower's acceptance of said modified terms, Lender shall commence transmission to Borrower's Digital Currency Address the amount of Digital Currency set forth in the Lending Request on or before Close of Business on the Request Day.

The specific and final terms of a Loan shall be memorialized using the Loan Term Sheet, which shall be delivered and executed after the final terms of a Loan are agreed to and prior to the delivery of the Loaned Assets. In the event of a conflict of terms between this Master Borrow Agreement and a Loan Term Sheet, the terms in the Loan Term Sheet shall govern.

(c) Loan Repayment Procedure

(i) Loan Repayment

Unless otherwise specified in subsections (ii) and (iii) below, upon the earlier of the Maturity Date, the Recall Delivery Day, or the Redelivery Day (as defined below) for a Loan, Borrower shall repay the entirety of the Loan Balance to Lender by Close of Business. If Lender has not provided to Borrower a Digital Currency Address for receiving the repayment of a Loan by Close of Business on the day prior to the earlier of the Maturity Date, the Recall Delivery Day (defined below), or the Redelivery Day (defined below), then such Loan will become an Open Loan on said Maturity Date or Redelivery Day, whichever applicable, and no additional Loan Fees shall be accrued after the Maturity Date or the Redelivery Day.

(ii) Call Option

For Loans in which the Lender has a Call Option (e.g. Open Loans, etc.), Lender may during Business Hours (the "Recall Request Day") demand repayment of a portion or the entirety of the Loan Balance (the "Recall Amount"). Lender will notify Borrower of Lender's exercising of this right by email to Borrower's Email. Borrower will then have until Close of Business on the seventh Business Day after the Recall Request Day (the "Recall Delivery Day") to deliver the Recall Amount.

In the event of a Call Option where Lender demands only a portion of the Loan Balance, Borrower shall repay said portion of the Loan Balance on the Recall Delivery Day and the remaining portion of the Loan Balance on the earlier of the Maturity Date or the subsequent Recall Delivery Day.

(iii) Prepayment Option

For Loans in which Borrower has a Prepayment Option (e.g. Open Loans, Term Loans with Prepayment Option, etc.), Borrower may notify Lender during Business Hours of Borrower's intent to return the Loan prior to the Maturity Date or the date Lender exercises its Call Option without being subject to, and as a result will not incur, Early Termination Fees as set forth in Section III(d). Borrower shall provide said notice at least one Business Day prior to the date on which the Borrower will repay all or a portion of the Loan Balance (said later date, the "Redelivery Day"). Borrower's exercising of its Prepayment Option shall not relieve it of any of its other obligations herein, including without limitation its payment of owed Loan Fees and Late Fees.

In the event of a Prepayment Option where the Borrower repays only a portion of the Loan Balance, Borrower shall repay said portion of the Loan Balance on the Redelivery Day and the remaining portion of the Loan Balance on the earlier of the Maturity Date, the Recall Delivery Day, or a subsequent Redelivery Day.

(d) Termination of Loan

A Loan will terminate upon the earlier of:

(i) the Maturity Date;

(ii) the repayment of the Loan Balance by Borrower prior to the Maturity Date;

(iii) the occurrence of an Event of Default as defined in Section VII; however, Lender shall have the right in its sole discretion to suspend the termination of a Loan under this subsection (iii) and reinstitute the Loan. In the event of reinstitution of the Loan pursuant to the preceding sentence, Lender does not waive its right to terminate the Loan hereunder; or

(iv) in the event any or all of the Loaned Assets becomes in Borrower's sole discretion a risk of being: (1) considered a security, swap, derivative, or other similarly-regulated financial instrument or asset by any regulatory authority, whether

governmental, industrial, or otherwise, or by any court of law or dispute resolution organization, arbitrator, or mediator; or (2) subject to future regulation materially impacting this Agreement, the Loan, or Borrower's business.

Nothing in the forgoing shall cause, limit, or otherwise affect the Term and termination of this Agreement except as specified in Section XXIII.

In the event of a termination of a Loan, any Loaned Assets or Collateral shall be redelivered immediately and any fees or owed shall be payable immediately to the appropriate party specified herein.

(e) Redelivery in an Illiquid Market

If (i) the seven-day average daily trading volume across each of the three highest-volume digital currency exchanges that report prices for the applicable Digital Currency (as measured by the 30-day average daily trading volume of the applicable Digital Currency on the Loan Date) (these such exchanges, the "Liquidity Exchanges") has decreased by 90% from the date of the Loan Term Sheet to the Maturity Date, Recall Delivery Day, or Redelivery Day, whichever applicable, or (ii) the Loaned Assets ceases to be listed on any of the Liquidity Exchanges (the duration of either event herein designated, the "Illiquid Period"), Borrower may repay the Loan in U.S. Dollars equal to the volume-weighted average price of the Loaned Assets on the Liquidity Exchanges (measured at 4:00 p.m. New York time) during the Illiquid Period, up to a maximum of 30 days (the "Illiquid Market Spot Rate").

If two of the three Liquidity Exchanges limit or suspend withdrawals or transactions in the Loaned Assets on the Maturity Date, the Recall Delivery Day, or the Redelivery Day, whichever applicable, the requirement for Borrower to return the Loaned Assets shall be temporarily suspended, without penalty or default, including without limitation the incurring of additional Loan Fees, until such time that at least two of the Liquidity Exchanges allow the resumption of withdrawals of and transactions in the Loaned Assets.

III. Loan Fees and Transaction Fees.

(a) Loan Fee

Unless otherwise agreed, Borrower agrees to pay Lender a financing fee on each Loan (the "Loan Fee"). When a Loan is executed, the Borrower will be responsible to pay the Loan Fee as agreed to herein and annualized in the relevant Loan Term Sheet and subject to change if thereafter agreed by Borrower and Lender. Except as Borrower and Lender may otherwise agree, Loan Fees shall accrue from, but excluding, the date on which the Loaned Digital Currencies or Loaned U.S. Dollars are transferred to Borrower until, and including, the date on which such Loaned Digital Currencies or Loaned U.S. Dollars are repaid in their entirety to Lender.

Lender shall calculate any Loan Fees owed on a daily basis and provide Borrower with the calculation upon request. The Loan Fee will be calculated off all outstanding portions of the Loaned Digital Currencies or Loaned U.S. Dollars.

(b) Late Fee

For each Calendar Day in excess of the Maturity Date or the Recall Delivery Day (whichever is applicable) in which Borrower has not returned the entirety of the Loaned Assets or failed to timely pay any outstanding Loan Fee in accordance with Section III(c), Borrower shall incur an additional fee (the "Late Fee") of a 1% (annualized, calculated daily) on all outstanding portions of the Loaned Digital Currencies or Loaned U.S. Dollars.

(c) Payment of Loan Fees and Late Fees

Unless otherwise agreed, any Loan Fee or Late Fees payable hereunder shall be paid by Borrower upon the earlier of (i) five (5) Business Days after receipt of an invoice from Lender or (ii) the termination of all Loans hereunder (the "Payment Due Date"). An invoice for Loan Fees and any Late Fees (the "Invoice Amount") shall be sent out on the first Business Day of the month and shall include any Loan Fees, Late Fees, and Early Termination Fees incurred and outstanding during the previous month and periods. Borrower shall have up to five Business Days from the date of said Invoice to pay the Invoice Amount. Failure of Lender to timely send an invoice in accordance with the preceding sentence shall not be considered a material default under Section VIII(d) nor shall it relieve Borrower of its obligation to pay any Loan Fees, Late Fees, and Early Termination Fees owed herein nor negate any Event of Default resulting from Borrower's failure to timely pay such fees. The Loan Fee, Late Fees, and Early Termination Fees shall be payable, unless otherwise agreed by the Borrower and Lender in the Loan Term Sheet, in the same Loaned Assets that were borrowed, whether U.S. Dollars or Digital Currency on the same blockchain and of the same type that was loaned by the Lender during the Loan.

(d) Early Termination Fees

For Fixed Term Loans and Term Loans with Call Options, if Borrower returns the Loaned Assets prior to the Maturity Date, Borrower shall pay to Lender a fee equal to twenty percent (20%) of the Loan Fee that would have accrued from the date of the repayment until the Maturity Date of the Loan (the "Early Termination Fee"). The Early Termination Fee is due with the repayment of the Loaned Assets. The Early Termination Fee shall not apply if Borrower returns the Loaned Assets to Lender in the event of a Hard Fork (as defined in Section V) or if Lender moves up the Maturity Date to an earlier date by exercising a Call Option.

(e) Taxes and Fees

Borrower shall report to the Internal Revenue Service ("IRS") all Loan Fees paid to Lender under this Agreement, and shall provide Lender Form 1099-INT annually documenting the amount reported to the IRS. For any Loan Fees paid in Digital Currency, such Loan Fees shall be calculated at the Coinbase Pro spot rate at 4 p.m. New York time daily on any day that Loan Fees accrue. Neither Borrower nor Lender shall have any liability to the other party for any taxes due under this Agreement.

IV. Collateral Requirements

(a) Collateral

If agreed in a Loan Term Sheet, Borrower shall provide as collateral an amount of U.S. Dollars, or Digital Currency as set forth below, or to be determined and agreed upon by the Borrower and Lender ("Collateral") and memorialized using the Loan Term Sheet. The Collateral will be calculated as a percentage of the value of the Loaned Assets, such value determined by a spot rate agreed upon in the Loan Term Sheet. Borrower shall, prior to or concurrently with the transfer of the Loaned Assets to Borrower, but in no case later than the Close of Business on the day of such transfer, transfer to Lender the agreed upon Collateral.

Collateral shall always be valued in U.S. Dollars, but Borrower may, if mutually agreed by both parties, provide the Collateral (in whole or in part) to Lender in Digital Currency in an amount equal to the value of the Collateral in U.S. Dollars at a spot rate determined by Borrower. For the avoidance of doubt, upon the repayment of the Loaned Assets at the termination of a Loan, Lender shall return to Borrower the same amount and type of Collateral that was deposited, net of any Additional Collateral, Margin Call, or Refunded Collateral adjustments (as defined below in Sections IV(c) & (e)). If a Hard Fork in the blockchain of Digital Currency meeting the criteria in Section V occurs while Lender is holding such Digital Currency as Collateral, Lender shall return the New Tokens (as defined in Section V) to Borrower in addition to the Collateral and Additional Collateral. If a Hard Fork occurs that does not meet the criteria in Section V, Lender shall have no obligation to return any New Tokens to Borrower.

The Collateral transferred by Borrower to Lender, as adjusted herein, shall be security for Borrower's obligations in respect of such Loan. Borrower hereby pledges with, assigns to, and grants Lender a continuing first priority security interest in, and a lien upon, the Collateral, which shall attach upon the transfer of the Loaned Assets by Lender to Borrower and which shall cease upon the return of the Loaned Assets by Borrower to Lender.

(b) Loan and Collateral Transfer

If Lender transfers Loaned Assets to Borrower and Borrower does not transfer Collateral to Lender as provided in Section IV(a), Lender shall have the absolute right to the return of the Loaned Assets; and if Borrower transfers Collateral to Lender, as provided in Section IV(a), and Lender does not transfer the Loaned Assets to Borrower, Borrower shall have the absolute right to the return of the Collateral.

(c) Margin Calls

If during the Term of a Loan the value of the Loaned Assets increases, or the value of the Collateral decreases, so that the value of the Loaned Assets becomes equal to or greater than the value of the Collateral (the "Margin Call Limit"), Lender shall have the right to require Borrower to contribute additional Collateral so that the Collateral is at least the same percentage indicated in the Loan

Term Sheet relative to the value of the Loaned Assets (the "Additional Collateral") as measured by the spot rate published on Coinbase Pro (such rate, the "Margin Call Spot Rate").

If Lender requires Borrower to contribute Additional Collateral, it shall send an email notification (the "First Notification") to the Borrower at the email address indicated in Section XIII (or such other address as the parties shall agree to in writing) that sets forth: (i) the value of the Loaned Assets, (ii) the value of the Collateral, (iii) the Margin Call Spot Rate and (iv) the amount of Additional Collateral required based on the Margin Call Spot Rate. Borrower shall have twenty-four (24) hours from the time Lender sends such First Notification to (x) respond and send payment to Lender in accordance with subsection (d) below, or (y) respond that the value of the Loaned Assets, value of the Collateral, or spot rate as indicated on Coinbase Pro as applicable, has decreased sufficiently such that it is no longer at or above the Margin Call Spot Rate. If Lender agrees by email that Borrower's response according to (y) above is correct, then no other action is required by Borrower.

If Borrower fails to respond to the First Notification within twenty-four (24) hours, or Lender rejects Borrower's response pursuant to (y) above and the spot rate of the Loaned Assets is still at least at the Margin Call Spot Rate, Lender shall send a second email notification (the "Second Notification") repeating the information in provisions (i) – (iv) in the preceding paragraph. Borrower shall have twelve (12) hours from the time Lender sends the Second Notification to respond according to (x) or (y) in the preceding, and Lender has the right to accept or reject Borrower's response as stated above. Upon Lender's rejection of Borrower's response to the Second Notification, Borrower shall make immediate payment of Additional Collateral as set forth in Section IV(d) below. Failure to provide Additional Collateral, or failure by Borrower to respond to either the First Notification or the Second Notification, shall give Lender the option to declare an Event of Default under Section VII below.

Borrower acknowledges that its obligations hereunder, including those in this Section IV, continue regardless of Lender's request for Additional Collateral and Borrower's acceptance or rejection of the same.

(d) Payment of Additional Collateral

Payment of the Additional Collateral shall be made by bank wire to the account, or if applicable the Digital Currency Address, specified in the Loan Term Sheet or by a return of the amount of Loaned Assets necessary to make the Collateral percentage indicated in the Loan Term Sheet correct based on the Margin Call Spot Rate. For any return of Loaned Assets made in accordance with this Section, Borrower is still responsible for payment of any Early Termination Fees that apply to the particular Loan.

(e) Refund of Collateral

If during the Term of a Loan the value of the Loaned Assets decreases, or the value of the Collateral increases, so that the value of the Collateral relative to the value of the Loaned Assets becomes equal to or greater than the percentage indicated in the Loan Term Sheet (the "Collateral Refund Limit"), Borrower shall have the right to require Lender to return an amount of Collateral so that

the Collateral is at no greater than the percentage indicated in the Loan Term Sheet relative to the value of the Loaned Assets (the "Refunded Collateral") as measured by the spot rate published on Coinbase Pro (such rate, the "Collateral Refund Spot Rate").

If Borrower requires Lender to repay Refunded Collateral, it shall send an email notification (the "First Refund Notification") to the Lender at the Lender Email that sets forth: (i) the value of the Loaned Assets, (ii) the value of the Collateral, (iii) the Collateral Refund Spot Rate and (iv) the amount of Additional Collateral required based on the Margin Call Spot Rate. Lender shall have twenty-four (24) hours from the time Borrower sends such First Refund Notification to (x) respond and send payment to Borrower in accordance with subsection (f) below, or (y) respond that the value of the Loaned Assets as a percentage of the value of the Collateral has increased sufficiently such that it is no longer at or below the Collateral Refund Spot Rate. If Borrower agrees by email that Lender's response according to (y) above is correct then no other action is required by Lender.

If Lender fails to respond to the First Refund Notification within twenty-four (24) hours, and the value of the Loaned Assets is still at or below the Collateral Refund Spot Rate, Borrower shall send a second email notification (the "Second Refund Notification") repeating the information in (i) – (iv) in the preceding paragraph. Lender shall have twelve (12) hours from the time Borrower sends the Second Refund Notification to respond according to (x) or (y) in the preceding paragraph. Failure by Lender to respond to either the First Refund Notification or the Second Refund Notification shall give Borrower the option to declare an Event of Default under Section VII below.

(f) Payment of Refunded Collateral

Payment of the Refunded Collateral shall be made by bank wire to the account specified by the Borrower or to a Digital Currency Address specified by the Borrower, as applicable.

(g) Return of Collateral

Upon Borrower's repayment of the Loan and acceptance by Lender of the Loaned Assets into Lender's Digital Currency Address, with such delivery being confirmed on the relevant Digital Currency blockchain ten times, Lender shall initiate the return of Collateral within two Business Days to a bank account designated by Borrower or, where Digital Currency is Collateral, into an applicable Digital Currency Address on the behalf of Borrower.

V. Hard Fork

(a) Notification

In the event of a public announcement of a future Hard Fork or an Airdrop in the blockchain for any Loaned Assets, Lender shall provide email notification to Borrower.

(b) No Immediate Termination of Loans Due to Hard Fork

In the event of a Hard Fork in the blockchain for any Loaned Assets or an Airdrop, any outstanding Loans will not be automatically terminated. Borrower and Lender may agree,

regardless of Loan type, either (i) to terminate a Loan without any penalties on an agreed upon date or (ii) for Lender to manage the Hard Fork on the behalf of Borrower. Nothing herein shall relieve, waive, or otherwise satisfy Borrower's obligations hereunder, including without limitation, the return of the Loaned Assets at the termination of the Loan and payment of accrued Loan Fees, which includes the per diem amounts for days on which Borrower transfers Digital Currency to Lender and Lender transfers said Digital Currency back to Borrower pursuant to this section.

(c) Lender's Right to New Tokens

Lender will receive the benefit and ownership of any incremental tokens generated as a result of a Hard Fork in the Digital Currency protocol or an Applicable Airdrop (the "New Tokens") if any two of the following four conditions are met:

- *Hash Power*: the average hash power mining the New Token on the 30th day following the occurrence of the Hard Fork or Applicable Airdrop (calculated as a 30-day average on such date) is at least 5% of the hash power mining the Loaned Assets on the day preceding the Hard Fork or Applicable Airdrop (calculated as a 3-day average of the 3 days preceding the Hard Fork).
- *Market Capitalization*: the average market capitalization of the New Token (defined as the total value of all New Tokens) on the 30th day following the occurrence the Hard Fork or Applicable Airdrop (calculated as a 30-day average on such date) is at least 5% of the average market capitalization of the Loaned Assets (defined as the total value of the Loaned Assets) (calculated as a 30-day average on such date).
- *24-Hour Trading Volume*: the average 24-hour trading volume of the New Token on the 30th day following the occurrence the Hard Fork or Applicable Airdrop (calculated as a 30-day average on such date) is at least 1% of the average 24-hour trading volume of the Loaned Assets (calculated as a 30-day average on such date).
- *Wallet Compatibility*: the New Token is supported by either BitGo wallets or Ledger wallets within 30 days of the Hard Fork or Applicable Airdrop.

For the above calculations, the source for the relevant data on the Digital Currency hash power, market capitalization, and 24-Hour trading volume will be blockchain.info (or, if blockchain.info does not provide the required information, bitinfocharts.com, and if neither provides the required information, the parties shall discuss in good faith to mutually agree upon another data source) and the source for the hash power of the New Token will be bitinfocharts.com (or, if bitinfocharts.com does not provide the required information, the parties shall discuss in good faith to mutually agree upon another data source prior to the 30-day mark of the creation of the New Token).

If the Hard Fork or Applicable Airdrop meets the criteria above, Borrower will have up to 60 days from the Hard Fork or Applicable Airdrop to transfer the New Tokens to Lender. If sending the New Tokens to Lender is burdensome, upon Lender's written agreement with Borrower, Borrower can reimburse Lender for the value of the New Tokens by either (i) a one-time payment in the same Loaned Assets transferred as a part of the Loan reflecting the amount of the New Tokens owed using the spot rate agreed upon by the Parties at the time of said repayment, or (ii) returning the borrowed Digital Currency so that Lender can manage the split of

the underlying digital tokens as described in Section IV(b) above. Alternatively, subject to Lender's written agreement, the parties may agree to other methods of making Lender whole for Borrower's failure to transfer New Tokens to Lender. In all cases, Borrower will be solely responsible for payment of additional costs incurred by any transfer method other than returning the New Tokens to Lender, including but not limited to technical costs, third party fees, and tax obligations for the transaction, including but not limited to a tax gross-up payment. For the avoidance of doubt, if Borrower returns a Loan to Lender prior to the 30th day following a Hard Fork, Borrower's obligations under this Section V shall continue for any New Tokens that meet the criteria in this subsection (c) for such Loan on the 30th day following the Hard Fork. Lender's rights to New Tokens as set forth in this Section shall survive the termination of the relevant Loan, return of the Loaned Assets, and termination of this Agreement.

VI. Representations and Warranties.

The parties to this Agreement (individually, a "Party," collectively the "Parties") hereby make the following representations and warranties, which shall continue during the term of this Agreement and any Loan hereunder:

(a) Each Party represents and warrants that (i) it has the power to execute and deliver this Agreement, to enter into the Loans contemplated hereby and to perform its obligations hereunder, (ii) it has taken all necessary action to authorize such execution, delivery and performance, and (iii) this Agreement constitutes a legal, valid, and binding obligation enforceable against it in accordance with its terms.

(b) Each Party hereto represents and warrants that it has not relied on the other for any tax or accounting advice concerning this Agreement and that it has made its own determination as to the tax and accounting treatment of any Loan, any Digital Currency, Collateral, or funds received or provided hereunder.

(c) Each Party hereto represents and warrants that it is acting for its own account.

(d) Each Party hereto represents and warrants that it is a sophisticated party and fully familiar with the inherent risks involved in the transaction contemplated in this Agreement, including, without limitation, risk of new financial regulatory requirements, potential loss of money and risks due to volatility of the price of the Loaned Assets, and voluntarily takes full responsibility for any risk to that effect.

(e) Each Party represents and warrants that it is not insolvent and is not subject to any bankruptcy or insolvency proceedings under any applicable laws

(f) Each Party represents and warrants there are no proceedings pending or, to its knowledge, threatened, which could reasonably be anticipated to have any adverse effect on the transactions contemplated by this Agreement or the accuracy of the representations and warranties hereunder or thereunder.

(g) Each Party represents and warrants that to its knowledge the transactions contemplated in this Agreement are not prohibited by law or other authority in the jurisdiction of its place of incorporation, place of principal office, or residence and that it has necessary licenses and registrations to operate in the manner contemplated in this Agreement.

(h) Lender represents and warrants that it has, or will have at the time of the loan of any Digital Currency, the right to lend such Loaned Assets subject to the terms and conditions hereof, and free and clear of all liens and encumbrances other than those arising under this Agreement.

(i) Borrower represents and warrants that it has, or will have at the time of return of any Loaned Assets, the right to transfer such Loaned Assets subject to the terms and conditions hereof.

(j) Borrower represents and warrants that it has, or will have at the time of transfer of any Collateral, the right to grant a first priority security interest in said Collateral subject to the terms and conditions hereof.

VII. Default

It is further understood that any of the following events shall constitute an event of default hereunder against the defaulting Party, and shall be herein referred to as an "Event of Default" or "Events of Default":

(a) the failure of the Borrower to return any and all Loaned Assets upon termination of any Loan however, Borrower shall have ten Business Days to cure such default;

(b) the failure of Borrower to pay any and all Loan Fees, Late Fees, or to remit any New Tokens, however, Borrower shall have ten Business Days to cure such default;

(c) the failure of either Party to transfer Collateral or Additional Collateral, including any Refunded Collateral, as required by Section IV, however, a Party shall have ten Business Days to cure such default;

(d) a material default by either Party in the performance of any of the other agreements, conditions, covenants, provisions or stipulations contained in this Agreement, including without limitation a failure by either Party to abide by its obligations in Section IV or V of this Agreement and such Party's failure to cure said material default within ten Business Days;

(e) any bankruptcy, insolvency, reorganization or liquidation proceedings or other proceedings for the relief of debtors or dissolution proceedings that are instituted by or against a Party and are not be dismissed within thirty (30) days of the initiation of said proceedings; or

(f) any representation or warranty made by either Party in any of the Loan Documents that proves to be incorrect or untrue in any material respect as of the date of making or deemed making thereof however, a Party shall have ten Business Days to cure such default.

VIII. Remedies

(a) Upon the occurrence and during the continuation of any Event of Default on a Loan by Borrower, the Lender may, at its option: (1) declare the entire Loan Balance outstanding for the Loan hereunder immediately due and payable; (2) transfer any Collateral for a Loan from the collateral account to Lender's operating account necessary for the payment of any nonpayment, liability, obligation, or indebtedness created by the Loan; and/or (3) exercise all other rights and remedies available to the Lender hereunder, under applicable law, or in equity. If any Event of Default by Borrower under Sections VII(a), (b), (c), or (d) persist for thirty days or more, or immediately upon an Event of Default by Borrower under Sections VII(e) or (f), the Lender may, at its option, (4) terminate this Agreement and any Loan hereunder upon notice to Borrower.

(b) Upon the occurrence and during the continuation of any Event of Default on a Loan by Lender, the Borrower may, at its option: (1) demand a return of any and all Collateral in the control or possession of Lender or its agents; (2) withhold repayment of the Loaned Assets and any outstanding Loan Fees, Late Fees or other amounts claimed by Lender; and/or (3) exercise all other rights and remedies available to the Borrower hereunder, under applicable law, or in equity. If any Event of Default by Lender under Sections VII (c) or (d) persist for thirty-days or more, or immediately upon an Event of Default by Lender under Sections VII (e) or (f), the Borrower may, at its option, (4) terminate this Agreement and any Loan hereunder upon notice to Lender.

(c) In addition to its rights hereunder, the non-defaulting Party shall have any rights otherwise available to it under any other agreement or applicable law; however, the non-defaulting Party shall have an obligation to mitigate its damages in a commercially reasonable manner.

IX. Rights and Remedies Cumulative.

No delay or omission by a Party in exercising any right or remedy hereunder shall operate as a waiver of the future exercise of that right or remedy or of any other rights or remedies hereunder. All rights of each Party stated herein are cumulative and in addition to all other rights provided by law, in equity.

X. Survival of Rights and Remedies

All remedies hereunder and all obligations with respect to any Loan shall survive the termination of the relevant Loan, return of Loaned Assets or Collateral, and termination of this Agreement.

XI. Governing Law; Dispute Resolution.

This Agreement is governed by, and shall be construed and enforced under, the laws of the State of New York without regard to any choice or conflict of laws rules. If a dispute arises out of or relates to this Agreement, or the breach thereof, and if said dispute cannot be settled through negotiation it shall be finally resolved by arbitration administered in the County of New York, State of New York by the American Arbitration Association under its Commercial Arbitration Rules, or such other applicable arbitration body as required by law or regulation, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction. The parties agree to waive their rights to a jury trial. If any proceeding is brought for the enforcement of this Agreement, then the successful or prevailing party shall be entitled to recover attorneys' fees and other costs incurred in such proceeding in addition to any other relief to which it may be entitled.

XII. Confidentiality.

(a) Each Party to this Agreement shall hold in confidence all information obtained from the other Party in connection with this Agreement and the transactions contemplated hereby, including without limitation any discussions preceding the execution of this Agreement (collectively, "Confidential Information"). Confidential Information shall not include information that the receiving Party demonstrates with competent evidence was, or becomes, (i) available to the public through no violation of this Section XIV, (ii) in the possession of the receiving Party on a non-confidential basis prior to disclosure, (iii) available to the receiving Party on a non-confidential basis from a source other than the other Party or its affiliates, subsidiaries, officers, directors, employees, contractors, attorneys, accountants, bankers or consultants (the "Representatives"), or (iv) independently developed by the receiving Party without reference to or use of such Confidential Information.

(b) Each Party shall (i) keep such Confidential Information confidential and shall not, without the prior written consent of the other Party, disclose or allow the disclosure of such Confidential Information to any third party, except as otherwise herein provided, and (ii) restrict internal access to and reproduction of the Confidential Information to a Party's Representatives only on a need to know basis; provided, however, that such Representatives shall be under an obligation of confidentiality at least as strict as set forth in this Section XII.

(c) Each Party also agrees not to use Confidential Information for any purpose other than in connection with transactions contemplated by this Agreement.

(d) The provisions of this Section XII will not restrict a Party from disclosing the other Party's Confidential Information to the extent required by any law, regulation, or direction by a court of competent jurisdiction or government agency or regulatory authority with jurisdiction over said Party; provided that the Party required to make such a disclosure uses reasonable efforts to give the other Party reasonable advance notice of such required disclosure in order to enable the other Party to prevent or limit such

disclosure. Notwithstanding the foregoing, Lender may disclose the other Party's Confidential Information without notice pursuant to a written request by a governmental agency or regulatory authority.

(e) The obligations with respect to Confidential Information shall survive for a period of three (3) years from the date of this Agreement. Notwithstanding anything in this agreement to the contrary, a Party may retain copies of Confidential Information (the "Retained Confidential Information") to the extent necessary (i) to comply with its recordkeeping obligations, (ii) in the routine backup of data storage systems, and (iii) in order to determine the scope of, and compliance with, its obligations under this Section XII; provided, however, that such Party agrees that any Retained Confidential Information shall be accessible only by legal or compliance personnel of such Party and the confidentiality obligations of this Section XII shall survive with respect to the Retained Confidential Information for so long as such information is retained.

XIII. Notices.

Unless otherwise provided in this Agreement, all notices or demands relating to this Agreement shall be in writing and shall be personally delivered or sent by Express or certified mail (postage prepaid, return receipt requested), overnight courier, electronic mail (at such email addresses as a Party may designate in accordance herewith), or to the respective address set forth below:

Lender:
[redacted]

Borrower:
Genesis Global Capital, LLC
111 Town Square Place, Suite 1203
Jersey City, NJ 07310
Attn: Michael Moro, CEO
Email: michael@genesiscap.co

Either Party may change its address by giving the other Party written notice of its new address as herein provided.

XIV. Modifications.

All modifications or amendments to this Agreement shall be effective only when reduced to writing and signed by both parties hereto.

XV. Single Agreement

Borrower and Lender acknowledge that, and have entered into this Agreement in reliance on the fact that, all Loans hereunder constitute a single business and contractual relationship and have been entered into in consideration of each other. Accordingly, Borrower and Lender hereby agree that payments, deliveries, and other transfers made by either of them in respect of any Loan shall be deemed to have been made in consideration of payments, deliveries, and other transfers in respect of any other Loan hereunder, and the obligations to make any such payments, deliveries and other transfers may be applied against each other and netted. In addition, Borrower and Lender acknowledge that, and have entered into this Agreement in reliance on the fact that, all Loans hereunder have been entered into in consideration of each other.

XVI. Entire Agreement.

This Agreement, each exhibit referenced herein, and all Loan Term Sheets constitute the entire Agreement among the parties with respect to the subject matter hereof and supersedes any prior negotiations, understandings and agreements. Nothing in this Section XVI shall be construed to conflict with or negate Section XV above.

XVII. Successors and Assigns.

This Agreement shall bind and inure to the benefit of the respective successors and assigns of each of the parties; provided, that Lender may not assign this Agreement or any rights or duties hereunder without the prior written consent of the Borrower (such consent to not be unreasonably withheld). Borrower may assign this Agreement or any rights or duties hereunder upon notice to Lender. Notwithstanding the foregoing, in the event of a change of control of Lender or Borrower, prior written consent shall not be required so such Party provides the other Party with written notice prior to the consummation of such change of control. For purposes of the foregoing, a "change of control" shall mean a transaction or series of related transactions in which a person or entity, or a group of affiliated (or otherwise related) persons or entities acquires from stockholders of the Party shares representing more than fifty percent (50%) of the outstanding voting stock of such Party. Neither this Agreement nor any provision hereof, nor any Exhibit hereto or document executed or delivered herewith, or Loan Term Sheet hereunder, shall create any rights in favor of or impose any obligation upon any person or entity other than the parties hereto and their respective successors and permitted assigns. For the avoidance of doubt, any and all claims and liabilities against Genesis arising in any way out of this Agreement are only the obligation of Genesis, and not any of its parents or affiliates, including but not limited to Digital Currency Group, Inc. and Genesis Global Trading, Inc. The Parties agree that none of Genesis' parents or affiliates shall have any liability under this Agreement nor do such related entities guarantee any of Genesis' obligations under this Agreement.

XVIII. Severability of Provisions.

Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision.

XIX. Counterpart Execution.

This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement. Delivery of an executed counterpart of this Agreement by email or other electronic method of transmission shall be equally as effective as delivery of an original executed counterpart of this Agreement. Any Party delivering an executed counterpart of this Agreement by email or other electronic method of transmission also shall deliver an original executed counterpart of this Agreement but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement.

XX. Relationship of Parties.

Nothing contained in this Agreement shall be deemed or construed by the Parties, or by any third party, to create the relationship of partnership or joint venture between the parties hereto, it being understood and agreed that no provision contained herein shall be deemed to create any relationship between the parties hereto other than the relationship of Borrower and Lender.

XXI. No Waiver.

The failure of or delay by either Party to enforce an obligation or exercise a right or remedy under any provision of this Agreement or to exercise any election in this Agreement shall not be construed as a waiver of such provision, and the waiver of a particular obligation in one circumstance will not prevent such Party from subsequently requiring compliance with the obligation or exercising the right or remedy in the future. No waiver or modification by either Party of any provision of this Agreement shall be deemed to have been made unless expressed in writing and signed by both parties.

XXII. Indemnification.

Lender shall indemnify and hold harmless Genesis, or any of its parents or affiliates, from and against any and all third party claims, demands, losses, expenses and liabilities of any and every nature (including attorneys' fees of an attorney of Genesis' choosing to defend against any such claims, demands, losses, expenses and liabilities) that Genesis may sustain or incur or that may be asserted against it arising out of Genesis' borrowing Digital Currency from Lender under this Agreement, except for any and all claims, demands, losses, expenses and liabilities arising out of or relating to Genesis' bad faith, gross negligence or willful misconduct in the performance of its duties under this Agreement.

XXIII. Term and Termination.

The Term of this Agreement shall commence on the date hereof for a period of one year, and shall automatically renew for successive one-year terms annually, unless either Party provides notice of a desire to terminate the contract no less than ten (10) days prior to the end of such one-year period. The foregoing notwithstanding, this Agreement may be terminated as set forth in Section VIII or upon 30 days' notice by either Party to the other.

In the event of a termination of this Agreement, any Loaned Assets or Collateral shall be redelivered immediately and any fees owed shall be payable immediately.

XXIV. Miscellaneous.

Whenever used herein, the singular number shall include the plural, the plural the singular, and the use of the masculine, feminine, or neuter gender shall include all genders where necessary and appropriate. This Agreement is solely for the benefit of the parties hereto and their respective successors and assigns, and no other Person shall have any right, benefit, priority or interest under, or because of the existence of, this Agreement. The section headings are for convenience only and shall not affect the interpretation or construction of this Agreement. The Parties acknowledge that the Agreement and any Lending Request are the result of negotiation between the Parties which are represented by sophisticated counsel and therefore none of the Agreement's provisions will be construed against the drafter.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and delivered as of the date first above written.

LENDER:

[redacted]

By: _____
Name: [redacted]
Title: [redacted]

BORROWER:

GENESIS GLOBAL CAPITAL, LLC

DocuSigned by:
By: Kristopher Johnson
E5D870D05A1C4B3...
Name: Kristopher Johnson
Title: Senior Risk Officer

EXHIBIT A

Authorized Agents. The following are authorized to deliver Lending Requests on behalf of Borrower in accordance with Section II hereof:

Name: [redacted]
Email: [redacted]

Name: [redacted]
Email: [redacted]

Borrower may change its Authorized Agents by notice given to Lender as provided in accordance with Section XV. Such notice shall not be considered to be a modification of or amendment to this Agreement for purposes of Section XVI.

EXHIBIT B

LOAN TERM SHEET

This loan agreement dated [DATE OF TERM SHEET] between Genesis Global Capital, LLC ("Genesis") and [redacted] ("Lender") incorporates all of the terms of the Master Borrow Agreement between Genesis and Borrower on [DATE OF MASTER AGREEMENT] and the following specific terms:

Borrower:	Genesis Global Capital, LLC
Lender:	[redacted]
Borrowed Asset:	
Amount of Currency:	
Borrow Fee:	
Loan Type:	[Open Loan] [Fixed Term Loan] [Term Loan With Prepayment Option]
Maturity Date:	

GENESIS GLOBAL CAPITAL, LLC [redacted]

By:_____
Name:
Title:

By: _____
Name:
Title:

Exhibit B

Ad Hoc Group Fee Reimbursement Letter

Proskauer

January 3, 2023

Brian S. Rosen
Member of the Firm
d +1.212.969.3380
f 212.969.2900
brosen@proskauer.com
www.proskauer.com

Genesis Global Capital, LLC
c/o Sean A. O'Neal (soneal@cgsh.com)
Clearly Gottlieb Steen & Hamilton LLP
One Liberty Plaza
New York, NY 10006

Re: Genesis Global Capital, LLC - Fee Letter

Dear Sean,

As you know, commencing as of November 22, 2022 (the Engagement Date"), Proskauer Rose LLP ("Proskauer") represents a group of individual and institutional lenders (collectively, the "Lender Group") who hold, manage, or represent holders of fiat and digital asset loans (collectively, the "Loans") pursuant to certain Master Loan Agreements and Loan Term Sheets executed pursuant thereto, in the aggregate approximate principal amount of $1.2 billion[1] to Genesis Global Capital, LLC (the "Company"). The Company and the Lender Group are engaged in discussions about a potential restructuring of the Company (the "Restructuring") and the Lender Group requests that the Company execute this Agreement.

To facilitate discussions regarding the Restructuring, and for other good and sufficient consideration which the Company acknowledges, the Company has agreed to satisfy the Lender Group's reasonable fees and expenses incurred by Proskauer commencing as of the Engagement Date, to provide Proskauer with an initial retainer of $200,000 (the "Retainer") and to replenish the Retainer within three (3) business days of the Company's receipt of Proskauer's Summary Statement, as defined below, to the extent necessary to ensure that the Retainer will at all times be not less than $200,000. The Retainer was earned by Proskauer upon receipt, may be held in Proskauer' s general cash account, will not be held in a separate account on the Company's behalf, and the Company will not have any interest in the Retainer (except for the return of the unused portion of the Retainer as set forth below in this letter). For the avoidance of doubt, the Retainer is not a cap on Proskauer's fees, and nothing in this letter is a limitation on, or otherwise relieves the Company of, its obligation to pay reasonable and documented fees and expenses of the Lender Group.

Notwithstanding anything to the contrary herein, the Company shall be responsible only for the reasonable fees and expenses relating to a Restructuring, which may include a holistic approach inclusive of obligations of Digital Currency Group to the Company, and Proskauer shall not charge, and the Company shall not have any obligation to pay, (a) any fees or expenses

[1] This balance includes Loans denominated in both U.S. Dollars and Bitcoin, Ethereum, and various other digital currencies, and accordingly this estimate is subject to increase or decrease depending on the trading value of various digital currencies at any given moment. This estimate is based on the November 22 trading values of each digital currency. Additionally, this amount is subject to increase as the Lender Group continues to grow.

Proskauer

relating to any litigation against the Company or any of its subsidiaries, affiliates or any of their respective officers, directors or employees, or (b) any rates, whether premium or otherwise, exceeding the standard rates that Proskauer would charge the members of the Lender Group if they were paying Proskauer directly.

On a periodic basis, Proskauer will submit a statement to our clients for legal services that will include a description of the work performed and expenses incurred. In order for Proskauer to preserve the attorney-client privilege with our clients, Proskauer will provide your counsel only with a summary statement (a "Summary Statement"). It is agreed that reasonable and documented fees and expenses incurred in connection with the Restructuring set forth in Proskauer's statements shall be paid from the Retainer within five (5) business days of receipt of the applicable statement. The Company reserves the right to dispute the amounts set forth in any such statement and withhold any disputed amounts from any subsequent Retainer replenishment request. Any unused portion of the Retainer will be returned to the Company upon completion of the Restructuring. Notwithstanding the immediately preceding sentence, the Company's obligations under this Agreement to provide and replenish the Retainer will automatically terminate upon the one year anniversary of the execution of this Agreement (the "Termination Date"), and Proskauer will return to the Company any unapplied portion of the Retainer at such time; *provided that,* in the event that work related to the Restructuring continues, or is expected to continue, after the Termination Date, including work performed in connection with defending challenges to the Restructuring, Proskauer and the Company will mutually agree in good faith to extend this Agreement.

The Company may terminate this Agreement at any time immediately upon written notice, and Proskauer will return to the Company any unapplied portion of the Retainer at such time less Proskauer's accrued and unpaid reasonable and documented fees and expenses at the time of such termination.

Beginning on the first Friday after the execution of this letter agreement, Proskauer shall disclose, in writing, and every two weeks thereafter, to the Company counsel, Cleary Gottlieb Steen & Hamilton LLP (the "Company Counsel"), the aggregate principal amount of loans made to the Company by Proskauer's clients. In the event that the aggregate principal loan amount held by Proskauer's clients becomes less than $1,000,000.00, Proskauer shall provide written notice thereof to Company Counsel within three (3) business days of Proskauer having knowledge of such reduction.

This Agreement may be executed on facsimile copies and in counterparts, and such counterparts and this letter shall constitute one agreement upon delivery of the executed signature pages to the parties hereto.

Proskauer

Please countersign this letter to acknowledge your agreement to the terms hereof. We look forward to working with you.

Sincerely,

Brian S. Rosen

Genesis Global Capital, LLC

By: DocuSigned by:
Derar Islim
112CB3D00F63428...

Name: Derar Islim
Title: Interim CEO