

**INTERCREDITOR AGREEMENT**

dated \_\_\_\_\_ 2024

between

**PRICEWATERHOUSECOOPERS B.V.**

and

**STICHTING BELANGENBEHARTIGING DUURZAAMINVESTEREN**

as Creditors

and

**METABOLIC HOLDING B.V.,**

**METABOLIC B.V.**

and

**SYSTEMIC B.V.**

as Debtors

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**THIS AGREEMENT** is dated \_\_\_\_\_ 2024 and made between:

1. **PricewaterhouseCoopers B.V.**, a private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*) incorporated under the laws of the Netherlands, having its statutory seat (*statutaire zetel*) in Amsterdam, The Netherlands, its principal place of business at Thomas R. Malthusstraat 5, 1066 JR, Amsterdam, The Netherlands and registered with the trade register (*handelsregister*) of the Chamber of Commerce (*Kamer van Koophandel*) under number 34180289 ("**PwC**");
2. **Stichting Belangenbehartiging DuurzaamInvesteren**, a foundation (*stichting*) incorporated under the laws of the Netherlands, having its statutory seat (*statutaire zetel*) in Amsterdam, The Netherlands, its principal place of business at Strawinskylaan 1755, 1077 XX, Amsterdam, The Netherlands and registered with the trade register (*handelsregister*) of the Chamber of Commerce (*Kamer van Koophandel*) under number 69337772, acting as the attorney (*gevolmachtigde*) on behalf of the bond holders under the SDI Finance Documents ("**SDI**");
3. **Metabolic Holding B.V.**, a private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*) incorporated under the laws of the Netherlands, having its statutory seat (*statutaire zetel*) in Amsterdam, The Netherlands, its principal place of business at Gedempt Hamerkanaal 29, 1021 KL Amsterdam, The Netherlands and registered with the trade register (*handelsregister*) of the Chamber of Commerce (*Kamer van Koophandel*) under number 70533334 (the "**Company**");
4. **Metabolic B.V.**, a private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*) incorporated under the laws of the Netherlands, having its statutory seat (*statutaire zetel*) in Amsterdam, The Netherlands, its principal place of business at Gedempt Hamerkanaal 29, 1021 KL Amsterdam, The Netherlands and registered with the trade register (*handelsregister*) of the Chamber of Commerce (*Kamer van Koophandel*) under number 70539952; and
5. **Systemic B.V.**, a private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*) incorporated under the laws of the Netherlands, having its statutory seat (*statutaire zetel*) in Amsterdam, The Netherlands, its principal place of business at Gedempt Hamerkanaal 29, 1021 KL Amsterdam, The Netherlands and registered with the trade register (*handelsregister*) of the Chamber of Commerce (*Kamer van Koophandel*) under number 70540136 (together with the Company and Metabolic B.V. collectively referred to as the "**Debtors**" and each a "**Debtor**").

**IT IS AGREED** as follows:

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this Agreement:

"**Business Day**" means a day (other than a Saturday or Sunday) on which banks are open for general business in Amsterdam.

"**Creditors**" means PwC and SDI.

"**DCC**" means the Dutch Civil Code.

"**Debt Document**" means each of this Agreement, the PwC Finance Documents, the SDI Finance Documents, the Transaction Security Documents and any other document designated as such by the Creditors and the Company jointly.

"**Delegate**" means any delegate, agent, attorney or co-trustee appointed by a Creditor.

"**Insolvency Event**" means, in relation to any Debtor:

- (a) any resolution is passed or order made for the winding up, dissolution, administration or reorganisation of that Debtor, a moratorium is declared in relation to any indebtedness of that Debtor or an administrator is appointed to that Debtor;
- (b) offers a composition (*schuldeisersakkoord aanbieden*) to its creditors in a situation of financial distress;
- (c) the appointment of any liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of that Debtor or any of its assets; or
- (d) any analogous procedure or step is taken in any jurisdiction.

"**Liabilities**" means all present and future liabilities and obligations at any time of any Debtor to any Creditor under the Debt Documents, both actual and contingent and whether incurred solely or jointly or as principal or surety or in any other capacity together with any of the following matters relating to or arising in respect of those liabilities and obligations:

- (a) any refinancing, novation, deferral or extension; and
- (b) any claim as a result of any recovery by any Debtor of a Payment on the grounds of preference or otherwise,

and any amounts which would be included in any of the above but for any discharge, non-provability, unenforceability or non-allowance of those amounts in any insolvency or other proceedings.

"**Non-Cash Consideration**" means consideration in a form other than cash.

"**Parallel Debt**" has the meaning given thereto in Clause 3 (*Parallel Debts*).

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

"**Payment**" means, in respect of any Liabilities (or any other liabilities or obligations), a payment, prepayment, repayment, redemption, defeasance or discharge of those Liabilities (or other liabilities or obligations).

"**PwC Finance Documents**" means (i) the PwC Loan Agreement and (ii) any Transaction Security Document with PwC as pledgee.

"**PwC Liabilities**" means the Liabilities owed by the Debtors to PwC under this Agreement and the PwC Finance Documents.

"**PwC Loan Agreement**" means the loan agreement originally dated 15 August 2022 and the addendum thereto dated 18 June 2024, as recently amended by an amendment letter dated \_\_\_\_\_ 2024, entered into between the Debtors and PwC.

"**SDI Finance Documents**" means the documentation relating to the bonds issuance consisting (i) of the 'Obligatievoorwaarden' dated \_\_\_\_\_ 2024, (ii) the 'Trustakte' dated \_\_\_\_\_ 2024 entered into between the Company and SDI and (iii) any Transaction Security Document with SDI as pledgee.

"**SDI Liabilities**" means the Liabilities owed by the Debtors to SDI under this Agreement (including the Parallel Debt) and the SDI Finance Documents.

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

"**Transaction Security**" means the Security created or evidenced or expressed to be created or evidenced on the relevant assets under or pursuant to the relevant Transaction Security Documents.

"**Transaction Security Documents**" means:

- (a) an omnibus deed of first ranking pledge between the Company and Metabolic B.V. as pledgors and PwC as pledgee dated 21 August 2024;
- (b) a notarial deed of first ranking pledge of registered shares in Metabolic B.V. between the Company as pledgor, PwC as pledgee and Metabolic B.V. as company dated 23 August 2024;
- (c) a notarial deed of first ranking pledge of registered shares in Systemic B.V. between the Company as pledgor, PwC as pledgee and Systemic B.V. as company dated 23 August 2024;
- (d) a notarial deed of first ranking pledge of registered shares in the Company between Metabolic Partners B.V. as pledgor, PwC as pledgee and the Company as company dated on or about the date of this Agreement;
- (e) a notarial deed of first ranking pledge of registered shares in the SPV (to be incorporated) that will hold shares in the capital of Spectral Enterprise B.V. between the Company as pledgor, PwC as pledgee and the SPV as company dated on or about the date of this Agreement;
- (f) an omnibus deed of second ranking pledge between the Company and Metabolic B.V. as pledgors and SDI as pledgee dated on or about the date of this Agreement;

- (g) a notarial deed of second ranking pledge of registered shares in the Company between Metabolic Partners B.V. as pledgor, SDI as pledgee and the Company as company dated on or about the date of this Agreement;
- (h) a notarial deed of second ranking pledge of registered shares in Metabolic B.V. between the Company as pledgor, SDI as pledgee and Metabolic B.V. as company dated on or about the date of this Agreement;
- (i) a notarial deed of second ranking pledge of registered shares in Systemic B.V. between the Company as pledgor, SDI as pledgee and Systemic B.V. as company dated on or about the date of this Agreement;
- (j) a notarial deed of second ranking pledge of registered shares in the SPV (to be incorporated) that will hold shares in the capital of Spectral Enterprise B.V. between the Company as pledgor, SDI as pledgee and the SPV as company dated on or about the date of this Agreement; and
- (k) any other document creating Transaction Security over any assets in favour of any Creditor and designated as a "Transaction Security Document" by the Parties.

## 1.2 Construction

- (a) Unless a contrary indication appears, a reference in this Agreement to:
  - (i) "**PwC**", "**SDI**", the "**Company**", any "**Creditor**", any "**Debtor**" and any other person or entity shall be construed to be a reference to it in its capacity as such and not in any other capacity and shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Debt Documents;
  - (ii) an "**amount**" includes an amount of cash and an amount of Non-Cash Consideration;
  - (iii) "**assets**" includes present and future properties, revenues and rights of every description;
  - (iv) a "**Debt Document**" or any other agreement or instrument is (other than a reference to a Debt Document or any other agreement or instrument in "original form") a reference to that Debt Document, or other agreement or instrument, as amended, novated, supplemented, extended or restated as permitted by this Agreement;
  - (v) a "**distribution**" of or out of the assets of a Debtor, includes a distribution of cash and a distribution of Non-Cash Consideration;
  - (vi) "**enforcing**" (or any derivation) the Transaction Security includes the appointment of an administrator (or any analogous officer in any jurisdiction) of a Debtor by a Creditor;
  - (vii) "**indebtedness**" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;

- (viii) the "**original form**" of a Debt Document or any other agreement or instrument is a reference to that Debt Document, agreement or instrument as originally entered into;
  - (ix) a "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
  - (x) a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation; and
  - (xi) a provision of law is a reference to that provision as amended or re-enacted from time to time.
- (b) Section, Clause and Schedule headings are for ease of reference only.

### 1.3 Most favoured nation provisions

- (a) If any amendments, supplements or restatements are entered into by a Debtor relating to any Debt Document after the date of this Agreement (each an "**Amendment**") or any replacement thereof (the "**New Facility**") and such New Facility or Amendment contains any event of default or covenant, that is, in either case, not included in the other Debt Document, more restrictive than in the other Debt Document and/or otherwise less favourable to the Debtors and/or more favourable to the Creditor thereunder than the Creditor under the other Debt Document (the "**Relevant Provision**"), the relevant Debtor will promptly, and in any case within 5 Business Days of entering into to such New Facility or Amendment, notify the other Creditor, provide a copy of the Relevant Provision to the other Creditor and offer to amend (and commit to so amend) the terms of the other Debt Document to include terms equivalent to the Relevant Provision, all at the expense of the Debtors.
- (a) Unless the other Creditor notifies that Debtor within 5 Business Days of receipt by such other Creditor of the above notice that it does not wish to accept the offer by that Debtor, the Debtors shall immediately take such action as is required to incorporate the Relevant Provision into the other Debt Document *mutatis mutandis* and (if applicable) modify, amend or replace the corresponding provision in the other Debt Document.

## 2. CONFIRMATION BY SDI

SDI confirms that it acts as attorney on behalf of each bond holder that has accepted the terms of the SDI Finance Documents, all in accordance with the provisions of the SDI Finance Documents and the information memorandum 'Obligatielening Metabolic Holding B.V.' published on or about the date of this Agreement.

### 3. PARALLEL DEBTS

#### 3.1 Parallel debts to SDI

- (a) For the purpose of this Clause 3, "**Principal Obligations**" means each Debtor's payment obligations to PwC:
  - (i) under or in connection with the PwC Finance Documents;
  - (ii) in connection with any other indebtedness as the Creditors and the Company may agree from time to time.
- (b) Each Debtor irrevocably and unconditionally undertakes to pay to SDI amounts equal to its Principal Obligations as they may exist from time to time (each a "**Parallel Debt**"). Each Parallel Debt will become due and payable at the same time as the corresponding Principal Obligation becomes due and payable.
- (c) The rights of SDI under each Parallel Debt are its own claims to receive payment from the relevant Debtor, several and independent from any right that PwC may have under the PwC Finance Documents.
- (d) An amount received by SDI in discharge of a Parallel Debt will discharge the corresponding Principal Obligation in an equal amount.
- (e) The aggregate amount outstanding under the Parallel Debts will never exceed the aggregate amount outstanding under the Principal Obligations.
- (f) SDI acts under the Transaction Security Documents to which it is a party as the creditor of the Parallel Debts.

#### 3.2 Parallel debts to PwC

Each of the Parties acknowledges and agrees with the creation of parallel debt obligations by any Debtor owed to PwC in the PwC Loan Agreement, which parallel debts shall mirror each Debtor's payment obligations to SDI.

### 4. RANKING AND PRIORITY

#### 4.1 Creditor Liabilities

Each of the Parties agrees that the Liabilities owed by the Debtors to each Creditor shall rank *pari passu*.

#### 4.2 Transaction Security

Each of the Parties agrees that any Transaction Security shall rank and secure the following Liabilities (but for the avoidance of doubt only to the extent that such Transaction Security is expressed to secure those Liabilities) in the following order:

- (a) first, the PwC Liabilities; and
- (b) second, the SDI Liabilities.



## **5. CREDITORS AND LIABILITIES**

### **5.1 Payment of Liabilities**

- (a) The Debtors may make Payments of the Liabilities at any time in accordance with the relevant Debt Documents, provided that such Payment is not restricted pursuant to the terms of this Agreement.
- (b) The Debtors are entitled to prepay, in accordance with the relevant Debt Document:
  - (i) at any time, the PwC Liabilities or any part thereof (without making simultaneously a prepayment on the SDI Liabilities);
  - (ii) at any time, the SDI Liabilities or any part thereof, provided that simultaneously also the PwC Liabilities or any party thereof are prepaid pro rata to the Liabilities owed to each Creditor.
- (c) An authorised representative of the relevant Debtor shall at any time that Debtor makes a Payment of the Liabilities, confirm to the relevant Creditor that such Payment is made in accordance with paragraph (a) of Clause 5.2 (*Pro rata payments*) and, in case of a prepayment to SDI, paragraph (b) above.

### **5.2 Pro rata payments**

- (a) If at any time a Debtor is unable to pay in full any of its Liabilities due to any Creditor, that Debtor shall make partial Payments to the Creditors pro rata to the Liabilities owed to each Creditor.
- (b) Notwithstanding paragraph (a), a Debtor that is unable to pay its Liabilities when due, remains in default if so stipulated in the terms of the relevant Debt Documents and this Clause shall not operate as a waiver of any right or remedy under a Debt Document.
- (c) An authorised representative of the Debtors shall, upon request by a Creditor, promptly confirm whether it (i) is in a situation that it is unable to pay in full any of its Liabilities due to any Creditor as referred to in paragraph (a) above and (ii) has sufficient liquidity to meet future payments of its Liabilities.

### **5.3 Amendments and Waivers**

Each Creditor may amend or waive the terms of the Debt Documents in accordance with their terms (and subject to any consent required under them) at any time, with the exception of an amendment that is, in relation to the original form of that Debt Document, constituting an increase in the principal amount of the loan provided thereunder.

### **5.4 Additional Transaction Security**

The Creditors may take, accept or receive the benefit of:

- (a) Transaction Security in respect of the Liabilities in addition to the Transaction Security on the date of this Agreement which is, at the same time, also offered to all Creditors (provided that such Transaction Security shall be created and

ranks in the same order of priority as that contemplated in Clause 2 (*Ranking and Priority*); and

- (b) any guarantee, indemnity or other assurance against loss in respect of the Liabilities in addition to those in:
  - (i) the original form of the relevant Debt Document;
  - (ii) this Agreement,

if at the same time it is also offered to the other Creditors in respect of their Liabilities and ranks in the same order of priority as that contemplated in Clause 2 (*Ranking and Priority*).

## **6. ENFORCEMENT OF TRANSACTION SECURITY**

### **6.1 Enforcement by PwC**

- (a) PwC may take any steps to enforce or require the enforcement of any Transaction Security created in favour of it in accordance with the relevant Debt Document.
- (b) Upon taking any such enforcement of Transaction Security, PwC will inform SDI thereof and keep SDI generally informed of any progress of enforcement of any Transaction Security (where that is reasonably practicable).

### **6.2 Restriction on enforcement**

SDI shall be entitled to take any steps to enforce or require the enforcement of any Transaction Security created in favour of it only prior to approval of PwC.

### **6.3 Waiver of rights**

To the extent permitted under applicable law and subject to this Agreement, each of the Creditors and the Debtors waives all rights it may otherwise have to require that the Transaction Security be enforced in any particular order or manner or at any particular time or that any amount received or recovered from any person, or by virtue of the enforcement of any of the Transaction Security or of any other security interest, which is capable of being applied in or towards discharge of any of the secured obligations is so applied.

### **6.4 Duties owed**

- (a) Each of the Creditors and the Debtors acknowledges that, in the event that the Transaction Security is enforced, the duties of the relevant Creditor and of any Delegate owed to the other Creditor in respect of the method, type and timing of that enforcement or of the exploitation, management or realisation of any of that Transaction Security shall be no different to or greater than the duty that is owed by the relevant Creditor or Delegate to the Debtors under general law.
- (b) Each Creditor will, in the performance of this Agreement, take into account the justified interests of the other Creditor. However, no Creditor will be liable against any other Creditor as a result of the enforcement and/or bringing to value of any Transaction Security.

## **7. APPLICATION OF PROCEEDS**

All amounts from time to time received or recovered by a Creditor in connection with the realisation or enforcement of Transaction Security shall be applied and distributed by such Creditor in the following order of priority:

- (a) in payment of all costs and expenses incurred by any Creditor in connection with any realisation or enforcement of the Transaction Security taken in accordance with the terms of this Agreement; and
- (b) in payment to the Creditors pro rata to the Liabilities owed to each Creditor for application towards the discharge of the Liabilities (in accordance with the relevant Debt Document).

## **8. EFFECT OF INSOLVENCY EVENT**

### **8.1 Distributions**

- (a) After the occurrence of an Insolvency Event in relation to any Debtor, any Party entitled to receive a distribution out of the assets of that Debtor in respect of Liabilities owed to that Party shall, to the extent it is able to do so, direct the person responsible for the distribution of the assets of that Debtor to make that distribution to the Creditors until the Liabilities owing to the Creditors have been paid in full.
- (b) Each Creditor shall apply distributions paid to it under paragraph (a) above in accordance with Clause 7 (*Application of proceeds*).

### **8.2 Set-off**

To the extent that any Debtor's Liabilities are discharged by way of set-off (mandatory or otherwise) after the occurrence of an Insolvency Event in relation to that Debtor, any Creditor which benefited from that set-off shall pay an amount equal to the amount of the Liabilities owed to it which are discharged by that set-off to the Creditors for application in accordance with Clause 7 (*Application of proceeds*).

### **8.3 Non-cash distributions**

If any Creditor receives a distribution in the form of Non-Cash Consideration in respect of any of the Liabilities, the Liabilities will not be reduced by that distribution until and except to the extent that the realisation proceeds are actually applied towards the Liabilities.

## **9. TURNOVER OF RECEIPTS**

### **9.1 Turnover by the Creditors**

Subject to Clause 9.2 (*Permitted assurance and receipts*), if any Creditor receives or recovers any Payment or distribution of, or on account of or in relation to, any of the Liabilities which is not made in accordance with paragraph (b) of Clause 5.1 (Payment Liabilities) or paragraph (a) of Clause 5.2 (*Pro rata payments*) or Clause 7 (*Application of proceeds*), that Creditor will promptly pay or distribute an amount equal to that receipt or recovery to the Creditor entitled to such amount in accordance with the terms of this Agreement.

## 9.2 Permitted assurance and receipts

Nothing in this Agreement shall restrict the ability of any Creditor to:

- (a) arrange with any person (which is not a member of the group to which the Debtors belong) any assurance against loss in respect of, or reduction of its credit exposure to, a Debtor (including assurance by way of credit based derivative or sub-participation); or
- (b) make any assignment or transfer permitted by Clause 12 (*Changes to the Parties*),

which is permitted under this Agreement, and that Creditor shall not be obliged to account to any other Party for any sum received by it as a result of that action.

## 9.3 Amounts received by Debtors

If any of the Debtors receives or recovers any amount which, under the terms of any of the Debt Documents, should have been paid to a Creditor, that Debtor will promptly pay or distribute an amount equal to that receipt or recovery to the Creditors entitled to such amount in accordance with the terms of this Agreement.

## 10. DISCLOSURE BETWEEN CREDITORS

Notwithstanding any agreement to the contrary, each of the Debtors consents to the disclosure by Creditors to each other of such information concerning the Debtors as any Creditor shall see fit, among other things:

- (a) the exchange of information on the financing provided to a Debtor, any non-payment or other non-compliance by a Debtor, the occurrence of an (event of default) and acceleration of the loans; and
- (b) the coordination of any legal acts and legal measures in connection with the financing provided to a Debtor, including the acceleration of the loans and the timing thereof.

## 11. NO DUTIES; EXCLUSION OF LIABILITY

### 11.1 No fiduciary duties to others

Nothing in this Agreement constitutes any Creditor as an agent, trustee or fiduciary of any Party.

### 11.2 Exclusion of liability

- (a) Without limiting paragraph (b) below, none of the Creditors nor any Delegate will be liable for:
  - (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Debt Document unless directly caused by its gross negligence or wilful misconduct;
  - (ii) exercising or not exercising any right, power, authority or discretion given to it by, or in connection with, any Debt Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Debt Document;

- (iii) any shortfall which arises on the enforcement or realisation of the Transaction Security; or
- (iv) without prejudice to the generality of paragraphs (i) to (iii) above, any damages, costs, losses, any diminution in value or any liability whatsoever arising as a result of:
  - (A) any act, event or circumstance not reasonably within its control; or
  - (B) the general risks of investment in, or the holding of assets in, any jurisdiction,

including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets; breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.

- (b) No Party (other than the relevant Creditor or that Delegate (as applicable)) may take any proceedings against any officer, employee or agent of that Creditor or a Delegate in respect of any claim it might have against that Creditor or a Delegate or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Debt Document or any Transaction Security.
- (c) Nothing in this Agreement shall oblige a Creditor to carry out:
  - (i) any "know your customer" or other checks in relation to any person; or
  - (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Creditor,

on behalf of any Creditor and each Creditor confirms to the other Creditor that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the other Creditor.

## 12. CHANGES TO THE PARTIES

No Party may:

- (a) assign any of its rights; or
- (b) transfer any of its rights and obligations,

in respect of any Debt Documents or the Liabilities.

### 13. NOTICES

#### 13.1 Communications in writing

Any communication to be made under or in connection with this Agreement shall be made in writing and may be made by e-mail or letter.

#### 13.2 Addresses

The address and e-mail address of each Party for any communication or document to be made or delivered under or in connection with this Agreement is:

(a) In respect of PwC:

PricewaterhouseCoopers B.V.  
Attn. M.C.W. van de Pol  
Thomas R. Malthusstraat 5  
1066 JR, Amsterdam, The Netherlands  
E-mail address: maarten.van.de.pol@pwc.com, with copy to  
hans.dullaert@pwc.com

(b) In respect of SDI:

Stichting Belangenbehartiging DuurzaamInvesteren  
Attn. \_\_\_\_\_  
Strawinskylaan 1755 | Tower 7, Level 17, unit C1702  
1077 XX, Amsterdam, The Netherlands  
E-mail address: stichting@duurzaaminvesteren.nl

(c) In respect of the Debtors:

Metabolic Holding B.V.  
Attn. \_\_\_\_\_  
Gedempt Hamerkanaal 29  
1021 KL, Amsterdam, The Netherlands  
E-mail address: \_\_\_\_\_,

or any substitute address, e-mail address or department or officer which that Party may notify to the other Parties by not less than five Business Days' notice.

#### 13.3 Delivery

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

- (i) if by way of e-mail, when received in accordance with paragraph (c) below; or
- (ii) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 13.2 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document made or delivered to the Company in accordance with this Clause 13.3 will be deemed to have been made or delivered to each of the Debtors.
- (c) Any such electronic communication or document as specified in paragraph (a) above made between any two Parties or delivered by one Party to another will be effective only when actually received (or made available) in readable form.

## **14. PRESERVATION**

### **14.1 Partial invalidity**

If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of that provision under the law of any other jurisdiction will in any way be affected or impaired.

### **14.2 No impairment**

If, at any time after its date, any provision of this Agreement is not binding on or enforceable in accordance with its terms against a Party, neither the binding nature nor the enforceability of that provision or any other provision of this Agreement will be impaired as against the other Party(ies).

### **14.3 Remedies and waivers**

- (a) No failure to exercise, nor any delay in exercising, on the part of any Party, any right or remedy under a Debt Document shall operate as a waiver of any such right or remedy, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in each Debt Document are cumulative and not exclusive of any rights or remedies provided by law.
- (b) Each Party (other than the Creditors) irrevocably waives, to the fullest extent permitted by law, any right it may have at any time to:
  - (i) rescind (*ontbinden*) this Agreement (in whole or in part) pursuant to section 6:265 DCC;
  - (ii) suspend (*opschorten*) any of its obligations under this Agreement pursuant to section 6:52, 6:262 or 6:263 DCC or on any other ground; and/or
  - (iii) nullify (*vernietigen*) this Agreement (in whole or in part) pursuant to section 6:228 DCC or on any other ground.

### **14.4 Waiver of defences**

The provisions of this Agreement or any Transaction Security will not be affected by an act, omission, matter or thing which, but for this Clause 14.4, would reduce, release or prejudice the subordination and priorities expressed to be created by this Agreement including (without limitation and whether or not known to any Party):

- (a) any time, waiver or consent granted to, or composition with, any Debtor or other person;
- (b) the release of any Debtor or any other person under the terms of any composition or arrangement with any creditor of any Debtor;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Debtor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Transaction Security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any Debtor or other person;
- (e) any amendment, novation, supplement, extension (whether of maturity or otherwise) or restatement (in each case, however fundamental and of whatsoever nature, and whether or not more onerous) or replacement of a Debt Document or any other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Debt Document or any other document or security;
- (g) any intermediate Payment of any of the Liabilities owing to the Creditors in whole or in part; or
- (h) any insolvency or similar proceedings.

#### **14.5 Priorities not affected**

Except as otherwise provided in this Agreement the priorities referred to in Clause 2 (*Ranking and Priority*) will:

- (a) not be affected by any reduction or increase in the principal amount secured by the Transaction Security in respect of the Liabilities owing to any Creditor or by any intermediate reduction or increase in, amendment or variation to any of the Debt Documents, or by any variation or satisfaction of, any of the Liabilities or any other circumstances;
- (b) apply regardless of the order in which or dates upon which this Agreement and the other Debt Documents are executed or registered or notice of them is given to any person; and
- (c) secure the Liabilities owing to the Creditors in the order specified, regardless of the date upon which any of the Liabilities arise or of any fluctuations in the amount of any of the Liabilities outstanding.

#### **15. COUNTERPARTS**

- (a) This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.
- (b) Any signature (including, without limitation, (x) any electronic symbol, process or data attached to, or associated with, a contract or other record and adopted or otherwise used by a person with the intent to sign, authenticate or accept



such contract or record and (y) any facsimile, .pdf or other digital record of a handwritten signature) to this Agreement or any other agreement, deed or document referred to in this Agreement or made pursuant to this Agreement through electronic means, shall have the same legal effect as a manually handwritten signature ("wet ink"). The Parties agree that any such signature through electronic means provides for a sufficiently reliable method of signing within the meaning of and in accordance with section 3:15a DCC. For the avoidance of doubt, the foregoing also applies to any amendment, supplement, extension or restatement of this Agreement or any other agreement, deed or document referred to in this Agreement or made pursuant to this Agreement.

## **16. GOVERNING LAW AND JURISDICTION**

### **16.1 Governing law**

- (a) This Agreement (including this Clause 16) and any non-contractual obligations arising out of or in connection with it are governed by Dutch law.
- (b) If a Dutch Party is represented by an attorney in connection with the signing and/or execution of this Agreement or any other deed, agreement or document referred to in this Agreement or made pursuant to this Agreement, it is hereby expressly acknowledged and accepted by the other Parties that the existence and extent of the attorney's authority and the effects of the attorney's exercise or purported exercise of his authority shall be governed by Dutch law.

### **16.2 Jurisdiction**

- (a) The courts of Amsterdam, the Netherlands have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a "**Dispute**").
- (b) Notwithstanding paragraph (a) above, no Creditor shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, each Creditor may take concurrent proceedings in any number of jurisdictions.

**This Agreement has been entered into on the date stated at the beginning of this Agreement.**

**SIGNATURES**

**THE CREDITORS**

**PRICEWATERHOUSECOOPERS B.V.**

\_\_\_\_\_  
By: Agnes Koops-Aukes  
Title: CEO

\_\_\_\_\_  
By: Maarten van de Pol  
Title: CFO/COO

**STICHTING BELANGENBEHARTIGING DUURZAAMINVESTEREN**

\_\_\_\_\_  
By:  
Title: Authorised signatory

\_\_\_\_\_  
By:  
Title: Authorised signatory

**THE DEBTORS**

**METABOLIC HOLDING B.V.**

\_\_\_\_\_  
By:  
Title: Authorised signatory

\_\_\_\_\_  
By:  
Title: Authorised signatory

**METABOLIC B.V.**

\_\_\_\_\_  
By:  
Title: Authorised signatory

\_\_\_\_\_  
By:  
Title: Authorised signatory

**SYSTEMIC B.V.**

\_\_\_\_\_  
By:  
Title: Authorised signatory

\_\_\_\_\_  
By:  
Title: Authorised signatory