



**Registration of a Charge**

Company Name: **FC SHIPPING LIMITED**

Company Number: **05085910**



Received for filing in Electronic Format on the: **15/06/2023**

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**Details of Charge**

Date of creation: **12/06/2023**

Charge code: **0508 5910 0028**

Persons entitled: **ABN AMRO BANK N.V.**

Brief description: **FC SHIPPING LIMITED HAS GRANTED A MORTGAGE AND CHARGE  
OVER M.V. IVER PROSPERITY (IMO NUMBER: 9351921)**

**Contains negative pledge.**

**Authentication of Form**

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

**Authentication of Instrument**

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

Certified by: **NORTON ROSE FULBRIGHT LLP**



## **CERTIFICATE OF THE REGISTRATION OF A CHARGE**

Company number: 5085910

Charge code: 0508 5910 0028

The Registrar of Companies for England and Wales hereby certifies that a charge dated 12th June 2023 and created by FC SHIPPING LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 15th June 2023 .

Given at Companies House, Cardiff on 19th June 2023

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



**Companies House**



**THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES**

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

*Norton Rose Fulbright LLP*

**Date:** 15 June 2023

Private & Confidential

Execution Version

**Dated** 12 June 2023

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**Owner**

**FC SHIPPING LIMITED**

**Mortgagee**

**ABN AMRO BANK N.V.**

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**AMENDMENT NO. 3 TO FIRST PREFERRED  
MARSHALL ISLANDS SHIP MORTGAGE**

**m.v. "IVER PROSPERITY"**

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**NORTON ROSE FULBRIGHT**

THIS AMENDMENT NO. 3 TO FIRST PREFERRED MARSHALL ISLANDS SHIP MORTGAGE (this "Amendment No. 3") is dated 12 June 2023 and made between:

- (1) **FC SHIPPING LIMITED** (the "**Owner**") an English company and whose registered office is at Tobias House, St Mark's Court, Teesdale Business Park, Teesside TS17 6QW, United Kingdom and is registered as a foreign maritime entity under the laws of the Republic of the Marshall Islands; and
- (2) **ABN AMRO BANK N.V.** (the "**Mortgagee**") acting in its capacity as agent and as trustee for the Finance Parties.

**WHEREAS:**

- (A) pursuant to the facility agreement, dated December 24, 2014 (the "**Original Facility Agreement**"), made among (1) FB Tankship I Inc., FB Tankship III Limited, FB Tankship IV Limited, FC Tankship I Ltd and FC Tankship II Ltd, as borrowers (collectively, the "**Borrowers**") (2) the Mortgagee, as mandated lead arranger, hedging provider, agent and security agent, and (3) the financial institutions listed in Schedule 1 thereto, as lenders, as amended and restated by a first supplemental agreement, dated June 22, 2015 (the "**First Supplemental Agreement**") and as further amended and restated by a second supplemental agreement, dated 12 June 2023 (the "**Second Supplemental Agreement**" (the copy of which is attached in Schedule 1 and together with the Original Facility Agreement and the First Supplemental Agreement, the "**Facility Agreement**", and made among, inter alia, (1) the Borrowers, as borrowers, (2) the financial institutions listed in Schedule 1 thereto (the "**Lenders**"), as lenders, (3) the Mortgagee, as mandated lead arranger, agent and security agent, (4) the Owner and FC Shipping Limited, as lessor owners, and (5) Vroon Shipping U.K. Limited and Vroon Vessel Participations I B.V., as shareholders, the Lenders made available to the Borrowers a term loan facility in the amount of (originally) up to US\$95,000,000 for the purposes set out therein. The outstanding principal amount under the Facility Agreement on the date hereof is US\$18,722,839.17;
- (B) to guarantee the obligations of the Borrowers under the Facility Agreement, the Owner entered into a guarantee, dated 23 June 2015 (the "**Guarantee**", a copy of the form of which was annexed to the Original Mortgage (as hereinafter defined) as Schedule 4), made between the Owner and the Mortgagee;
- (C) to secure payment of the Owner's obligations under the Guarantee and the Facility Agreement, the Owner granted the First Preferred Ship Mortgage, dated June 23, 2015 (the "**Original Mortgage**"), in favor of the Mortgagee on the Owner's Marshall Islands flag vessel IVER PROSPERITY, Official Number 2784 (the "**Vessel**"), which Original Mortgage was recorded in the Marshall Islands Office of the Maritime Administrator on June 23, 2015 at 3:49 P.M., B.S.T. at London, England, U.K. (June 23, 2015 at 10:49 A.M., E.D.S.T. in the Central Office of the Maritime Administrator) in Book PM 26 at Page 1018, as the same was amended pursuant to an Amendment No. 1 to First Preferred Marshall Islands Ship Mortgage (the "**First Mortgage Amendment**") dated 29 November 2018, as duly recorded in the Marshall Islands Office of the Maritime Administrator on 29 November 2018 at 11:14 A.M., E.S.T. at New York, New York in Book PM 29 at Page 2043, as the same was further amended pursuant to an Amendment No. 2 to First Preferred Marshall Islands Ship Mortgage (the "**Second Mortgage Amendment**", the Original Mortgage as amended by the First Mortgage Amendment and the Second Mortgage Amendment, the "**Mortgage**") dated 31 March 2021, as duly recorded in the Marshall Islands Office of the Maritime Administrator on 31 March 2021 at 2:00

P.M., E.D.S.T. at New York, New York in Book PM 32 at Page 679. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Mortgage.

**THIS AMENDMENT WITNESSETH** as follows:

**1. Amendments to the Mortgage**

1.1 All references in the Mortgage to "Facility Agreement" shall mean the Original Facility Agreement, as amended and restated by the Second Supplemental Agreement.

1.2 All references in the Mortgage to "Hedging Master Agreements" or "Hedging Contracts" shall be deleted and without prejudice to the generality of the foregoing:

- (a) the words immediately after "(ii)" in the fourth line of Recital (A) of the Mortgage shall be replaced with "Internationally Omitted";
- (b) Recital (B) of the Mortgage shall be deleted;
- (c) the words "and/or any Hedging Master Agreement" in the third line of Recital (C) of the Mortgage shall be deleted;
- (d) the definition of "Hedging Master Agreements" in clause 1.1 of the Mortgage shall be deleted;
- (e) paragraph (d) of the section headed "Facility Agreement" in Schedule 1 to the Mortgage shall be deleted; and
- (f) the section headed "Hedging Master Agreements" in Schedule 1 to the Mortgage shall be deleted.

1.3 All references in the Mortgage to "Mortgage" shall mean the Mortgage as amended by this Amendment No.3.

1.4 All defined terms used in the Facility Agreement shall be read and construed in accordance with their amended definitions.

1.5 Section 2.6 of the Mortgage is hereby amended in its entirety to read as follows:

"For the purpose of recording this First Preferred Ship Mortgage as required by Chapter 3 of the Maritime Act 1990 of the Marshall Islands as amended, the total maximum amount secured by this Mortgage is US\$18,722,839.17 and interest and premiums and all other sums of money payable and costs, expenses and performance of mortgage covenants. The date of maturity with respect to the amounts owing under the Facility is 30 September 2025. The discharge amount is the same as the total amount."

**2. No Other Amendments**

Except as specifically amended herein, all other terms and conditions of the Mortgage shall remain in full force and effect.

**3. Governing Law**

This Mortgage is governed by, and shall be construed in accordance with, the laws of the Republic of the Marshall Islands.

[Signature Page Follows]

**IN WITNESS WHEREOF**, the Owner and the Mortgagee have caused this Amendment No. 3 to be duly executed by their respective duly appointed attorneys-in-fact on the date set forth above.

**FC SHIPPING LIMITED**

**As Owner**

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

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

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

*CHRISTOPHER*

*Attorney*

**ABN AMRO BANK N.V.**

**As Mortgagee**

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

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

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

**IN WITNESS WHEREOF**, the Owner and the Mortgagee have caused this Amendment No. 3 to be duly executed by their respective duly appointed attorneys-in-fact on the date set forth above.

**FC SHIPPING LIMITED**

**As Owner**

By: \_\_\_\_\_  
Name:  
Title:

**ABN AMRO BANK N.V.**

**As Mortgagee**

By:   
Name:  
Title:

*Beatrice Shah Scott  
Attorney-In-Fact*

***[INSERT LOCAL NOTARY BLOCK]***

**SCHEDULE 1**  
**SECOND SUPPLEMENTAL AGREEMENT**

**Dated** 12 June 2023

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**SECOND SUPPLEMENTAL AGREEMENT**

**relating to a Facility Agreement for a \$95,000,000 Loan**

**to**

**FB TANKSHIP I INC.**

**FB TANKSHIP III LTD.**

**FB TANKSHIP IV LTD.**

**FC TANKSHIP I LTD.**

**FC TANKSHIP II LTD.**

**arranged by**

**ABN AMRO BANK N.V.**

**with**

**ABN AMRO BANK N.V.**

**as Agent**

**ABN AMRO BANK N.V.**

**as Security Agent**

 **NORTON ROSE FULBRIGHT**

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**THIS DEED** is dated 12 June 2023 and made **BETWEEN:**

- (1) **FB TANKSHIP I INC., FB TANKSHIP III LTD., FB TANKSHIP IV LTD., FC TANKSHIP I LTD and FC TANKSHIP II LTD.** as Borrowers (the **Borrowers**);
- (2) **THE FINANCIAL INSTITUTIONS** whose names and addresses are set out in Schedule 1 (*The Original Lenders*) (together the **Lenders**);
- (3) **ABN AMRO BANK N.V.** as mandated lead arranger (the **Arranger**);
- (4) **ABN AMRO BANK N.V.** as agent for the Finance Parties (the **Agent**);
- (5) **ABN AMRO BANK N.V.** as security agent for the Finance Parties (the **Security Agent**);
- (6) **FB SHIPPING LIMITED and FC SHIPPING LIMITED** as Lessor Owners; and
- (7) **VROON SHIPPING U.K LIMITED and VROON VESSEL PARTICIPATIONS I B.V.** as Shareholders (the **Shareholders**).

**WHEREAS:**

- (A) this Deed is supplemental to a loan agreement originally dated 24 December 2014 as supplemented, amended and restated pursuant to a supplemental agreement dated 22 June 2015 (the **Principal Agreement**) made between, among others, the Borrowers (therein referred to as the **Borrowers**), the Lenders, the Arranger, the Agent and the Security Agent relating to a loan of up to \$95,000,000;
- (B) by a framework agreement dated 13 November 2018 (the **Framework Agreement**) and made between, among others, the Borrowers, the Agent, the Security Agent and the Lenders, the terms and conditions of the Principal Agreement were supplemented further on the terms set out therein;
- (C) by a implementation agreement dated 30 May 2023 (the **Implementation Agreement**) relating to the restructuring of the corporate structure and certain financial indebtedness of the Group made between, among others, the Borrowers, the Agent and the Security Agent, among other, (i) the Framework Agreement will be terminated upon fulfilment of certain conditions and (ii) the Parties to the Principal Agreement have agreed to amend and restate the Principal Agreement on the terms and subject to the conditions contained in this Deed;
- (D) pursuant to the terms of the Implementation Agreement, the Guarantee by the Guarantor will be terminated on or about the Effective Date; and
- (E) it is a condition pursuant to the terms of the Implementation Agreement that the Parties enter into this Deed and each Shareholder enters into a guarantee relating to the obligations of the Obligors under the Facility Agreement in favour of the Security Agent.

**NOW IT IS HEREBY AGREED** as follows:

## **1 Definitions**

### **1.1 Defined expressions**

Words and expressions defined in the Facility Agreement shall unless the context otherwise requires or unless otherwise defined herein, have the same meanings when used in this Deed.

## **1.2 Definitions**

In this Deed, unless the context otherwise requires:

**Effective Date** means the date of this Deed (which has been determined pursuant to Step 5.1 (d) of Schedule 1 (*Restructuring Steps*) of the Implementation Agreement).

**Facility Agreement** means the Principal Agreement as amended by this Deed.

**Party** means a party to this Deed.

**Total Commitments** has the meaning given to that term in the Facility Agreement.

## **1.3 Principal Agreement**

References in the Principal Agreement to "this Agreement" shall, with effect from the Effective Date and unless the context otherwise requires, be references to the Principal Agreement as amended by this Deed and words such as "herein", "hereof", "hereunder", "hereafter", "hereby" and "hereto", where they appear in the Principal Agreement, shall be construed accordingly.

## **1.4 Headings**

Clause headings and the table of contents are inserted for convenience of reference only and shall be ignored in the interpretation of this Deed.

## **1.5 Construction of certain terms**

Clause 1.11 of the Principal Agreement shall apply to this Deed (*mutatis mutandis*) as if set out herein and as if references therein to "this Agreement" were references to this Deed.

## **1.6 Third Party Rights**

A person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Deed.

## **2 Conditions Precedent**

The Borrowers shall provide the documents and evidence set out in Part 5 (*Initial FE0045 Facility Agreement Conditions Precedent*) of Schedule 9 (*Initial Restructuring Conditions Precedent*) and Part 5 (*FE0045 Facility Agreement Remaining Conditions Precedent*) of Schedule 10 (*Remaining Restructuring Conditions Precedent*) in accordance with the terms of the Implementation Agreement.

## **3 Resignation of Hedging Providers**

Prior to the date of this Deed, all Hedging Contracts have been terminated and each Hedging Provider shall be deemed to have resigned from its role as Hedging Provider under the Principal Agreement and each of the other Finance Documents.

## **4 Total Commitments**

On the Effective Date if the total aggregate Exposure outstanding under the Principal Agreement is greater than the Total Commitments under and as defined in the Facility Agreement, the difference between those amounts shall hereby be deemed to be automatically and without further

documentation required to be entered into or action or steps required to be taken by any party be treated to be satisfied fully and absolutely in each case so as to bind all Parties. The Borrowers hereby irrevocably and unconditionally instruct the Agent to apply an amount equal to \$8,630,000 standing to the credit of the Accounts in prepayment of the Facility on the Effective Date.

## **5 Amendment and restatement**

### **5.1 Amendment and restatement**

- (a) With effect on and from (and including) the Effective Date, the Principal Agreement shall be amended and restated in the form set out in Schedule 2 (*Amended and Restated Facility Agreement*) so that the rights and obligations of the parties to the Principal Agreement relating to their performance on and after the Effective Date under the Principal Agreement shall be governed by, and construed in accordance with, the terms of the Facility Agreement.
- (b) Each Party agrees and acknowledges that, with effect on and from (and including) the Effective Date, it shall have the rights and take on the obligations ascribed to such Party under the Facility Agreement.

### **5.2 Continuing obligations**

- (a) The provisions of the Principal Agreement and the other Finance Documents shall, save as amended by this Deed, continue in full force and effect.
- (b) Without prejudice to the generality of paragraph (a) above, each relevant Obligor confirms that on and after the Effective Date:
  - (i) the guarantee that it has been given in accordance with the terms of the Facility Agreement, (the **Guarantee**); and
  - (ii) each Parallel Debt, shall remain in full force and effect and shall continue to guarantee all the liabilities and obligations that such guarantee or, as the case may be, such Parallel Debt, is expressed to guarantee or otherwise relate to.
- (c) Save as expressly set out in this Deed:
  - (i) the Finance Parties retain at all times the full power to exercise their rights and remedies under the Finance Documents. Any delay or decision by a Finance Party not to enforce its rights under the Finance Documents shall not constitute or be construed as a waiver of the rights of that Finance Party thereunder or prejudice, diminish or otherwise adversely affect, any of the present or future rights or remedies of the Finance Parties arising in respect of or pursuant to the Finance Documents and the Finance Parties retain at all times the full power to exercise their rights which continue in full force and effect; and
  - (ii) nothing in this Deed shall constitute or be construed as a waiver or compromise of any other term or condition of, or any of the Finance Parties' rights in relation to, the Finance Documents or any other related agreement which, for the avoidance of doubt, shall continue to apply in full force and effect and shall remain valid and enforceable in accordance with their respective terms.
  - (iii) notwithstanding the amendments and consents to the Finance Documents contemplated by this Deed, the Charged Property (as defined in the Facility

Agreement) created by it and its obligations under any guarantee or Security Interests (as defined in the Facility Agreement) given or created by it under the Finance Documents (as defined in the Facility Agreement) to which it is a party will:

- (A) continue in full force and effect;
  - (B) continue to constitute its legal, valid and binding obligations, enforceable in accordance with its terms; and
  - (C) extend to the liabilities and obligations of such Obligor under the Finance Documents (as defined in the Facility Agreement); and
- (iv) in the case of any new Security Documents (as defined in the Facility Agreement), the obligations of the Obligors arising under each Finance Document as amended or supplemented by this Deed are included in the secured liabilities (however defined) in that new Security Document, to the maximum extent permitted by law.
- (d) Each Obligor shall take all such action as is available to it (including making all filings and registrations) as may be necessary in connection with the confirmations set out in paragraphs (a) to (c) above.
- (e) No part of this Deed intended to, or will, create a registrable Security Interest.
- (f) The Parties acknowledge and agree that the amendment of a Finance Document pursuant to this Deed shall not constitute, and shall not be construed as, a novation of, or to have a novative effect on, the obligations or the other transactions contemplated under such Finance Document.

## **6 Representations and warranties**

**6.1** Each Obligor represents and warrants for the benefit of the other Parties, each in respect of itself, that the following statements shall, on the date of this Deed and the Effective Date, be true and accurate as if made with reference to the facts and circumstances existing on such date:

- (a) it is duly incorporated as a limited liability company and has power to carry on its business as it is now being conducted and to own its property and other assets; and
  - (b) it has power to execute, deliver and perform its obligations under this Deed and all necessary corporate, shareholder and other action has been taken to authorise the execution, delivery and performance of the same.
- (a) subject to the Legal Reservations, the obligations expressed to be assumed by it in under this Deed are legal, valid, binding and enforceable;
- (b) the entry by it into this Deed to which it is a party will not conflict in any material respect:
- (i) with its Constitutional Documents;
  - (ii) with any laws or regulations applicable to it; and
  - (iii) with any other agreements or instruments binding on it or constitute a default or termination event (however described therein);

- (c) it has complied with all necessary corporate formalities required in connection with, and has the power and authority to enter into and comply with, its obligations under this Deed;
- (d) all authorisations, consents, approvals, resolutions, licenses, exemptions, filings, notarisations or registrations:
  - (i) in relation to its entry into, exercise of its rights and compliance with the obligations under this Deed to which it is a party and the transactions contemplated by this Deed;
  - (ii) necessary to ensure the legal validity and enforceability of those obligations; and
  - (iii) to enable it to create the Security Interest proposed to be created pursuant to the Security Documents to which it is a party with the priority and ranking expressed,

are in full force and effect, other than as otherwise agreed to in writing with the Facility Agent;
- (e) under the laws of its Relevant Jurisdictions it is not necessary that this Deed or the Security Documents (as defined in the Facility Agreement), in each case to which it is a party, are filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar Taxes or fees be paid on or in relation to this Deed to which it is a party or the transactions contemplated by this Deed to which it is a party except in respect of any perfection or registration requirements in respect of the Security Documents (as defined in the Facility Agreement, or as otherwise agreed to in writing with the Agent; and
- (f) subject to the Legal Reservations:
  - (i) the choice of governing law of this Deed will be recognised and enforced in its Relevant Jurisdictions; and
  - (ii) any judgment obtained in relation to this Deed in the jurisdiction of its governing law will be recognised and enforced in its Relevant Jurisdictions.

## **7 Miscellaneous and notices**

### **7.1 Incorporated clauses**

The provisions of clauses 17 (*Costs and Expenses*), 32 (*Notices*), 34 (*Partial Invalidity*), 39 (*Counterparts*) and 40 (*Contractual Recognition of Bail-In*) of the Facility Agreement shall apply to this Deed if set out herein (but, with respect to clause 17 (*Costs and Expenses*) of the Facility Agreement, without double counting for costs invoiced under the Implementation Agreement).

### **7.2 Designation**

This Deed is a Finance Document for the purpose of the Facility Agreement.

## **8 Applicable law**

### **8.1 Governing law**

This Deed and any non-contractual obligations connected with it are governed by English law.

## **8.2 Jurisdiction of English courts**

The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed or any non-contractual obligations connected with it (including a dispute regarding the existence, validity or termination of this Deed (a **dispute**)).

The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

This clause 8.2 is for the benefit of the Finance Parties only. As a result, no such Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Finance Parties may take concurrent proceedings in any number of jurisdictions.

**This Deed has been entered into and delivered on the date stated at the beginning of this Deed.**

**Schedule 1**  
**The Original Lenders**

ABN AMRO BANK N.V.  
Gustav Mahlerlaan  
1082 PP Amsterdam  
The Netherlands

Attn: Willem Holterman and Ewout Verhagen

Email: [REDACTED] and [REDACTED]

BANK OF AMERICA EUROPE DESIGNATED ACTIVITY COMPANY  
Two Park Place  
Hatch Street  
Dublin 2  
Ireland

Attention: Bank Loan Corporate Actions

Email: [corporate.actions@bankofamerica.com](mailto:corporate.actions@bankofamerica.com)

**Schedule 2**  
**Form of Amended and Restated Facility Agreement**

**Dated 24 December 2014 (as amended  
and restated on 22 June 2015 and on  
12 June 2023)**

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**FB TANKSHIP I INC.  
FB TANKSHIP III LTD.  
FB TANKSHIP IV LTD.  
FC TANKSHIP I LTD.  
FC TANKSHIP II LTD.  
as Borrowers**

**arranged by  
ABN AMRO BANK N.V.**

**with**

**ABN AMRO BANK N.V.  
as Agent**

**ABN AMRO BANK N.V.  
as Security Agent**

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**FE0045 FACILITY AGREEMENT  
FOR A \$95,000,000 LOAN FACILITY**

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 **NORTON ROSE FULBRIGHT**

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**THIS AGREEMENT** is originally dated 24 December 2014 (as amended and restated on 22 June 2015 and as amended and restated on 12 June 2023) and made between:

- (1) **THE ENTITIES** listed in Schedule 1 (The original parties) as borrowers (the **Borrowers**);
- (2) **ABN AMRO BANK N.V.** as mandated lead arranger (the **Arranger**);
- (3) **THE FINANCIAL INSTITUTIONS** listed in Schedule 1 (The original parties) as lenders (the **Original Lenders**);
- (4) **ABN AMRO BANK N.V.** as agent of the other Finance Parties (the **Agent**); and
- (5) **ABN AMRO BANK N.V.** as security agent of the Finance Parties (the **Security Agent**).

**RECITALS:**

- (A) At the Restructuring Effective Date, the amount of the Loan is \$27,284,872, the Loan has been fully utilised and no amount of the Available Facility is available for utilisation.
- (B) This is the "FE0045 Facility Agreement" as referred to in the Implementation Agreement.

**IT IS AGREED** as follows:

## **Section 1 - Interpretation**

### **1 Definitions and Interpretation**

#### **1.1 Definitions**

In this Agreement and (unless otherwise defined in the relevant Finance Document) the other Finance Documents:

**Acadian** means the ship described as such in Schedule 2 (*Ship information*).

**Acceptable Bank** means:

- (a) a Lender;
- (b) a bank or financial institution which has a rating for its long-term unsecured and non-credit enhanced debt obligations of BBB or higher by Standard & Poor's Rating Services or Fitch Ratings Ltd or Baa3 or higher by Moody's Investors Service Limited; or
- (c) any other bank or financial institution approved by the Majority Lenders.

**Account** means any bank account, deposit or certificate of deposit opened, made or established in accordance with clause 26 (*Bank accounts*).

**Account Bank** means, in relation to any Account, either the Security Agent or another bank or financial institution approved by the Majority Lenders at the request of the Borrowers.

**Account Holder(s)** means, in relation to any Account, each Obligor in whose name that Account is held.

**Account Security** means, in relation to an Account, a deed or other instrument by the relevant Account Holder(s) in favour of the Security Agent in an agreed form conferring a Security Interest over that Account.

**Additional Business Day** means any day specified as such in the Reference Rate Terms.

**Affiliate** means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.

**Agent** includes any person who may be appointed as such under the Finance Documents.

**Agent's Spot Rate of Exchange** means:

- (a) the Agent's spot rate of exchange; or
- (b) (if the Agent does not have an available spot rate of exchange) any other publicly available spot rate of exchange selected by the Agent (acting reasonably),

for the purchase of the relevant currency with USD in the London market or any other relevant foreign exchange market at or about 11:00 a.m. on a particular day.

**Annex VI** means Annex VI of the Protocol of 1997 (as subsequently amended from time to time) to amend the International Convention for the Prevention of Pollution from Ships 1973 (Marpol), as modified by the Protocol of 1978 relating thereto.

**Approved Flag** means Madeira, Luxembourg, Canada, The Netherlands, the United Kingdom, the Marshall Islands, Cyprus, Gibraltar, the Isle of Man, Malta, Panama, Liberia, Hong Kong, Singapore or Italy or any other jurisdiction approved by the Majority Lenders.

**Approved Managers** means any Subsidiary of the Parent, Fleet Management Ltd (Hong Kong), Norbulk Shipping Ltd, Thome Shipmanagement Ltd, Bernhard Schulte Shipmanagement or such other managers nominated by the Borrowers as may be approved by the Majority Lenders.

**Approved Shipbroker** means each of Fearnleys, RS Platou ASA, Clarkson, Arrow, Maersk Broker, Bright Cook & Co, Barry Rogliano Salles S.A., Hesnes Shipping AS, Rodskog Hong Kong, Offshore Shipbrokers or any other firm of shipbrokers acceptable to both the Borrowers and the Majority Lenders.

**Approved Ship Disposal** means the disposal of a Mortgaged Ship where the conditions in any of the paragraphs below are satisfied:

- (a) Majority Lender approval has been obtained for the disposal of that Mortgaged Ship; and
- (b) the Borrowers have confirmed in a certificate to the Agent that simultaneously with the disposal of that Mortgaged Ship it will make a prepayment of the Loan in accordance with clause 7.5 (*Mandatory Prepayment – Sale or Total Loss*).

**Authorisation** means any authorisation, consent, concession, approval, resolution, licence, exemption, filing, notarisation or registration.

**Available Facility** means, at any relevant time, such part of the Total Commitments (drawn and undrawn) which is available for borrowing under this Agreement at such time in accordance with clause 4 (*Conditions of Utilisation*) to the extent that such part of the Total Commitments is not cancelled or reduced under this Agreement.

**Baseline CAS** means any rate which is either:

- (a) specified as such in the Reference Rate Terms; or
- (b) determined by the Agent (or by any other Finance Party which agrees to determine that rate in place for the Agent) in accordance with the methodology specified in the Reference Rate Terms.

**Break Costs** means any amount specified as such in the Reference Rate Terms.

**Business Day** means a day (other than a Saturday or Sunday) on which commercial banks are open for general business in London, Amsterdam, Toronto and New York, and:

- (a) (in relation to:
  - (i) any date for the repayment of, or payment or purchase of an amount relating to the Loan or Unpaid Sum; or
  - (ii) the determination of the first day or the last day of an Interest Period for the Loan or Unpaid Sum, or otherwise in relation to the determination of the length of such an Interest Period),

which is an Additional Business Day relating to that the Loan or Unpaid Sum.

**Canadian Ship** means either Acadian or East Coast and **Canadian Ships** means both of them.

**Cash** means at any time, cash in hand or at bank and (in the latter case) credited to an account in the name of an Obligor with an Acceptable Bank and to which an Obligor is alone (or together with the other Obligors) beneficially entitled and for so long as:

- (a) that cash is repayable on demand;
- (b) repayment of that cash is not contingent on the prior discharge of any other indebtedness of any Obligor or of any other person whatsoever or on the satisfaction of any other condition;
- (c) there is no Security Interest over that cash except for under the Security Documents or any Security Interests constituted by a netting, set-off or similar arrangement entered into by the Obligors in the ordinary course of their banking arrangements; and
- (d) the cash is freely and (except as mentioned in paragraph (a) above) immediately available to be applied in repayment or prepayment of the Loan.

**Cash Flow Forecast** means the cash flow forecast most recently delivered by the Borrowers to the Agent in accordance with clause 19.4 (*Cash flow forecast*).

**Central Bank Rate** has the meaning given to that term in the Reference Rate Terms.

**Central Bank Rate Adjustment** has the meaning given to that term in the Reference Rate Terms.

**Change of Control** means:

- (a) any change in the legal or beneficial ownership of the shares in any Obligor; or

- (b) when Vroon Tankers B.V. and its Subsidiaries (taken as a whole) cease to control directly or indirectly the Borrowers.

**Charged Property** means all of the assets of the Obligors which from time to time are, or are expressed or intended to be, the subject of the Security Documents.

**Charter** means a charter commitment for a Ship for a duration in excess of 24 months (excluding optional extensions).

**Charter Assignment** means, in relation to a Ship and its Charter Documents, an assignment by the relevant owner of its interest in such Charter Documents in favour of the Security Agent in the agreed form.

**Charter Documents** means, in relation to a Ship, the Charter of that Ship, any documents supplementing it and any guarantee or security given by any person for the relevant Charterer's obligations under it.

**Charterer** means, in relation to a Ship, Irving Oil or any other charterer of that Ship pursuant to a charter and/or any other charterer of that Ship named in Schedule 2 (*Ship information*) as charterer of that Ship.

**Classification Society** means, in relation to a Ship, the classification society specified in respect of such Ship in Schedule 2 (*Ship information*) or another classification society (being a member of the International Association of Classification Societies (IACS) or, if such association no longer exists, any similar association nominated by the Agent) approved by the Majority Lenders as its Classification Society, at the request of the relevant owner.

**Code** means the US Internal Revenue Code of 1986.

**Commitment** means:

- (a) in relation to an Original Lender, the amount set opposite its name under the heading "Commitment" in Schedule 1 (*The original parties*) and the amount of any other Commitment assigned to it under this Agreement; and
- (b) in relation to any other Lender, the amount of any Commitment assigned to it under this Agreement,

to the extent not cancelled, reduced or assigned by it under this Agreement.

**Compliance Certificate** means a certificate substantially in the form set out in Schedule 7 (*Form of Compliance Certificate*) or otherwise approved by the Majority Lenders.

**Compounded Reference Rate** means, in relation to any RFR Banking Day during the Interest Period of the Loan, the percentage rate per annum which is the aggregate of:

- (a) the Daily Non-Cumulative Compounded RFR Rate for that RFR Banking Day; and
- (b) the applicable Baseline CAS.

**Compounding Methodology Supplement** means, in relation to the Daily Non-Cumulative Compounded RFR Rate, a document which:

- (a) is agreed in writing by the Borrowers, the Agent (in its own capacity) and the Agent (acting on the instructions of Majority Lenders);
- (b) specifies a calculation methodology for that rate; and
- (c) has been made available to the Borrowers and each Finance Party.

**Compton Loans** means any loan existing at the Restructuring Effective Date between Compton Investments Limited as lender and any Obligor as borrower.

**Confidential Information** means all information relating to an Obligor, the Group, the Finance Documents or the Facility of which a Finance Party becomes aware in its capacity as, or for the purpose of becoming, a Finance Party or which is received by a Finance Party in relation to, or for the purpose of becoming a Finance Party under, the Finance Documents or the Facility from either:

- (a) any member of the Group or any of its advisers; or
- (b) another Finance Party, if the information was obtained by that Finance Party directly or indirectly from any member of the Group or any of its advisers,

in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes:

- (i) information that:
  - (A) is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of clause 37 (*Confidential Information*); or
  - (B) is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers; or
  - (C) is known by that Finance Party before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with the Group and which, in either case, as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality; and
- (ii) any Funding Rate.

**Confidentiality Undertaking** means a confidentiality undertaking substantially in a recommended form of the Loan Market Association or in any other form agreed between the Borrowers, the Agent and any relevant Lender.

**Constitutional Documents** means, in respect of an Obligor, such Obligor's certificate of incorporation, and/or memorandum and articles of association, shareholder agreements, resolutions, by-laws or other constitutional documents from time to time.

**Cumulative Compounded RFR Rate** means, in relation to an Interest Period for the Loan, the percentage rate per annum determined by the Agent (or by any other Finance Party which agrees to determine that rate in place of the Agent) in accordance with the methodology set out in Schedule 10 (*Cumulative Compounded RFR Rate*) or in any relevant Compounding Methodology Supplement.

**Daily Non-Cumulative Compounded RFR Rate** means, in relation to any RFR Banking Day during an Interest Period for the Loan, the percentage rate per annum determined by the Agent (or by any other Finance Party which agrees to determine that rate in place of the Agent) in accordance with the methodology set out in Schedule 9 (*Daily Non-Cumulative Compounded RFR Rate*) or in any relevant Compounding Methodology Supplement.

**Daily Rate** means the rate specified as such in the Reference Rate Terms.

**Deed of Covenant** means, in relation to a Canadian Ship, a first deed of covenant in respect of such Ship by the relevant owner in favour of the Security Agent in the agreed form

**Default** means an Event of Default or any event or circumstance specified in clause 28 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of the foregoing) be an Event of Default.

**Delegate** means any delegate, agent, attorney, additional trustee or co-trustee appointed by the Security Agent.

**Disruption Event** means either or both of:

- (a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the Facility (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties; or
- (b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party preventing that, or any other Party:
  - (i) from performing its payment obligations under the Finance Documents; or
  - (ii) from communicating with other Parties in accordance with the terms of the Finance Documents,

and which (in either such case) is not caused by, and is beyond the control of, the Party whose operations are disrupted.

**Earnings** means means, in relation to a Ship and a person, all moneys whatsoever at any time payable (whether actually or contingently) to that person for or in relation to the use or operation of such Ship including:

- (c) freight, hire and passage monies, money payable to that person for the provision of services by or from such Ship or under any charter commitment;

- (d) requisition for hire compensation (which is not Requisition Compensation), remuneration for salvage and towage services, demurrage and detention monies and damages for breach and payments for termination or variation of any charter commitment; and
- (e) all moneys which are at any time payable under the Insurances in respect of loss of earnings or hire.

**East Coast** means the ship described as such in Schedule 2 (*Ship information*).

**Effective Date** means the "Effective Date" as defined in the First Supplemental Agreement.

**Environmental Claims** means:

- (a) enforcement, clean-up, removal or other governmental or regulatory action or orders or claims instituted or made pursuant to any Environmental Laws or resulting from a Spill; or
- (b) any claim made by any other person relating to a Spill.

**Environmental Incident** means any Spill from any Mortgaged Ship in circumstances where:

- (a) any Mortgaged Ship or its owner, operator or manager may be liable for Environmental Claims arising from the Spill (other than Environmental Claims arising and fully satisfied before the date of this Agreement); and/or
- (b) any Mortgaged Ship may be arrested or attached in connection with any such Environmental Claim.

**Environmental Laws** means all laws, regulations and conventions concerning pollution or protection of human health or the environment.

**EU Ship Recycling Regulation** means Regulation (EU) No 1257/2013 of the European Parliament and of the Council of 20 November 2013 on ship recycling and amending Regulation (EC) No 1013/2006 and Directive 2009/16/EC (Text with EEA relevance).

**Event of Default** means any event or circumstance specified as such in clause 28 (*Events of Default*).

**Facility** means the term loan facility made available under this Agreement as described in clause 2 (*The Facility*).

**Facility Office** means:

- (a) in respect of a Lender, the office or offices notified by that Lender to the Agent in writing on or before the date it becomes a Lender (or, following that date, by not less than five Business Days' written notice) as the office through which it will perform its obligations under this Agreement; and
- (b) in respect of any other Finance Party, the office in the jurisdiction in which it is resident for tax purposes.

**Facility Period** means the period from and including the date of this Agreement to and including the date on which the Total Commitments have reduced to zero and all indebtedness of the Obligor under the Finance Documents has been fully paid and discharged.

**FATCA means:**

- (a) sections 1471 to 1474 of the Code or any associated regulations;
- (b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above; or
- (c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraphs (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.

**FATCA Application Date means:**

- (a) in relation to a "withholdable payment" described in section 1473(1)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014; or
- (b) in relation to a "passthru payment" described in section 1471(d)(7) of the Code not falling within paragraph (a) above, the first date from which such payment may become subject to a deduction or withholding required by FATCA.

**FATCA Deduction** means a deduction or withholding from a payment under a Finance Document required by FATCA.

**FATCA Exempt Party** means a Party that is entitled to receive payments free from any FATCA Deduction.

**Fee Letter** means any letter dated on or before the date of this Agreement between the Arranger and the Borrowers (or the Agent and the Borrowers) setting out, inter alia, any of the fees referred to in clause 12 (*Fees*).

**Final Repayment Date** means 30 September 2025.

**Finance Documents** means this Agreement, the First Supplemental Agreement, the Second Supplemental Agreement, any Fee Letter, the Security Documents, the Intercreditor Agreements, any Reference Rate Supplement, any Compounding Methodology Supplement and any other document designated as such by the Agent and the Borrowers.

**Finance Party** means the Agent, the Security Agent, the Arranger or a Lender.

**Finance Party Insolvency Event** means in relation to a Finance Party means that the Finance Party:

- (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- (b) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
- (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- (d) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its

incorporation or organisation or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding up or liquidation by it or such regulator, supervisor or similar official;

- (e) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition is instituted or presented by a person or entity not described in paragraph (d) above and:
  - (i) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding up or liquidation; or
  - (ii) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof;
- (f) has a resolution passed for its winding up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (g) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets;
- (h) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter;
- (i) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in paragraphs (a) to (h) above; or
- (j) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

**Financial Indebtedness** means any indebtedness for or in respect of:

- (a) moneys borrowed and debit balances at banks or other financial institutions;
- (b) any acceptance under any acceptance credit or bill discounting facility (or dematerialised equivalent);
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with GAAP, be treated as a finance or capital lease;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);

- (f) any Treasury Transaction (and, when calculating the value of that Treasury Transaction, only the marked to market value shall be taken into account);
- (g) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution;
- (h) any amount of any liability under an advance or deferred purchase agreement if (a) one of the primary reasons behind entering into the agreement is to raise finance or to finance the acquisition or construction of the asset or service in question or (b) the agreement is in respect of the supply of assets or services and payment is due more than 180 days after the date of supply;
- (i) any amount raised under any other transaction (including any forward sale or purchase, sale and sale back, sale and leaseback agreement) having the commercial effect of a; and
- (j) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (i) above.

**Financial Quarter** means the period commencing on the day after one Payment Date and ending on the next Payment Date.

**Flag State** means, in relation to a Ship, the country of an Approved Flag.

**Free Cash** means the aggregate of Cash at such time which is freely available and held by or on behalf of the Obligor excluding any Restricted Cash.

**Funding Rate** means any individual rate notified by a Lender to the Agent pursuant to paragraph (a)(ii) of clause 11.3 (*Cost of funds*).

**GAAP** means in respect of each Obligor, generally accepted accounting principles in the country of incorporation of such Obligor.

**General Assignment** means, in relation to a Marshall Islands Ship, a first assignment of its interest in the Ship's Insurances, Earnings and Requisition Compensation by the relevant Borrower and/or Lessor Owner in favour of the Security Agent in the agreed form.

**Great Eastern** means the ship described as such in Schedule 2 (*Ship information*).

**Group** means the Guarantors and its Subsidiaries for the time being and any other entity required to be treated as a subsidiary in its consolidated accounts in accordance with GAAP and/or any applicable law.

**Group Member** means the Borrowers and any other entity which is part of the Group.

**Guarantees** means:

- (a) the Lessor Owner Guarantees;
- (b) the guarantee by Vroon Shipping UK in favour of the Security Agent in the agreed form; and
- (c) the guarantee by Vroon Vessel Participations in favour of the Security Agent in the agreed form.

**Guarantors** means each Lessor Owner, Vroon Shipping UK and Vroon Vessel Participations.

**Holding Company** means, in relation to a person, any other person in respect of which it is a Subsidiary.

**Hong Kong Convention** means The Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009 and includes any (future) guidelines issued by the International Maritime Organization in connection with such convention.

**Impaired Agent** means the Agent or the Security Agent at any time when:

- (a) it has failed to make (or has notified a Party that it will not make) a payment required to be made by it under the Finance Documents by the due date for payment;
- (b) the Agent otherwise rescinds or repudiates a Finance Document; or
- (c) a Finance Party Insolvency Event has occurred and is continuing with respect to the Agent;

unless, in the case of paragraph (a) above:

- (i) its failure to pay is caused by:

- (A) administrative or technical error; or

- (B) a Disruption Event; and

payment is made within 3 Business Days of its due date; or

- (ii) the Agent is disputing in good faith whether it is contractually obliged to make the payment in question.

**Implementation Agreement** means the implementation agreement dated 30 May 2023 between, among others, the Borrowers, the financial institutions names therein (as finance parties), the Agent and the Security Agent.

**Intercreditor Agreement** means, in respect of each Ship, the intercreditor deed dated 12 June 2023 between, *inter alios*, the Security Agent, the Lenders, the relevant Borrower and/or Lessor Owner, Santander and the NewCo Security Agent in an approved form.

**Interest Payment** means the aggregate amount of interest that is, or is scheduled to become, payable under any Finance Document.

**Increased Costs** has the meaning given to that term in clause 14.1 (*Increased costs*).

**Indemnified Person** means:

- (a) each Finance Party, each Receiver, any Delegate and any attorney, agent or other person appointed by them under the Finance Documents;
- (b) each Affiliate of those persons; and
- (c) any officers, directors, employees, advisers, representatives or agents of any of the above persons.

**Insolvency Event** means the occurrence of any event as described in clause 28.9 (*Insolvency*).

**Insurance Notice** means, in relation to a Ship, a notice of assignment in the form scheduled to the Ship's Deed of Covenant or General Assignment or in another approved form.

**Insurances** means, in relation to a Ship:

- (a) all policies and contracts of insurance; and
- (b) all entries in a protection and indemnity or war risks or other mutual insurance association

in the name of such Ship's owner or the joint names of its owner and any other person in respect of or in connection with such Ship and/or its owner's Earnings from the Ship and includes all benefits thereof (including the right to receive claims and to return of premiums).

**Interest Period** means each period determined in accordance with clause 10 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with clause 9.3 (*Default interest*).

**ISM Code** means the International Safety Management Code (including the guidelines on its implementation), adopted by the International Maritime Organisation as the same may be amended or supplemented from time to time (and the terms safety management system, **Safety Management Certificate** and **Document of Compliance** have the same meanings as are given to them in the ISM Code).

**ISPS Code** means the International Ship and Port Facility Security Code as adopted by the International Maritime Organisation, as the same may be amended or supplemented from time to time.

**Irving Oil** means Irving Oil Limited of Canada.

**Irving Oil Charter** means the charter commitment(s) for the Irving Oil Ships, details of which are provided in Schedule 2 (*Ship information*).

**Iver Prosperity** means the ship described as such in Schedule 2 (*Ship information*).

**Joint Venture** means any joint venture entity, whether a company, unincorporated firm, undertaking, association, joint venture or partnership or any other entity.

**Last Availability Date** shall be construed to mean a date having occurred prior to the Restructuring Effective Date.

**Legal Opinion** means any legal opinion delivered to the Agent under or in connection with this Agreement or any other Finance Document.

**Legal Reservations** means:

- (a) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;
- (b) the time barring of claims under the Limitation Act 1980 and the Foreign Limitation Periods Act 1984, the possibility that an undertaking to assume liability for, or indemnify a person

against, non-payment of UK stamp duty may be void and defences of set-off or counterclaim;

- (c) similar principles, rights and defences under the laws of any Relevant Jurisdiction; and
- (d) any other matters which are set out as qualifications or reservations as to matters of law of general application in the Legal Opinions.

**Lessor Owner Guarantee** means a guarantee by the relevant Lessor Owner in favour of the Security Agent in the agreed form.

**Lessor Owners** means each of the entities specified as such in Schedule 1 (*The original parties*) and Lessor Owner means either of them.

**Lender** means:

- (a) any Original Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Party as a Lender in accordance with clause 29 (*Changes to the Lenders*),

which in each case has not ceased to be a Lender in accordance with the terms of this Agreement.

**Loan** means the loan made or to be made under the Facility or the principal amount outstanding for the time being of that loan.

**Lookback Period** means the number of days specified as such in the Reference Rate Terms.

**Losses** means any costs, expenses, payments, charges, losses, demands, liabilities, claims, actions, proceedings, penalties, fines, damages, judgments, orders or other sanctions.

**Loss Payable Clauses** means, in relation to a Ship, the provisions concerning payment of claims under the Ship's Insurances in the form scheduled to the Ship's Deed of Covenant or General Assignment or in another approved form.

**Major Casualty** means any casualty to a vessel for which the total insurance claim, inclusive of any deductible, exceeds or may exceed the Major Casualty Amount.

**Major Casualty Amount** means, in relation to a Ship, the amount specified as such in Schedule 2 (*Ship information*) against the name of such Ship or the equivalent in any other currency.

**Majority Lenders** means:

- (a) if no part of the Loan is then outstanding, a Lender or Lenders whose Commitments aggregate more than 66 2/3 per cent of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than 66 2/3 per cent of the Total Commitments immediately prior to the reduction); or
- (b) at any other time, a Lender or Lenders whose participations in the Loan aggregate more than 66 2/3 per cent of the Loan.

**ManagementCo** means Vroon Administration and Management B.V.

**ManagementCo Group** means:

- (a) ManagementCo and its Subsidiaries from time to time; and
- (b) Vroon Offshore Services Ltd.

**Manager's Undertaking** means, in relation to a Ship, an undertaking by any manager of the Ship to the Security Agent in the agreed form pursuant to clause 22.4 (*Manager*).

**Margin** means the percentage rate per annum specified as such in the Reference Rate Terms.

**Market Disruption Rate** means the rate (if any) specified as such in the Reference Rate Terms.

**Marshall Islands Ship** means any of Great Eastern, Iver Prosperity, New England and Nor Easter and **Marshall Islands Ships** means any or all of them.

**Material Adverse Effect** means, in the reasonable opinion of the Majority Lenders, a material adverse effect on:

- (a) the business, operations, property, condition (financial or otherwise) or prospects of each Obligor; or
- (b) the ability of the Obligors (taken as a whole) to perform its obligations under the Finance Documents; or
- (c) the validity or enforceability of, or the effectiveness or ranking of any Security Interest granted or purporting to be granted pursuant to any of, the Finance Documents or the rights or remedies of any Finance Party under any of the Finance Documents.

**Month** means, in relation to an Interest Period (or any other period for the accrual of commission or fees in a currency) a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, subject to adjustment in accordance with the rules specified as "Business Day Conventions" in the Reference Rate Terms.

**Mortgage** means, in relation to a Ship, a first mortgage of the Ship in the agreed form by the relevant owner in favour of the Security Agent.

**Mortgaged Ship** means, at any relevant time, any Ship which is subject to a Mortgage and/or whose Earnings, Insurances and Requisition Compensation are subject to a Security Interest under the Finance Documents.

**Net Disposal Proceeds** means, in respect of a disposal of an asset, subject to the Security Interests created or evidenced or expressed to be created or evidenced under or pursuant to the Security Documents, by an Obligor, the gross amount paid by a buyer to an Obligor as consideration for such disposal less:

- (a) any external broker commission fees;
- (b) any external legal fees (if any); and
- (c) any fees related to the opening or handling of escrow accounts or facilitating alternative payment procedures,

incurred by the Obligors in connection therewith provided that, where the disposal of a Ship by an Obligor is permitted or required by this Agreement, and unless an Event of Default has

occurred and is continuing, the proceeds of a sale of any bunkers, spare parts and/or lubricants on board the Ship shall not be part of the Net Disposal Proceeds.

**NewCo Facility Agreement** means the facility agreement dated 1 June 2023 and made between, *inter alios*, the Parent as borrower, the banks and financial institutions listed therein as lenders and the NewCo Security Agent.

**NewCo Security Agent** means GLAS Trust Corporation Limited in its capacity as security agent and trustee under the NewCo Facility Agreement (including its successors in title, permitted assigns and permitted transferees from time to time).

**New England** means the ship described as such in Schedule 2 (*Ship information*).

**New Lender** has the meaning given to that term in clause 29 (*Changes to the Lenders*).

**Nor Easter** means the ship described as such in Schedule 2 (*Ship information*).

**Obligor** means a Borrower or a Guarantor.

**Operating Account** means any Account designated as an **Operating Account** under clause 26 (*Bank accounts*).

**Original Cash Flow Forecast** means the cash flow forecast for the Obligors delivered on or prior to the Restructuring Effective Date in respect of each Financial Quarter from (and including) April 2023 to (and including) September 2025, prepared by the Borrowers in form and substance satisfactory to the Agent.

**Original Financial Statements** means the unaudited financial statements of each of the Borrowers for its financial year ended 31 December 2021

**Original Obligor** means each party to this Agreement and the Original Security Documents (other than a Finance Party), being the Borrowers, the Lessor Owners, any manager of a Ship executing a Manager's Undertaking (but only if it is a Group Member) and the persons executing the Share Security as at the date of this Agreement.

**Original Security Documents** means:

- (a) the Mortgages over each of the Ships;
- (b) the Deeds of Covenant in relation to each of the Canadian Ships;
- (c) the General Assignments in relation to each of the Marshall Islands Ships;
- (d) the Guarantee;
- (e) the Share Security in relation to each Borrower and Lessor Owner;
- (f) the Charter Assignment in relation to each Ship's Charter Documents;
- (g) the Account Security;
- (h) the Subordination and Assignment Deed;

- (i) any Manager's Undertaking in relation to a Ship if required under clause 22.4 (*Manager*); and
- (j) the Lessor Owner Guarantees.

**Parallel Debt** has the meaning given thereto in clause 7 (*Parallel Debt*) of Schedule 11 (*Administration, agency and other provisions*).

**Parent** means Lamo Holding B.V. (to be renamed Vroon Holdings B.V.), a company incorporated under the laws of the Netherlands with its registered office at Lage Mosten 17, 4822 NJ, Breda, the Netherlands.

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

**Payment Date** means 31 March, 30 June, 30 September and 31 December in each year.

**Permitted Maritime Liens** means, in relation to any Mortgaged Ship:

- (a) unless an Event of Default is continuing, any ship repairer's or outfitter's possessory lien in respect of such Mortgaged Ship;
- (b) any lien on such Mortgaged Ship for master's, officer's or crew's wages outstanding in the ordinary course of its trading provided that it is outstanding for no more than 30 days;
- (c) any lien on such Mortgaged Ship for salvage; and
- (d) any lien, retention rights or similar rights against such Mortgaged Ship in favour of third parties which may arise in the ordinary course of operating that Mortgaged Ship, provided however that such rights shall only represent a Permitted Maritime Lien for the purposes of the Finance Documents if the underlying debt or payment obligation:
  - (i) is not yet overdue for payment according to its payment terms; or
  - (ii) is being contested in good faith by the Borrowers or the relevant Lessor Owner by appropriate proceedings and for which adequate reserves or security are maintained or provided.

**Permitted Payment** means:

- (a) the payment of a dividend, distribution or other amount between Obligors where required in the ordinary course of trade, as part of ordinary cash management between the Obligors or to enable payments to be made under this Agreement and the other Finance Documents; and
- (b) the payment of an amount by the Borrowers in accordance with the agreement relating to the Borrowers' contribution towards the overhead and central administration and support services in respect of the ManagementCo Group, insofar as such payments are made in accordance with the payment terms contained therein.

**Permitted Security Interests** means, in relation to any Mortgaged Ship, any Security Interest over it which is:

- (a) granted by the Finance Documents; or

- (b) in relation to a Ship:
  - (i) a second priority mortgage (and related three party deed) over such Ship in favour of Santander; and
  - (ii) a third priority mortgage (and any related Deed of Covenant or General Assignment) over such Ship in favour of the NewCo Security Agent,
 but in each case subject to the Intercreditor Agreement relating to such Ship; or
- (c) any right of pledge and set-off under and pursuant to the general conditions of ABN AMRO Bank N.V.; or
- (d) a Permitted Maritime Lien; or
- (e) any Security Interest arising under a retention of title, hire purchase or conditional sale arrangement or arrangement having similar effect in respect of goods supplied to any Obligor in the ordinary course of trading and on the supplier's standard or usual terms and not arising as a result of any default or omission by such Obligor and which shall exclude any Mortgaged Ship or any assets which once fitted on a Mortgaged Ship shall form part of such Mortgaged Ship; or
- (f) is approved by the Majority Lenders.

**Pollutant** means and includes crude oil and its products, any other polluting, toxic or hazardous substance and any other substance whose release into the environment is regulated or penalised by Environmental Laws.

**Poseidon Principles** means the financial industry framework for assessing and disclosing the climate alignment of ship finance portfolios published on 18 June 2019 as the same may be amended or replaced to reflect changes in applicable law or regulation or the introduction of or changes to mandatory requirements of the International Maritime Organisation from time to time.

**Principal Obligations** means all obligations and liabilities of any Obligor under the Finance Documents.

**Receiver** means a receiver or a receiver and manager or an administrative receiver appointed in relation to the whole or any part of the Charged Property under any Security Document.

**Reference Rate Supplement** means, in relation to any currency, a document which:

- (a) is agreed in writing by the Borrowers, the Agent (in its own capacity) and the Agent (acting on the instructions of all Lenders);
- (b) specifies the relevant terms which are expressed in this Agreement to be determined by reference to Reference Rate Terms; and
- (c) has been made available to the Borrowers and each Finance Party.

**Reference Rate Terms** means the terms set out in Schedule 8 (*Reference Rate Terms*) or in any Reference Rate Supplement.

**Registry** means, in relation to each Ship, such registrar, commissioner or representative of the relevant Flag State who is duly authorised and empowered to register the relevant Ship, the relevant owner's title to such Ship and the relevant Mortgage under the laws of its Flag State.

**Relevant Jurisdiction** means, in relation to an Obligor:

- (a) its jurisdiction of incorporation;
- (b) any jurisdiction where any Charged Property owned by it is situated;
- (c) any jurisdiction where it conducts its business; and
- (d) any jurisdiction whose laws govern the perfection of any of the Security Documents entered into by it.

**Relevant Market** means the market specified as such in the Reference Rate Terms.

**Relevant Person** means:

- (a) each Obligor and each member of the Group (including without limitation its direct or indirect Subsidiaries) and each of their Joint Ventures; and
- (b) each of their Subsidiaries, directors officers, employees, agents and representatives.

**Repeating Representations** means each of the representations and warranties set out in clauses 18.1 (*Status*) to 18.11 (*Ranking and effectiveness of security*), clause 18.26 (*DAC 6*) and clause 18.27 (*Sanctions*).

**Reporting Day** means the day (if any) specified as such in the Reference Rate Terms.

**Reporting Time** means the relevant time (if any) specified as such in the Reference Rate Terms.

**Representative** means any delegate, agent, manager, administrator, nominee, attorney, trustee or custodian.

**Requisition Compensation** means, in relation to a Ship, any compensation paid or payable by a government entity for the requisition for title, confiscation or compulsory acquisition of such Ship.

**Restricted Cash** means the cash of an Obligor at a bank or financial institution which is blocked and subject to a Security Interest.

**Restricted Person** means any person or Ship that (from time to time) is:

- (a) listed on any list maintained in connection with Sanctions by any Sanctions Authority (whether listed by name or by reason of being included in a class of persons or entities);
- (b) domiciled, located or registered as located in, or organised or incorporated under the laws of, a Sanctioned Country;

- (c) directly or indirectly owned (by 50% or more), or controlled (as that term is understood pursuant to the relevant Sanctions), by, or acting on behalf, at the direction, or for the benefit of, a person referred to in (a) or (b) above or with which any Lender is prohibited from dealing with by any Sanctions; or
- (d) otherwise the subject of any Sanctions.

**Restructuring Effective Date** has the meaning given to that term in the Implementation Agreement.

**RFR** means the rate specified as such in the Reference Rate Terms.

**RFR Banking Day** means any day specified as such in the Reference Rate Terms.

**Sanctioned Country** means a country, region, or territory that is, or whose government is, the target of country-wide, region-wide or territory-wide Sanctions.

**Sanctions** means any trade, economic or financial sanctions laws, export controls, orders and/or regulations, embargoes, prohibitions, restrictive measures, decisions, executive orders or notices from regulators implemented, adapted, imposed, administered, or enforced from time to time by any Sanctions Authority.

**Sanctions Authority** means any one or a combination of:

- (a) the United Nations (including the Security Council);
- (b) the European Union, and any member state of the European Union;
- (c) the United States of America;
- (d) any member state of the European Economic Area;
- (e) the United Kingdom;
- (f) Singapore; and
- (g) any country which has jurisdiction over any activity of any Obligor; and

the respective governmental institutions or any agency or person who is duly appointed or authorised to enact, administer, implement or enforce Sanctions of any of the foregoing including, without limitation, His Majesty's Treasury (HMT), the Office of Foreign Assets Control of the US Department of the Treasury (OFAC), the US Department of Commerce, the US Department of State and any other agency of the US government, and any authority, official institution or agency acting on behalf of any of them in connections with Sanctions.

**Sanctions Event** means:

- (a) any representation contained in clause 18.27 (*Sanctions*) made or deemed to be made by an Obligor, is or proves to have been incorrect or misleading when made or deemed to be made, or any undertaking in clause 21.11 (*Sanctions*) is not complied with;
- (b) an Obligor or any of their Subsidiaries or any other Relevant Person is or becomes a Restricted Person;

- (c) a Ship is or becomes a Restricted Person;
- (d) it would be a breach of Sanctions for a Lender or would expose a Lender to the risk of adverse measures pursuant to any Sanctions, to perform any of its obligations as contemplated by this Agreement or to fund or maintain its participation in the Loan; and/or
- (e) an act or omission of an Obligor and/or their Relevant Persons causes a Lender to be in breach of Sanctions or exposes a Lender to the risk of adverse measures pursuant to any Sanctions (including a Lender becoming a Restricted Person).

**Santander** means Santander Asset Finance plc.

**Santander Group Relief Deeds** means the group relief deeds dated 17 November 2011 entered into by Santander, FB Shipping Limited and FC Shipping Limited in relation to the group relief arrangements arising in respect of the activities of each of FB Shipping Limited and FC Shipping Limited prior to the sale of certain shares.

**Santander Sale and Purchase Agreements** means the two share sale and purchase agreements dated 17 November 2011 entered into by Santander as seller and Vroon Shipping U.K. Ltd and the Vroon Group B.V. as guarantor pursuant to which Santander agreed to sell and Vroon Shipping U.K. Ltd agreed to buy certain shares in FB Shipping Limited and FC Shipping Limited.

**Santander Tax Claim** means a claim of Santander (including a claim made on behalf of another member of the Santander group) against FB Shipping Ltd or FC Shipping Ltd pursuant to any Santander Group Relief Deed or a claim of Santander against Vroon Shipping UK Ltd, FB Shipping Ltd or FC Shipping Ltd pursuant to any Santander Sale and Purchase Agreement or any Santander Tax Deed, in each case in respect of or in connection with a Tax liability arising in respect of the Leased Assets (as defined in the Santander Sale and Purchase Agreements).

**Santander Tax Deeds** means the tax deeds dated 17 November 2011 and entered into by Santander, Vroon Shipping U.K. Ltd, FB Shipping Limited and FC Shipping Limited in connection with the Santander Sale and Purchase Agreements.

**Second Supplemental Agreement** means the second supplemental agreement to this Agreement dated 12 June 2023 between, *inter alios*, the Parties.

**Security Documents** means:

- (a) the Original Security Documents;
- (b) any other document as may be executed to guarantee and/or secure any amounts owing to the Finance Parties under this Agreement or any other Finance Document.

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

**Share Security** means, in relation to each Borrower and each Lessor Owner, the document constituting a first Security Interest by the persons specified as such in Schedule 1 (*The original parties*) (other than Santander) in favour of the Security Agent in the agreed form in respect of all of the shares in such Borrower or, as applicable, such Lessor Owner (and, in the case of FB Tankship I Inc., as amended by a securities pledge amending agreement dated on or about the Effective Date).

**Ship Representation** means the representation and warranty set out in clause 18.25 (*Ship status*).

**Ships** means each of the ships described in Schedule 2 (*Ship information*) and **Ship** means any of them.

**Spill** means any actual or threatened spill, release or discharge of a Pollutant into the environment.

**Subordination and Assignment Deed** means the deed to be executed by any Obligor and any other Group Member referred to in clause 27.4(a) (*Financial Indebtedness*) in favour of the Security Agent in the agreed form (as amended by side letters dated on or about the Effective Date).

**Social Law** means any applicable law, regulation, convention or treaty which relates to labour or human rights issues.

**Statement of Compliance** means a Statement of Compliance related to fuel oil consumption pursuant to regulations 6.6 and 6.7 of Annex VI.

**Subsidiary** means in relation to a person, an entity of which that person has direct or indirect control or owns directly or indirectly more than 50 per cent of the voting capital or similar right of ownership and **control** for this purpose means the power to direct the management and the policies of the entity whether through the ownership of voting capital, by contract or otherwise.

**First Supplemental Agreement** means the first supplemental agreement to this Agreement dated 22 June 2015 between, inter alios, the Parties.

**Tax** means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

**Total Commitments** means the aggregate of the Commitments, being initially \$95,000,000 and \$27,352,839.17 at the Restructuring Effective Date.

**Total Loss** means, in relation to a Mortgaged Ship:

- (a) the actual, constructive, compromised, agreed, arranged or other total loss of such Mortgaged Ship;
- (a) any expropriation, confiscation, requisition or acquisition of such Mortgaged Ship, whether for full consideration, a consideration less than its proper value, a nominal consideration or without any consideration, which is effected by any government or official authority or by any person or persons claiming to be or to represent a governmental or official authority (excluding a requisition for hire for a fixed period not exceeding one (1) year without any right to extension) or any piracy or hijacking of such Mortgaged Ship unless it is within 90 days after the occurrence thereof redelivered to the full control of the relevant owner; and
- (b) any arrest, capture, seizure or detention of such Mortgaged Ship (including any hijacking or theft) unless it is within 90 days from the occurrence thereof redelivered to the full control of the relevant owner.

**Total Loss Proceeds** means all proceeds received in relation to a Total Loss or Requisition Compensation.

**Transfer Certificate** means a certificate substantially in the form set out in Schedule 6 (*Form of Transfer Certificate*) or any other form agreed between the Agent, the relevant Lender and the Borrowers.

**Transfer Date** means, in relation to an assignment or transfer pursuant to clause 29 (*Changes to the Lenders*) the later of:

- (a) the proposed Transfer Date specified in the relevant assignment agreement or Transfer Certificate; and
- (b)
  - (i) in the case of a transfer, the date on which the Agent executes the Transfer Certificate; and
  - (ii) in the case of an assignment, the date on which the Agent received confirmation from the New Lender of the assignment and assumption of obligations.

**Treasury Transaction** means any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price.

**Trust Property** means, collectively:

- (a) all moneys duly received by the Security Agent under or in respect of the Finance Documents;
- (b) any portion of the balance on any Account held by or charged to the Security Agent at any time;
- (c) the Security Interests, guarantees, security, powers and rights given to the Security Agent under and pursuant to the Finance Documents, including, without limitation, the covenants given to the Security Agent in respect of all obligations of any Obligor or any other person;
- (d) all assets paid or transferred to or vested in the Security Agent or its agent or received or recovered by the Security Agent or its agent in connection with any of the Finance Documents whether from any Obligor or any other person; and
- (e) all or any part of any rights, benefits, interests and other assets at any time representing or deriving from any of the above, including all income and other sums at any time received or receivable by the Security Agent or its agent in respect of the same (or any part thereof).

**Unpaid Sum** means any sum due and payable but unpaid by an Obligor under the Finance Documents.

**US** means the United States of America.

**Utilisation** means the making of the Loan.

**VAT** means:

- (a) any value added tax imposed by the Value Added Tax Act 1994;

- (b) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and
- (c) any other tax of a similar nature, whether imposed in the United Kingdom or in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraphs (a) or (b) above, or imposed elsewhere.

**Vroon Shipping UK** means Vroon Shipping U.K Ltd., a company incorporated under the laws of England with its registered office at 4th floor, Regent Centre, Regent Road, AB11 5NS, Aberdeen, United Kingdom.

**Vroon Vessel Participations** means Vroon Vessel Participations I B.V., a company incorporated under the laws of the Netherlands with its registered office at Lage Mosten 17, 4822 NJ, Breda, the Netherlands.

## 1.2 Construction

- (a) Unless a contrary indication appears, a reference in any of the Finance Documents to:
  - (i) the "Agent", any "Finance Party", any "Lender", any "Obligor", any "Obligee", any "Party", the "Security Agent" or any other person 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 Finance Documents and, in the case of the Security Agent, any person for the time being appointed as Security Agent or Security Agents in accordance with the Finance Documents;
  - (ii) Sections, clauses and Schedules are to be construed as references to the Sections and clauses of, and the Schedules to, the relevant Finance Document and references to a Finance Document include its Schedules. In Schedule 11 (Administration, agency and other provisions), references to clauses, except where the context otherwise requires, are references to clauses of such Schedule.;
  - (iii) a **Finance Document** or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as it may from time to time be amended, restated, novated or replaced, however fundamentally;
  - (iv) words importing the plural shall include the singular and vice versa;
  - (v) a time of day are to London time or, as the context may require, Central European Time;
  - (vi) any person includes its successors in title, permitted assignees or transferees;
  - (vii) a document in agreed form means:
    - (A) where a Finance Document has already been executed by all of the relevant parties, such Finance Document in its executed form;
    - (B) prior to the execution of a Finance Document, the form of such Finance Document separately agreed in writing between the Agent and the Borrowers as the form in which that Finance Document is to be executed or another form approved at the request of the Borrowers or, if not so agreed or approved, is in the form specified by the Agent;

- (viii) **approved by the Majority Lenders or approved by the Lenders** means approved in writing by the Agent acting on the instructions of the Majority Lenders or, as the case may be, all of the Lenders (on such conditions as they may respectively impose) and otherwise **approved** means approved in writing by the Agent (on such conditions as the Agent may impose) and **approval** and **approve** shall be construed accordingly;
  - (ix) **assets** includes present and future properties, revenues and rights of every description;
  - (x) **charter commitment** means, in relation to a vessel, any charter or contract for the use, employment or operation of that vessel or the carriage of people and/or cargo or the provision of services by or from it and includes any agreement for pooling or sharing income derived from any such charter or contract;
  - (xi) **control** of a Borrower means:
    - (A) the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:
      - (1) cast, or control the casting of, more than 50.1 per cent. of the maximum number of votes that might be cast at a general meeting of that entity; or
      - (2) appoint or remove all, or the majority, of the directors or other equivalent officers of that entity; or
    - (B) the holding beneficially of more than 50.1 per cent of the issued share capital of that Borrower (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital) (and, for this purpose, any Security Interest over share capital shall be disregarded in determining the beneficial ownership of such share capital),
- and **controlled** should be construed accordingly;
- (xii) a Lender's **cost of funds** in relation to its participation in the Loan is a reference to the average cost (determined either on an actual or a notional basis) which that Lender would incur if it were to fund, from whatever source(s) it may reasonably select, an amount equal to the amount of that participation in the Loan for a period equal in length to the Interest Period of the Loan;
  - (xiii) the term **disposal** or **dispose** means a sale, transfer or other disposal (including by way of lease or loan but not including by way of loan of money) by a person of all or part of its assets, whether by one transaction or a series of transactions and whether at the same time or over a period of time, but not the creation of a Security Interest;
  - (xiv) the **equivalent** of an amount specified in a particular currency (the **specified currency amount**) shall be construed as a reference to the amount of the other relevant currency which can be purchased with the specified currency amount on the date the calculation falls to be made for spot delivery, as conclusively determined by the Agent;
  - (xv) a **government entity** means any government, state or agency of a state;

- (xvi) a **group of Lenders** or a **group of Finance Parties** includes all the Lenders or (as the case may be) all the Finance Parties;
- (xvii) a **guarantee** means any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
- (xviii) **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;
- (xix) an **obligation** means any duty, obligation or liability of any kind;
- (xx) something being in the **ordinary course of business** of a person means something that is in the ordinary course of that person's current day-to-day operational business (and not merely anything which that person is entitled to do under its Constitutional Documents);
- (xxi) **pay, prepay or repay** in clause 27 (*Business restrictions*) includes by way of set-off, combination of accounts or otherwise;
- (xxii) a **person** includes any individual, firm, company, corporation, government entity or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
- (xxiii) 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 regulatory, self-regulatory or other authority or organisation and, in relation to any Lender, includes (without limitation) any Basel Regulation which is applicable to that Lender;
- (xxiv) **right** means any right, privilege, power or remedy, any proprietary interest in any asset and any other interest or remedy of any kind, whether actual or contingent, present or future, arising under contract or law, or in equity;
- (xxv) **trustee, fiduciary and fiduciary duty** has in each case the meaning given to such term under applicable law;
- (xxvi) (i) the **liquidation, winding up, dissolution, or administration** of person or (ii) a **receiver or administrative receiver or administrator** in the context of insolvency proceedings or security enforcement actions in respect of a person shall be construed so as to include any equivalent or analogous proceedings or any equivalent and analogous person or appointee (respectively) under the law of the jurisdiction in which such person is established or incorporated or any jurisdiction in which such person carries on business including (in respect of proceedings) the seeking or occurrences of liquidation, winding-up, reorganisation, dissolution, administration, arrangement, adjustment, protection or relief of debtors; and
- (xxvii) a **provision of law** is a reference to that provision as amended or re-enacted from time to time.

- (b) Where in this Agreement a provision includes a monetary reference level in one currency, unless a contrary indication appears, such reference level is intended to apply equally to its equivalent in other currencies as of the relevant time for the purposes of applying such reference level to any other currencies.
- (c) Section, clause and Schedule headings are for ease of reference only.
- (d) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
- (e) A Default (other than an Event of Default) is continuing if it has not been remedied or waived and an Event of Default is continuing if it has not been waived.
- (f) A reference in this Agreement to a page or screen of an information service displaying a rate shall include:
  - (i) any replacement page of that information service which displays that rate; and
  - (ii) the appropriate page of such other information service which displays that rate from time to time in place of that information service,
 and, if such page or service ceases to be available, shall include any other page or service displaying that rate specified by the Agent after consultation with the Borrowers.
- (g) A reference in this Agreement to a Central Bank Rate shall include any successor rate to, or replacement rate for, that rate.
- (h) Any Reference Rate Supplement overrides anything in:
  - (i) Schedule 8 (*Reference Rate Terms*); or
  - (ii) any earlier Reference Rate Supplement.
- (i) A Compounding Methodology Supplement relating to the Daily Non-Cumulative Compounded RFR Rate overrides anything relating to that rate in:
  - (i) Schedule 9 (*Daily Non-Cumulative Compounded RFR Rate*); or
  - (ii) any earlier Compounding Methodology Supplement.

### 1.3 Currency symbols and definitions

**\$, USD and dollars** denote the lawful currency of the United States of America.

### 1.4 Third party rights

- (a) Unless expressly provided to the contrary in a Finance Document for the benefit of a Finance Party or another Indemnified Person, a person who is not a party to a Finance Document has no right under the Contracts (Rights of Third Parties) Act 1999 (the **Third Parties Act**) to enforce or enjoy the benefit of any term of the relevant Finance Document.
- (b) Any Finance Document may be rescinded or varied by the parties to it without the consent of any person who is not a party to it (unless otherwise provided by this Agreement).

- (c) An Indemnified Person who is not a party to a Finance Document may only enforce its rights under that Finance Document through a Finance Party and if and to the extent and in such manner as the Finance Party may determine.

#### **1.5 Finance Documents**

Where any other Finance Document provides that this clause 1.5 shall apply to that Finance Document, any other provision of this Agreement which, by its terms, purports to apply to all or any of the Finance Documents and/or any Obligor shall apply to that Finance Document as if set out in it but with all necessary changes.

#### **1.6 Conflict of documents**

The terms of the Finance Documents (other than as relates to the creation and/or perfection of security) are subject to the terms of this Agreement and, in the event of any conflict between any provision of this Agreement and any provision of any Finance Document (other than in relation to the creation and/or perfection of security) the provisions of this Agreement shall prevail.

## **Section 2 - The Facility**

### **2 The Facility**

#### **2.1 The Facility**

Subject to the terms of this Agreement, the Lenders make available to the Borrowers a term loan facility in an aggregate amount equal to the Total Commitments.

#### **2.2 Finance Parties' rights and obligations**

- (a) The obligations of each Finance Party under the Finance Documents are several. Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.
- (b) The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from an Obligor shall be a separate and independent debt.
- (a) A Finance Party may, except as otherwise stated in the Finance Documents (including clause 3.26 (*All enforcement action through the Security Agent*) of Schedule 11 (*Administration, agency and other provisions*) and clause 4.2 (Finance Parties acting together) of Schedule 11 (*Administration, agency and other provisions*), separately enforce its rights under the Finance Documents.

#### **2.3 Borrowers' rights and obligations**

- (a) The obligations of each Borrower under this Agreement are joint and several. Failure by a Borrower to perform its obligations under this Agreement shall constitute a failure by all of the Borrowers.
- (b) Each Borrower irrevocably and unconditionally jointly and severally with each other Borrower:
  - (i) agrees that it is responsible for the performance of the obligations of each other Borrower under this Agreement;
  - (ii) acknowledges and agrees that it is a principal and original debtor in respect of all amounts due from the Borrowers under this Agreement; and
  - (iii) agrees with each Finance Party that, if any obligation of another Borrower under this Agreement is or becomes unenforceable, invalid or illegal for any reason it will, as an independent and primary obligation, indemnify that Finance Party immediately on demand against any and all Losses it incurs as a result of another Borrower not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by that other Borrower under this Agreement. The amount payable under this indemnity shall be equal to the amount which that Finance Party would otherwise have been entitled to recover.
- (c) The obligations of each Borrower under the Finance Documents shall continue until all amounts which may be or become payable by the Borrowers under or in connection with

the Finance Documents have been irrevocably and unconditionally paid or discharged in full, regardless of any intermediate payment or discharge in whole or in part.

- (d) If any discharge, release or arrangement (whether in respect of the obligations of a Borrower or any security for those obligations or otherwise) is made by a Finance Party in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of the Borrowers under this Agreement will continue or be reinstated as if the discharge, release or arrangement had not occurred.
- (e) The obligations of each Borrower under the Finance Documents shall not be affected by an act, omission, matter or thing which, but for this clause (whether or not known to it or any Finance Party), would reduce, release or prejudice any of its obligations under the Finance Documents including:
  - (i) any time, waiver or consent granted to, or composition with, any Obligor or other person;
  - (ii) the release of any other Obligor or any other person under the terms of any composition or arrangement with any creditor of any other Obligor;
  - (iii) 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 Obligor 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 security;
  - (iv) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or any other person;
  - (v) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of a Finance Document or any other document or security;
  - (vi) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
  - (vii) any insolvency or similar proceedings.
- (f) Each Borrower waives any right it may have of first requiring any Finance Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Borrower under any Finance Document. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.
- (g) Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably and unconditionally paid or discharged in full, each Finance Party (or any trustee or agent on its behalf) may:
  - (i) refrain from applying or enforcing any other moneys, security or rights held or received by that Finance Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Borrower will be entitled to the benefit of the same; and

- (ii) hold in an interest-bearing suspense account any money received from any Borrower or on account of any Borrower's liability under any Finance Document.
- (h) Until all amounts which may be or become payable by the Obligor under or in connection with the Finance Documents have been irrevocably paid in full and unless the Agent otherwise directs (on such terms as it may require), no Borrower shall exercise any rights (including rights of set-off) which it may have by reason of performance by it of its obligations under the Finance Documents:
  - (i) to be indemnified by another Obligor;
  - (ii) to claim any contribution from any other Obligor of any Obligor's obligations under the Finance Documents; and/or
  - (iii) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Finance Parties under the Finance Documents or of any guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Finance Party.

### **3 Purpose**

#### **3.1 Purpose**

The Commitments shall initially be made available solely for the purpose of assisting the Borrowers to refinance all amounts owing in respect of the Ships.

#### **3.2 Monitoring**

No Finance Party is bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

### **4 Conditions of Utilisation**

*[Intentionally omitted]*

## **Section 3 - Utilisation**

### **5 Utilisation**

*[Intentionally omitted].*

## **Section 4 - Repayment and Prepayment**

### **6 Repayment**

#### **6.1 Final Repayment Date**

The Borrowers shall repay the Loan in full and all other amounts outstanding under the Finance Documents on the Final Repayment Date (including, without limitation, all accrued and deferred interest) unless paid earlier in accordance with the terms of this Agreement.

#### **6.2 Payment on the Restructuring Effective Date**

The Borrowers shall make a repayment of \$8,630,000 on the Restructuring Effective Date.

#### **6.3 Fixed Amortisation Instalments**

The Borrowers shall repay the Loan on each Payment Date by equal consecutive quarterly instalments each in an amount equal to \$2,500,000 (each a **Fixed Amortisation**).

#### **6.4 Effect of prepayment on Fixed Amortisation**

If the Loan is repaid or prepaid in accordance with clause 7.3 (*Voluntary prepayment*), clause 7.5 (*Mandatory Prepayment – Sale or Total Loss*) and clause 7.6 (*Mandatory Prepayment – Excess Cashflow Event*) then the amount of the Fixed Amortisation for each Payment Date falling after that prepayment will reduce in inverse chronological order.

### **7 Illegality and prepayment**

#### **7.1 Illegality and Sanctions Event**

If:

- (a) it becomes unlawful under any law, regulation, treaty or of any directive of any monetary authority (whether or not having the force of law) in any applicable jurisdiction, for a Lender to perform any of its obligations as contemplated by this Agreement or to fund or maintain its participation in the Facility or it becomes unlawful for any Affiliate of a Lender for that Lender to do so (an **Illegality Event**); or
- (b) a Sanctions Event occurs,

then:

- (i) the relevant Lender shall promptly notify the Agent (specifying the obligations the performance of which is thereby rendered unlawful and the law giving rise to the same and/or the circumstance being an Illegality Event and/or a Sanctions Event which has occurred) upon becoming aware of such an event; and

- (ii) the Agent shall promptly notify the Borrowers (specifying the obligations the performance of which is thereby rendered unlawful and the law giving rise to the same and/or the circumstance being an Illegality Event and/or a Sanctions Event which has occurred) upon receipt of notification from the relevant Lender in accordance with paragraph (i) above; and

upon the Borrowers being so notified, the Borrowers shall repay the Loan in full together with accrued interest, and all other amounts accrued under the Finance Documents on the date specified by the Agent to the Borrowers such date, if permitted by Sanctions, not to be less than three (3) Business Days' after the Agent's notice to the Borrowers.

## **7.2 Change of control**

- (a) The Borrowers shall promptly notify the Agent upon any Obligor becoming aware of a Change of Control.
- (b) If a Change of Control occurs, the Agent may, and shall if so directed by the Majority Lenders, by notice to the Borrowers, cancel the Total Commitments with effect from a date specified in that notice which is not less than 15 days after the giving of the notice and declare that all or part of the Loan together with accrued interest and all other amounts accrued under the Finance Documents be payable on demand after such date, on which date it shall become payable on demand by the Agent on the instructions of the Majority Lenders.

## **7.3 Voluntary prepayment**

The Borrowers may, if they give the Agent not less than 20 Business Days' (or such shorter period as the Majority Lenders may agree) prior indicative notice and ten Business Days irrevocable notice, prepay the whole or any part of the Loan (but if in part, being an amount that reduces the amount of the Loan by a minimum amount of \$500,000 and is a multiple of \$100,000 on the last day of an Interest Period in respect of the amount to be prepaid).

## **7.4 Right of cancellation and prepayment in relation to a single Lender**

- (a) If:
  - (i) any sum payable to any Lender by an Obligor is required to be increased under clause 13.2 (*Tax gross-up*); or
  - (ii) any Lender claims indemnification from the Borrowers under clause 13.3 (*Tax indemnity*) or clause 14.1 (*Increased costs*),

the Borrowers may, whilst the circumstance giving rise to the requirement for that increase or indemnification continues, give the Agent notice of cancellation of the Commitment of that Lender and their intention to procure the repayment of that Lender's participation in the Loan.

- (b) On receipt of a notice referred to in paragraph (a) above, the Commitment of that Lender shall immediately be reduced to zero and the remaining Commitments shall each be reduced rateably.
- (c) On the last day of each Interest Period which ends after the Borrowers have given notice under paragraph (a) above in relation to a Lender (or, if earlier, the date specified by the Borrowers in that notice), the Borrowers shall repay that Lender's participation in the Loan

together with all interest and other amounts accrued under the Finance Documents which is then owing to it.

## **7.5 Mandatory Prepayment – Sale or Total Loss**

Upon a sale, Total Loss, or other disposition of a Mortgaged Ship, the Borrowers shall ensure that the Net Disposal Proceeds or Total Loss Proceeds received:

- (a) in the case of a sale which is an Approved Ship Disposal; or
- (b) in the case of a Total Loss or requisition of title, on the earlier of (A) the date falling 90 days after the date the Total Loss or requisition of title occurred and (B) the receipt by the Agent (on behalf of the Finance Parties) of the proceeds of insurance or requisition relating to such Total Loss or requisition of title,

are applied in prepayment of the Loan and any other amounts outstanding under the Finance Documents.

## **7.6 Mandatory Prepayment – Excess Cashflow Event**

- (a) In this clause 7.6:

**Excess Cashflow Event** means if on a Payment Date the amount of Free Cash plus any Irving Oil Termination Fee is greater than (x) \$2,500,000 plus (y) the amount required at such time to repay the Loan in full.

**Irving Oil Termination Fee** means any termination fee received from Irving Oil to an Obligor due to an early termination of the Irving Oil Charter.

- (b) If an Excess Cashflow Event occurs, the Agent may, and shall if so directed by the Majority Lenders, by notice to the Borrowers, cancel the Total Commitments with effect from a date specified in that notice which is not less than three Business Days after giving the notice and declare that all or part of the Loan together with accrued interest and all other amounts accrued under the Finance Documents be payable on the date specified for such in the notice, on which date it shall become payable on demand by the Agent on the instructions of the Majority Lenders.

## **7.7 Automatic cancellation**

Any part of the Total Commitments which has not become available by the relevant Last Availability Date shall be automatically cancelled at close of business in London on the relevant Last Availability Date.

# **8 Restrictions**

## **8.1 Notices of prepayment**

Any notice of prepayment given by any Party under clause 7 (*Illegality and prepayment*) shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant prepayment is to be made and the amount of that prepayment.

## **8.2 Interest and other amounts**

Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and, subject to any Break Costs, without premium or penalty.

## **8.3 No reborrowing**

The Borrowers may not re-borrow any part of the Facility which is prepaid or repaid.

## **8.4 Prepayment in accordance with Agreement**

The Borrowers shall not repay or prepay all or any part of the Loan or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this Agreement.

## **8.5 No reinstatement of Commitments**

No amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.

## **8.6 Agent's receipt of notices**

If the Agent receives a notice under clause 7 (*Illegality and prepayment*) it shall promptly forward a copy of that notice to either the Borrowers and all Lenders.

## **8.7 Effect of repayment and prepayment on Commitments**

If all or part of any Lender's participation in the Loan is repaid or prepaid, an amount of that Lender's Commitment equal to the amount of the participation which is repaid or prepaid will be deemed to be cancelled on the date of repayment or prepayment.

# **Section 5 - Costs of Utilisation**

## **9 Interest**

### **9.1 Calculation of interest**

(a) The rate of interest on the Loan for any day during an Interest Period is the percentage rate per annum which is the aggregate of the applicable:

- (i) Margin; and
- (ii) Compounded Reference Rate for that day.

(b) If any day during an Interest Period for the Loan is not an RFR Banking Day, the rate of interest on the Loan for that day will be the rate applicable to the immediately preceding RFR Banking Day.

### **9.2 Payment of interest**

The Borrowers shall pay accrued interest on the Loan on the last day of each Interest Period.

### **9.3 Default interest**

- (a) If an Obligor fails to pay any amount payable by it under a Finance Document to a Finance Party on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which is 2 per cent per annum higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted the Loan for successive Interest Periods, each of a duration selected by the Agent (acting reasonably).
- (b) Any interest accruing under this clause 9.3 shall be immediately payable by the Obligor on demand by the Agent.
- (c) Default interest payable under this clause 9.3 (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

### **9.4 Notifications**

- (a) The Agent shall promptly upon an Interest Payment being determinable notify:
  - (i) the Borrowers of that Interest Payment;
  - (ii) each relevant Lender of the proportion of that Interest Payment which relates to that Lender's participation in the Loan; and
  - (iii) the relevant Lenders and the Borrowers of:
    - (A) each applicable rate of interest relating to the determination of that Interest Payment; and
    - (B) to the extent it is then determinable, the Market Disruption Rate (if any) relating to the Loan.

This paragraph (a) will not apply to any Interest Payment determined pursuant to clause 11.3 (*Cost of funds*).

- (b) The Agent shall promptly notify the Borrowers and the Lenders of each Funding Rate relating to the Loan (or any relevant part of it) .
- (c) The Agent shall promptly notify the relevant Lenders and the Borrowers of the determination of a rate of interest to which clause 11.3 (*Cost of funds*) applies.
- (d) This clause 9.4 will not require the Agent to make any notification to any Party on a day which is not a Business Day.

## **10 Interest Periods**

### **10.1 Selection of Interest Periods**

- (a) Subject to this clause 10, each Interest Period shall be three Months.
- (b) No Interest Period for the Loan shall extend beyond the Final Repayment Date.

## **10.2 Non-Business Days**

Any rules specified as "Business Day Conventions" in the Reference Rate Terms shall apply to each Interest Period.

## **11 Changes to the calculation of interest**

### **11.1 Interest calculation if no RFR or Central Bank Rate**

If:

- (a) there is no applicable RFR or Central Bank Rate for the purposes of calculating the Daily Non-Cumulative Compounded RFR Rate for an RFR Banking Day during an Interest Period for the Loan; and
- (b) ***Cost of funds will apply as a fallback*** is specified in the Reference Rate Terms,

clause 11.3 (*Cost of funds*) shall apply to the Loan for that Interest Period.

### **11.2 Market disruption**

If:

- (a) a Market Disruption Rate is specified in the Reference Rate Terms; and
- (b) before the Reporting Time the Agent receives notifications from a Lender or Lenders (whose participations in the Loan exceed 30 per cent.) that its cost of funds relating to its participation in the Loan would be in excess of that Market Disruption Rate,

then clause 11.3 (*Cost of funds*) shall apply to the Loan for the relevant Interest Period.

### **11.3 Cost of funds**

- (a) If this clause 11.3 applies, the rate of interest on the Loan for an Interest Period shall be the percentage rate per annum which is the sum of:
  - (i) the Margin; and
  - (ii) the weighted average of the rates notified to the Agent by each Lender as soon as practicable and in any event by the Reporting Time, to be that which expresses as a percentage rate per annum its cost of funds relating to its participation in the Loan.
- (b) If this clause 11.3 applies and the Agent or the Borrowers so require, the Agent and the Borrowers shall enter into negotiations (for a period of not more than thirty days) with a view to agreeing a substitute basis for determining the rate of interest.
- (c) Any alternative basis agreed pursuant to paragraph (b) above shall, with the prior approval of all the Lenders and the Borrowers, be binding on all Parties.
- (d) If this clause 11.3 applies pursuant to clause 11.2 (*Market disruption*) and:
  - (i) a Lender's Funding Rate is less than the relevant Market Disruption Rate; or
  - (ii) a Lender does not notify a rate to the Agent by the Reporting Time,

that Lender's cost of funds relating to its participation in the Loan for that Interest Period shall be deemed, for the purposes of paragraph (a) above, to be the Market Disruption Rate.

- (e) Subject to paragraph (d) above, if this clause 11.3 applies but any Lender does not notify a rate to the Agent by the Reporting Time the rate of interest shall be calculated on the basis of the rates notified by the remaining Lenders.
- (f) If this clause 11.3 applies the Agent shall, as soon as is practicable, notify the Borrowers.

#### **11.4 Break Costs**

- (a) If an amount is specified as Break Costs in the Reference Rate Terms, the Borrowers shall, within three Business Days of demand by a Finance Party, pay to that Finance Party its Break Costs (if any) attributable to all or any part of the Loan or Unpaid Sum being paid by the Borrowers on a day prior to the last day of an Interest Period for the Loan or Unpaid Sum.
- (b) Each Lender shall, as soon as reasonably practicable after a demand by the Agent, provide a certificate confirming the amount of its Break Costs for any Interest Period in respect of which they become, or may become, payable.

### **12 Fees**

#### **12.1 Commitment commission**

*[Intentionally omitted]*

#### **12.2 Arrangement and other fees**

The Borrowers shall pay to the Arranger arrangement and other fees in the amount and at the times agreed in a Fee Letter.

## Section 6 - Additional Payment Obligations

### 13 Tax gross-up and indemnities

#### 13.1 Definitions

- (a) In this Agreement:

**Borrower DTTP Filing** means an HM Revenue & Customs' Form DTTP2 duly completed and filed by the relevant UK Borrower which:

- (a) where it relates to a UK Treaty Lender that is an Original Lender, contains the scheme reference number and jurisdiction of tax residence stated in respect of that Lender in Schedule 1 (*The Original Parties*), and is filed with HM Revenue & Customs within 30 days of the date of this Agreement; or
- (b) where it relates to a UK Treaty Lender that is not an Original Lender, contains the scheme reference number and jurisdiction of tax residence stated in respect of that Lender in the documentation which it executes on becoming a Party as a Lender, and is filed with HM Revenue & Customs within 30 days of that date.

**Protected Party** means a Finance Party or, in relation to clause 15.4 (*Indemnity concerning security*) and clause 15.7 (*Interest*) insofar as it relates to interest on any amount demanded by that Indemnified Person under clause 15.4 (*Indemnity concerning security*), any Indemnified Person, which is or will be subject to any liability, or required to make any payment, for or on account of Tax in relation to a sum received or receivable (or any sum deemed for the purposes of Tax to be received or receivable) under a Finance Document.

**Tax Confirmation** means a confirmation by a Lender that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:

- (a) a company resident in the United Kingdom for United Kingdom tax purposes; or
- (b) a partnership, each member of which is:
  - (i) a company so resident in the United Kingdom; or
  - (ii) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (for the purposes of section 19 of the Corporation Tax Act 2009 (CTA)) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA; or
- (c) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (for the purposes of section 19 of the CTA) of that company.

**Tax Credit** means a credit against, relief or remission for, or repayment of any Tax.

**Tax Deduction** means a deduction or withholding for or on account of Tax from a payment under a Finance Document other than a FATCA Deduction.

**Tax Payment** means either the increase in a payment made by an Obligor to a Finance Party under clause 13.2 (*Tax gross-up*) or a payment under clause 13.3 (*Tax indemnity*).

**UK Borrower** means a Borrower resident in the United Kingdom for taxation purposes.

**UK Non-Bank Lender** means a Lender which is not an Original Lender and which gives a Tax Confirmation in the documentation which it executes on becoming a Party as a Lender.

**UK Qualifying Lender** means a Lender which is beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document and is:

(a) a Lender:

- (i) which is a bank (as defined for the purpose of section 879 of the Income Tax Act 2007 (ITA)) making an advance under a Finance Document and is within the charge to United Kingdom corporation tax in respect of any payments of interest made in respect of that advance or would be within such charge as respects such payments apart from section 18A of the CTA; or
- (ii) in respect of an advance made under a Finance Document by a person that was a bank (as defined for the purpose of section 879 ITA) at the time that that advance was made and within the charge to United Kingdom corporation tax as respects any payments of interest made in respect of that advance; or

(b) a Lender which is:

- (i) a company resident in the United Kingdom for United Kingdom tax purposes;
- (ii) a partnership each member of which is:
  - (A) a company so resident in the United Kingdom; or
  - (B) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the purposes of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA;
- (iii) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company; or

(c) a UK Treaty Lender.

**UK Treaty Lender** means a Lender which:

- (a) makes an advance to a UK Borrower under a Finance Document;

- (b) is treated as a resident of a UK Treaty State for the purposes of the Treaty;
- (c) does not carry on a business in the United Kingdom through a permanent establishment with which that Lender's participation in the Loan is effectively connected;
- (d) is entitled under the provisions of the UK Treaty to receive payments of interest in respect of an advance under a Finance Document free and clear of any Tax Deduction; and
- (e) subject to the completion of any necessary procedural requirements, meets all other conditions in the Treaty for full exemption from United Kingdom taxation on interest which relate to the Lender.

**UK Treaty State** means a jurisdiction having a double taxation agreement (a **Treaty**) with the United Kingdom which makes provision for full exemption from tax imposed by the United Kingdom on interest.

### 13.2 Tax gross-up

- (a) Each Obligor shall make all payments to be made by it under any Finance Document without any Tax Deduction, unless a Tax Deduction is required by law.
- (b) The Borrowers shall, promptly upon becoming aware that an Obligor must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction), notify the Agent accordingly. Similarly, a Lender shall notify the Agent on becoming so aware in respect of a payment payable to that Lender. If the Agent receives such notification from a Lender it shall notify the Borrowers and that Obligor.
- (c) If a Tax Deduction is required by law to be made by an Obligor, the amount of the payment due from that Obligor under the relevant Finance Document shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
- (d) A payment shall not be increased under paragraph (c) above by reason of a Tax Deduction made by a UK Borrower on account of Tax imposed by the United Kingdom, if on the date on which the payment falls due:
  - (i) the payment could have been made to the relevant Lender without a Tax Deduction if the Lender had been a UK Qualifying Lender, but on that date that Lender is not or has ceased to be a UK Qualifying Lender other than as a result of any change after the date it became a Lender under this Agreement (or in the interpretation, administration, or application of) any law of Treaty, or any published practice or published concession of any relevant taxing authority; or
  - (ii) the following apply:
    - (A) the relevant Lender is a UK Qualifying Lender solely by virtue of paragraph (b) of the definition of UK Qualifying Lender in clause 13.1 (*Definitions*); and
    - (B) an officer of HM Revenue & Customs has given (and not revoked) a direction (a **Direction**) under section 931 of the ITA which relates to the payment and that Lender has received from that Obligor making the payment or from the relevant UK Borrower a certified copy of that Direction; and

- (C) the payment could have been made to the Lender without any Tax Deduction if that Direction had not been made; or
  - (iii) the relevant Lender is a UK Qualifying Lender solely by virtue of paragraph (b) of the definition of UK Qualifying Lender in clause 13.1 (*Definitions*); and
    - (A) the relevant Lender has not given a Tax Confirmation to the relevant UK Borrower; and
    - (B) the payment could have been made to the Lender without any Tax Deduction if the Lender had given a Tax Confirmation to the relevant UK Borrower, on the basis that the Tax Confirmation would have enabled the relevant UK Borrower to have formed a reasonable belief that the payment was an "excepted payment" for the purpose of section 930 of the ITA; or
  - (iv) the relevant Lender is a UK Treaty Lender and the Obligor making the payment is able to demonstrate that the payment could have been made to the Lender without the Tax Deduction had that Lender complied with its obligations under paragraphs (g) to (i) below.
- (e) If an Obligor is required to make a Tax Deduction, that Obligor shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
  - (f) Within ten (10) days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Obligor making that Tax Deduction shall deliver to the Agent for the Finance Party entitled to the payment evidence reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.
  - (g) Subject to paragraph (h) below, a Lender and each Obligor which makes a payment to which that Lender is entitled shall co-operate in completing any procedural formalities necessary for that Obligor to obtain authorisation to make that payment without a Tax Deduction.
  - (h) A UK Treaty Lender which is an Original Lender and holds a passport under the HM Revenue & Customs DT Treaty Passport scheme, and which wishes that scheme to apply to this Agreement, shall confirm its scheme reference number and its jurisdiction of tax residence in Schedule 1 (*The Original Parties*) and a UK Treaty Lender which is not an Original Lender and that holds a passport under the HM Revenue & Customs DT Treaty Passport scheme, and which wishes that scheme to apply to this Agreement, shall confirm its scheme reference number and its jurisdiction of tax residence in the documentation which it executes on becoming a Party as a Lender, and, having done so, in each such case that Lender shall be under no obligation pursuant to paragraph (g) above.
  - (i) If a Lender has confirmed its scheme reference number and its jurisdiction of tax residence in accordance with paragraph (h) above and:
    - (i) a UK Borrower making a payment to that Lender has not made a Borrower DTPP Filing in respect of that Lender; or

- (ii) a UK Borrower making a payment to that Lender has made a Borrower DTTP Filing in respect of that Lender but:
  - (A) that Borrower DTTP Filing has been rejected by HM Revenue & Customs; or
  - (B) HM Revenue & Customs has not given the UK Borrower authority to make payments to that Lender without a Tax Deduction within 60 days of the date of the Borrower DTTP Filing,

and in each case, the UK Borrower has notified that Lender in writing, that Lender and the UK Borrower shall co-operate in completing any additional procedural formalities necessary for that UK Borrower to obtain authorisation to make that payment without a Tax Deduction.

- (j) If a Lender has not confirmed its scheme reference number and jurisdiction of tax residence in accordance with paragraph (h) above, no Obligor shall make a Borrower DTTP Filing or file any other form relating to the HM Revenue & Customs DT Treaty Passport scheme in respect of that Lender's Commitment or its participation in the Loan unless the Lender otherwise agrees.
- (k) A UK Borrower shall, promptly on making a Borrower DTTP Filing, deliver a copy of that Borrower DTTP Filing to the Agent for delivery to the relevant Lender.
- (l) A UK Non-Bank Lender shall promptly notify the Borrowers and the Agent if there is any change in the position from that set out in the Tax Confirmation.

### **13.3 Tax indemnity**

- (a) Each Obligor who is a Party shall (within three Business Days of demand by the Agent) pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document.
- (b) Paragraph (a) above shall not apply:
  - (i) with respect to any Tax assessed on a Finance Party:
    - (A) under the law of the jurisdiction in which that Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Finance Party is treated as resident for tax purposes;
    - (B) under the law of the jurisdiction in which that Finance Party's Facility Office is located in respect of amounts received or receivable in that jurisdiction; or
    - (C) which results from the gross negligence or wilful misconduct of the relevant Protected Party,

if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Finance Party; or

- (ii) to the extent a loss, liability or cost:
  - (A) is compensated for by an increased payment under clause 13.2 (*Tax gross-up*);
  - (B) would have been compensated for by an increased payment under clause 13.2 (*Tax gross-up*) but was not so compensated solely because one of the exclusions in paragraph (d) of clause 13.2 (*Tax gross-up*) applied;
  - (C) is compensated for by clause 13.6 (*Stamp taxes*) or clause 13.8 (*Value added tax*) or would have been compensated for under those clauses but was not compensated solely because any of the exceptions set out therein applied; or
  - (D) relates to a FATCA Deduction required to be made by a Party or any Obligor which is not a Party.
- (c) A Protected Party making, or intending to make a claim under paragraph (a) above shall promptly notify the Agent of the event which will give, or has given, rise to the claim, following which the Agent shall notify the Borrower.
- (d) A Protected Party shall, on receiving a payment from an Obligor under this clause 13.3, notify the Agent.

#### **13.4 Tax Credit**

If an Obligor makes a Tax Payment and the relevant Finance Party determines that:

- (a) a Tax Credit is attributable (A) to an increased payment of which that Tax Payment forms part, (B) to that Tax Payment or (C) to a Tax Deduction in consequence of which that Tax Payment was required; and
- (b) that Finance Party (either alone or on an affiliated group basis) has obtained and utilised that Tax Credit,

the Finance Party shall pay an amount to the Obligor which that Finance Party determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by the Obligor.

#### **13.5 Indemnities on after Tax basis**

- (a) If and to the extent that any sum payable to any Protected Party by the Borrowers under any Finance Document by way of indemnity or reimbursement proves to be insufficient, by reason of any Tax suffered thereon, for that Protected Party to discharge the corresponding liability to a third party, or to reimburse that Protected Party for the cost incurred by it in discharging the corresponding liability to a third party, the Borrowers shall pay that Protected Party such additional sum as (after taking into account any Tax suffered by that Protected Party on such additional sum) shall be required to make up the relevant deficit.
- (b) If and to the extent that any sum (the **Indemnity Sum**) constituting (directly or indirectly) an indemnity to any Protected Party but paid by the Borrowers to any person other than that Protected Party, shall be treated as taxable in the hands of the Protected Party, the Borrowers shall pay to that Protected Party such sum (the **Compensating Sum**) as (after taking into account any Tax suffered by that Protected Party on the Compensating Sum)

shall reimburse that Protected Party for any Tax suffered by it in respect of the Indemnity Sum.

- (c) For the purposes of paragraphs (a) and (b) above, a sum shall be deemed to be taxable in the hands of a Protected Party if it fails to be taken into account in computing the profits or gains of that Protected Party for the purposes of Tax and, if so, that Protected Party shall be deemed to have suffered Tax on the relevant sum at the rate of Tax applicable to that Protected Party's profits or gains for the period in which the payment of the relevant sum falls to be taken into account for the purposes of such Tax.

### **13.6 Lender status confirmation**

- (a) Each Lender which is not an Original Lender shall indicate, in the documentation which it executes on becoming a Party as a Lender, and for the benefit of the Agent and without liability to any Obligor, which of the following categories it falls in:
  - (i) not a UK Qualifying Lender;
  - (ii) a UK Qualifying Lender (other than a UK Treaty Lender); or
  - (iii) a UK Treaty Lender.
- (b) If such a Lender fails to indicate its status in accordance with paragraph (a) above then that Lender shall be treated for the purposes of this Agreement (including by each Obligor) as if it is not a UK Qualifying Lender until such time as it notifies the Agent in writing (including by way of e-mail) which category applies (and the Agent, upon receipt of such notification, shall inform the Borrowers). For the avoidance of doubt, the documentation which it executes on becoming a Party as a Lender shall not be invalidated by any failure of a Lender to comply with this clause 13.6.
- (c) Each Lender (including, for the avoidance of doubt, any New Lender) shall promptly notify the Agent if it becomes aware it will or has ceased to be a UK Qualifying Lender, or changes the basis on which it will be a UK Qualifying Lender (including any change in the Treaty on which it relies), in which case it shall specify the reason why and as of what date it has ceased to be, or changed the basis on which it is, a UK Qualifying Lender.

### **13.7 Stamp taxes**

The Borrowers shall pay and, within three Business Days of demand, indemnify each Finance Party against any cost, loss or liability that Finance Party incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document.

### **13.8 Value added tax**

- (a) All amounts expressed to be payable under a Finance Document by any Party to a Finance Party which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and accordingly, subject to paragraph (b) below, if VAT is or becomes chargeable on any supply made by any Finance Party to any Party under a Finance Document, and such Finance Party is required to account to the relevant tax authority for the VAT, that Party must pay to such Finance Party (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of the VAT (and such Finance Party must promptly provide an appropriate VAT invoice to that Party).

- (b) If VAT is or becomes chargeable on any supply made by any Finance Party (the **Supplier**) to any other Finance Party (the **Recipient**) under a Finance Document, and any Party other than the Recipient (the **Subject Party**) is required by the terms of any Finance Document to pay an amount equal to the consideration for that supply to the Supplier (rather than being required to reimburse or indemnify the Recipient in respect of that consideration):
  - (i) (where the Supplier is the person required to account to the relevant tax authority for the VAT) the Subject Party must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the VAT. The Recipient must (where this paragraph (i) applies) promptly pay to the Subject Party an amount equal to any credit or repayment the Recipient receives from the relevant tax authority which the Recipient reasonably determines relates to the VAT chargeable on that supply; and
  - (ii) (where the Recipient is the person required to account to the relevant tax authority for the VAT) the Subject Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply but only to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.
- (c) Where a Finance Document requires any Party to reimburse or indemnify a Finance Party for any cost or expense, that Party shall reimburse or indemnify (as the case may be) such Finance Party for the full amount of such cost or expense, including such part thereof as represents VAT save to the extent that such Finance Party reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.
- (d) Any reference in this clause 13.8 to any Party shall, at any time when such Party is treated as a member of a group or unity (or fiscal unity) for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the person who is treated as making the supply, or (as appropriate) receiving the supply under the grouping rules (as set out in Article 11 of Council Directive 2006/112/EC, as amended (or as implemented by a member state of the European Union) or any other similar provision in any jurisdiction which is not a member state of the European Union) so that a reference to a Party shall be construed as a reference to that Party or the relevant group or unity (or fiscal unity) of which that Party is a member for VAT purposes at the relevant time or the relevant representative member (or head) of that group or unity (or fiscal unity) at the relevant time (as the case may be).
- (e) In relation to any supply made by a Finance Party to any Party under a Finance Document, if reasonably requested by such Finance Party, that Party must promptly provide such Finance Party with details of that Party's VAT registration and such other information as is reasonably requested in connection with such Finance Party's VAT reporting requirements in relation to such supply.

### **13.9 FATCA information**

- (a) Subject to paragraph (c) below, each Party shall, within ten (10) Business Days of a reasonable request by another Party:
  - (i) confirm to that other Party whether it is:
    - (A) a FATCA Exempt Party; or

- (B) not a FATCA Exempt Party;
  - (ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA; and
  - (iii) supply to that other Party such forms, documentation and other information relating to its status as that other Party reasonably requests for the purposes of that other Party's compliance with any other law, regulation, or exchange of information regime.
- (b) If a Party confirms to another Party pursuant to paragraph (a)(i) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.
  - (c) Paragraph (a) above shall not oblige any Finance Party to do anything, and paragraph (a)(iii) above shall not oblige any other Party to do anything, which would or might in its reasonable opinion constitute a breach of:
    - (i) any law or regulation;
    - (ii) any fiduciary duty; or
    - (iii) any duty of confidentiality
  - (d) If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with paragraph (a)(i) or (a)(ii) above (including, for the avoidance of doubt, where paragraph (c) above applies), then such Party shall be treated for the purposes of the Finance Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.

#### **13.10 FATCA Deduction**

- (a) Each Party may make any FATCA Deduction it is required to make by FATCA, and any payment required in connection with that FATCA Deduction, and no Party shall be required to increase any payment in respect of which it makes such a FATCA Deduction or otherwise compensate the recipient of the payment for that FATCA Deduction.
- (b) Each Party shall promptly, upon becoming aware that it must make a FATCA Deduction (or that there is any change in the rate or the basis of such FATCA Deduction), notify the Party to whom it is making the payment and, in addition, shall notify the Borrowers and the Agent and the Agent shall notify the other Finance Parties.

### **14 Increased Costs**

#### **14.1 Increased costs**

- (a) Subject to 14.3 (*Exceptions*) the Borrowers shall, within three Business Days of a demand by the Agent, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates which:
  - (i) arises as a result of (A) the introduction of or any change in (or in the interpretation, administration or application of) of any Applicable Law or (B) compliance with any Applicable Law made after the date of this Agreement;

- (ii) is a Basel III Increased Cost; and/or
  - (iii) any additional or increased cost (including any costs which a Lender from time to time may incur in order to comply with the regulatory requirements of the European Central Bank or local central bank or other relevant institutions or authorities, introduced or the introduction of which was made after the date of this Agreement.
- (b) In this Agreement:
- (i) **Applicable Law** means:
    - (A) in relation to any jurisdiction or to the European Union, any law, regulation, treaty, directive, decision, rule, regulatory requirement, judgment, order, ordinance, request, guideline or direction or any other act of any Government Entity of such jurisdiction or of the European Union whether or not having the force of law and with which any Party is required to comply, or with which it would, in the normal course of its business, comply; and
    - (B) in relation to any Finance Party, any Basel Regulation applicable to that Finance Party.
  - (ii) **Basel III** means:
    - (A) the agreements on capital requirements, a leverage ratio and liquidity standards contained in "Basel III: A global regulatory framework for more resilient banks and banking systems", "Basel III: International framework for liquidity risk measurement, standards and monitoring" and "Guidance for national authorities operating the countercyclical capital buffer" published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated;
    - (B) the rules for global systemically important banks contained in "Global systemically important banks: assessment methodology and the additional loss absorbency requirement – Rules text" published by the Basel Committee on Banking Supervision in November 2011, as amended, supplemented or restated; and
    - (C) any further guidance or standards published by the Basel Committee on Banking Supervision relating to "Basel III".
  - (iii) **CRD IV** means:
    - (A) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012;
    - (B) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms amending Directive 2002/87/EC and repealing Directive 2006/48/EC and 2006/49/EC; and
    - (C) any other regulation implementing any of the foregoing.

(iv) **Increased Costs** means:

- (A) a reduction in the rate of return from the Facility or on a Finance Party's (or its Affiliate's) overall capital;
- (B) an additional or increased cost; or
- (C) a reduction of any amount due and payable under any Finance Document,

which is incurred or suffered by a Finance Party or any of its Affiliates to the extent that it is attributable to that Finance Party having entered into its Commitment or funding or performing its obligations under any Finance Document.

**14.2 Increased cost claims**

- (a) A Finance Party intending to make a claim pursuant to clause 14.1 (*Increased costs*) shall notify the Agent of the event giving rise to the claim, following which the Agent shall promptly notify the Borrowers.
- (b) Each Finance Party shall, as soon as practicable after a demand by the Agent, provide a certificate confirming the amount of its Increased Costs.

**14.3 Exceptions**

- (a) Clause 14.1 (*Increased costs*) does not apply to any Increased Cost which is:
  - (i) attributable to a Tax Deduction required by law to be made by an Obligor;
  - (ii) attributable to a FATCA Deduction required to be made by a Party; or
  - (iii) compensated for by clause 13.3 (*Tax indemnity*) (or would have been compensated for under clause 13.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in paragraph (b) of clause 13.3 (*Tax indemnity*) applied); or
  - (iv) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation.
- (b) In paragraph (a) above, a reference to a Tax Deduction has the same meaning given to the term in clause 13.1 (*Definitions*).

**15 Other indemnities**

**15.1 Currency indemnity**

- (a) If any sum due from an Obligor under the Finance Documents (a **Sum**), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the **First Currency**) in which that Sum is payable into another currency (the **Second Currency**) for the purpose of:
  - (i) making or filing a claim or proof against that Obligor; and/or
  - (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

that Obligor shall, as an independent obligation, within three Business Days of demand by a Finance Party, indemnify each Finance Party to whom that Sum is due against any Losses arising out of or as a result of the conversion including any discrepancy between (i) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (ii) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

- (b) Each Obligor waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.

## **15.2 Other indemnities**

- (a) The Borrowers shall (or shall procure that another Obligor will), within three Business Days of demand by a Finance Party, indemnify each Finance Party against any and all Losses incurred by that Finance Party as a result of:
  - (i) the occurrence of any Event of Default;
  - (ii) a failure by an Obligor to pay any amount due under a Finance Document on its due date, including without limitation, any and all Losses arising as a result of clause 5 (*Sharing among the Finance Parties*) of Schedule 11 (*Administration, agency and other provisions*);
  - (iii) funding, or making arrangements to fund, its participation in a Utilisation requested by the Borrowers but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Finance Party alone);
  - (iv) the Loan (or part of the Loan) not being prepaid in accordance with a notice of prepayment given by the Borrowers;
  - (v) the Obligors breaching any law related to safety, Environmental Laws or any Sanctions (including but not limited to any claim, action, civil penalty or fine against, any settlement), and any other kind of loss or liability, and all reasonable costs and expenses (including reasonable counsel fees and disbursements) incurred by any Finance Party as a result of conduct of the Obligors or any of its respective partners, directors, officers, employees, agents or advisors, to the extent they are, or purport to be, acting on behalf of the Obligors; or
  - (vi) any claim, action, civil penalty or fine against, any settlement, and any other kind of loss or liability, and all reasonable costs and expenses (including reasonable counsel fees and disbursements) incurred by the Agent or any Finance Party as a result of the conduct of an Obligor or any of their partners (where such Obligor is a partnership) directors, officers, employees, agents or advisors (in case of agents and advisors, only if acting as agent or advisor to an Obligor or in relation to a Ship) that violates any Sanctions, and shall cover any cost, loss or liability incurred by each Finance Party in any jurisdiction arising or asserted under or in connection with any Sanctions as a result of the aforementioned conducted conduct.
- (b) The Borrowers shall promptly indemnify each Finance Party, each Affiliate of a Finance Party and each officer or employee of a Finance Party or its Affiliate, against any cost, loss or liability incurred by that Finance Party or its Affiliate (or officer or employee of that Finance Party or Affiliate) in connection with or arising out of the financing of the Ships

(including but not limited to those incurred in connection with any litigation, arbitration or administrative proceedings or regulatory enquiry concerning the Ships), unless such loss or liability is caused by the gross negligence or wilful misconduct of that Finance Party or its Affiliate (or employee or officer of that Finance Party or Affiliate). Any Affiliate or any officer or employee of a Finance Party or its Affiliate may rely on this clause 15.2.

### **15.3 Indemnity to the Agent and the Security Agent**

The Borrowers shall promptly indemnify the Agent and the Security Agent against:

- (a) any and all Losses (together with any applicable VAT) incurred by the Agent or the Security Agent (acting reasonably) as a result of:
  - (i) investigating any event which it reasonably believes is a Default;
  - (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
  - (iii) instructing lawyers, accountants, tax advisers, insurance consultants, ship managers, valuers, surveyors or other professional advisers or experts as permitted under the Finance Documents; or
  - (iv) any action taken by the Agent or the Security Agent or any of its or their representatives, agents or contractors in connection with any powers conferred by any Security Document (to which it is a party in its capacity as Agent or Security Agent) to remedy any breach of any Obligor's obligations under the Finance Documents, and
- (b) any and all Losses (including, without limitation, in respect of liability for negligence or any other category of liability whatsoever) (together with any applicable VAT) incurred by the Agent or the Security Agent (otherwise than by reason of the Agent's or the Security Agent's gross negligence or wilful misconduct) (or, in the case of any cost, loss or liability pursuant to clause 6.10 (*Disruption to payment systems etc.*) of Schedule 11 (Administration, agency and other provisions) notwithstanding the Agent's or the Security Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) in acting as Agent or the Security Agent under the Finance Documents.

### **15.4 Indemnity concerning security**

- (a) The Borrowers shall (or shall procure that another Obligor will) promptly indemnify each Indemnified Person against any and all Losses (together with any applicable VAT) incurred by it as a result of:
  - (i) any failure by the Borrowers to comply with its obligations under clause 17 (*Costs and expenses*) or any similar provision in any other Finance Document;
  - (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
  - (iii) the taking, holding, protection or enforcement of the Security Documents;
  - (iv) the exercise or purported exercise of any of the rights, powers, discretions, authorities and remedies vested in the Security Agent and/or any other Finance Party

in whose favour any Security Document (to which it is a party in its capacity as Security Agent and/or other Finance Party) has been granted and each Receiver and each Delegate by the Finance Documents or by law (otherwise, in each case, than by reason of the relevant Security Agent's and/or other Finance Party's, Receiver's or Delegate's gross negligence or wilful misconduct);

- (v) any default by any Obligor in the performance of any of the obligations expressed to be assumed by it in the Finance Documents;
  - (vi) any claim (whether relating to the environment or otherwise) made or asserted against the Indemnified Person which would not have arisen but for the execution or enforcement of one or more Finance Documents (unless and to the extent it is caused by the gross negligence or wilful misconduct of that Indemnified Person);
  - (vii) instructing lawyers, accountants, tax advisers, insurance consultants, ship managers, valuers, surveyors or other professional advisers or experts as permitted under the Finance Documents; or
  - (viii) (in the case of the Security Agent and/or any other Finance Party in whose favour any Security Document (to which it is a party in its capacity as Security Agent and/or other Finance Party) has been granted, any Receiver and any Delegate) acting as Security Agent and/or as holder of any of the Security Documents, Receiver or Delegate under the Finance Documents or which otherwise relates to the Charged Property (otherwise, in each case, than by reason of the relevant Security Agent's and/or other Finance Party's, Receiver's or Delegate's gross negligence or wilful misconduct).
- (b) The Security Agent may, in priority to any payment to the other Finance Parties, indemnify itself out of the Charged Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this clause 15.4 and shall have a lien on the Security Documents and the proceeds of the enforcement of the Security Documents for all moneys payable to it.

## **15.5 Continuation of indemnities**

The indemnities by the Borrowers in favour of any Indemnified Persons contained in this Agreement shall continue in full force and effect notwithstanding any breach by any Finance Party or the Borrowers of the terms of this Agreement, the repayment or prepayment of the Loan or the repudiation by any Finance Party or the Borrowers of this Agreement.

## **15.6 Third Parties Act**

- (a) Each Indemnified Person may rely on the terms of clause 15.4 (*Indemnity concerning security*) and clauses 13 (*Tax gross-up and indemnities*) and 15.6 (*Interest*) insofar as it relates to interest on, or the calculation of, any amount demanded by that Indemnified Person under clause 15.4 (*Indemnity concerning security*), subject to clause 1.4 (*Third party rights*) and the provisions of the Third Parties Act.
- (b) Where an Indemnified Person (other than a Finance Party) (the **Relevant Beneficiary**) who is:
  - (i) appointed by a Finance Party under the Finance Documents;
  - (ii) an Affiliate of any such person or that Finance Party; or

- (iii) an officer, director, employee, adviser, representative or agent of any of the above persons or that Finance Party,

is entitled to receive any amount (a **Third Party Claim**) under any of the provisions referred to in paragraph (a) above:

- (A) the Borrowers shall at the same time as the relevant Third Party Claim is due to the Relevant Beneficiary pay to that Finance Party a sum in the amount of that Third Party Claim;
- (B) payment of such sum to that Finance Party shall, to the extent of that payment, satisfy the corresponding obligations of the Borrowers to pay the Third Party Claim to the Relevant Beneficiary; and
- (C) if the Borrowers pay the Third Party Claim direct to the Relevant Beneficiary, such payment shall, to the extent of that payment, satisfy the corresponding obligations of the Borrowers to that Finance Party under sub-paragraph (A) above.

#### **15.7 Interest**

Moneys becoming due by the Borrowers to any Indemnified Person under the indemnities contained in this clause 15 (*Other indemnities*) or elsewhere in this Agreement shall be paid on demand made by such Indemnified Person and shall be paid together with interest on the sum demanded from the date of demand therefor to the date of reimbursement by the Borrowers to such Indemnified Person (both before and after judgment) at the rate referred to in clause 9.3 (*Default interest*).

#### **15.8 Exclusion of liability**

Without prejudice to any other provision of the Finance Documents excluding or limiting the liability of any Indemnified Person, no Indemnified Person will be in any way liable or responsible to any Obligor (whether as mortgagee in possession or otherwise) who is a Party or is a party to a Finance Document to which this clause applies for any loss or liability arising from any act, default, omission or misconduct of that Indemnified Person, except to the extent caused by its own gross negligence or wilful misconduct. Any Indemnified Person may rely on this clause 15.8 subject to clause 1.4 (*Third party rights*) and the provisions of the Third Parties Act.

#### **15.9 Email indemnity**

The Borrowers shall indemnify each Finance Party against any and all Losses together with any VAT thereon which any of the Finance Parties may sustain or incur as a consequence of any email communication purporting to originate from the Borrowers to the Agent or the Security Agent, being made or delivered fraudulently or without proper authorisation (unless such Losses are the direct result of the gross negligence or wilful misconduct of the relevant Finance party or the Agent or the Security Agent).

## **16 Mitigation by the Lenders**

### **16.1 Mitigation**

- (a) Each Finance Party shall, in consultation with the Borrowers, take all reasonable steps to mitigate any circumstances which arise and which would result in the Facility ceasing to be available or any amount becoming payable under or pursuant to, or cancelled pursuant to, any of clause 7.1 (*Illegality and sanctions*), clause 13 (*Tax gross-up and indemnities*) or clause 14 (*Increased costs*) including (but not limited to) assigning its rights under the Finance Documents to another Affiliate or Facility Office.
- (b) Paragraph (a) above does not in any way limit the obligations of any Obligor under the Finance Documents.

### **16.2 Limitation of liability**

- (a) The Borrowers shall promptly indemnify each Finance Party for all costs and expenses incurred by that Finance Party as a result of steps taken by it under clause 16.1 (*Mitigation*).
- (b) A Finance Party is not obliged to take any steps under clause 16.1 (*Mitigation*) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

## **17 Costs and expenses**

### **17.1 Transaction expenses**

The Borrowers shall, promptly on demand, pay any Finance Party the amount of all reasonable costs and expenses (fees, costs and expenses of lawyers, accountants, tax advisers, insurance consultants, ship managers, valuers, surveyors or other professional advisers and experts) (together with any applicable VAT) reasonably incurred by any of them (and, in the case of the Security Agent, by any Receiver or Delegate) in connection with the negotiation, preparation, printing, execution, syndication, registration and perfection and any release, discharge or reassignment of:

- (a) this Agreement and any other documents referred to in this Agreement and the Security Documents;
- (b) any other Finance Documents executed or proposed to be executed after the date of this Agreement;
- (c) any Security Interest expressed or intended to be granted by a Finance Document; or
- (d) any cost related to discharge of existing Security Interests related to the financing arrangements refinanced by this Agreement,

other than, in each case, any Transfer Certificate or assignment agreement.

### **17.2 Amendment costs**

If:

- (a) an Obligor requests an amendment, waiver or consent; or

- (b) an amendment is required pursuant to clause 6.9 (*Change of currency*) of Schedule 11 (*Administration, agency and other provisions*), clause 36.4 (*Changes to reference rates*), or any Compounding Methodology Supplement or Reference Rate Supplement,

the Borrowers shall, within three Business Days of demand, reimburse any Finance Party for the amount of all reasonable costs and expenses (including fees, costs and expenses of lawyers, accountants, tax advisers, insurance consultants, ship managers, valuers, surveyors or other professional advisers or experts) (together with any applicable VAT) reasonably incurred by the Agent and the Security Agent (and in the case of the Security Agent, by any Receiver or Delegate) in responding to, evaluating, negotiating or complying with that request or requirement.

### **17.3 Agent's and Security Agent's management time and additional remuneration**

- (a) Any amount payable to the Agent or the Security Agent under clause 15.3 (*Indemnity to the Agent and the Security Agent*), clause 15.4 (*Indemnity concerning security*), clause 17 (*Costs and expenses*) or clause 3.13 (*Lenders' indemnity to the Agent and others*) of Schedule 11 (*Administration, agency and other provisions*) shall include the cost of utilising the Agent's or (as the case may be) the Security Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Agent or (as the case may be) the Security Agent may notify to the Borrowers and the other Finance Parties, and is in addition to any other fee paid or payable to the Agent or the Security Agent.
- (b) Without prejudice to paragraph (a) above, in the event of:
  - (i) a Default;
  - (ii) the Agent or the Security Agent being requested by an Obligor or the other Finance Parties to undertake duties which the Agent or (as the case may be) the Security Agent and the Borrowers agree to be of an exceptional nature or outside the scope of the normal duties of the Agent or (as the case may be) the Security Agent under the Finance Documents; or
  - (iii) the Agent or (as the case may be) the Security Agent and the Borrowers agreeing that it is otherwise appropriate in the circumstances,

the Borrowers shall pay to the Agent or (as the case may be) the Security Agent any additional remuneration that may be agreed between them or determined pursuant to paragraph (c) below.

- (c) If the Agent or (as the case may be) the Security Agent and the Borrowers fail to agree upon the nature of the duties, or upon the additional remuneration referred to in paragraph (b) above or whether additional remuneration is appropriate in the circumstances, any dispute shall be determined by an investment bank (acting as an expert and not as an arbitrator) selected by the Agent or (as the case may be) the Security Agent and approved by the Borrowers or, failing approval, nominated (on the application of the Agent or (as the case may be) the Security Agent) by the President for the time being of the Law Society of England and Wales (the costs of the nomination and of the investment bank being payable by the Borrowers) and the determination of any investment bank shall be final and binding upon the Parties.

#### **17.4 Enforcement, preservation and other costs**

The Borrowers shall, on demand by a Finance Party, pay to each Finance Party the amount of all costs and expenses (including fees, costs and expenses of lawyers, accountants, tax advisers, insurance consultants, ship managers, valuers, surveyors or other professional advisers or experts) (together with any applicable VAT) incurred by that Finance Party in connection with:

- (a) the enforcement of, or the preservation of any rights under, any Finance Document and any proceedings initiated by or against any Indemnified Person as a consequence of taking or holding the Security Documents or enforcing those rights;
- (b) any valuation carried out under clause 25 (*Valuations*); or
- (c) any inspection carried out under clause 23.8 (*Inspection*) or any survey carried out under clause 23.14 (*Survey report*).

## **Section 7 - Representations, Undertakings and Events of Default**

### **18 Representations**

Each Borrower makes and repeats the representations and warranties set out in this clause 18, for itself and (where applicable) each other Obligor, to each Finance Party at the times specified in clause 18.28 (*Times when representations are made*).

#### **18.1 Status**

- (a) Each Borrower is duly incorporated and validly existing under the laws of the jurisdiction of its incorporation as a limited liability company or corporation and has no centre of main interests, permanent establishment or place of business outside the jurisdiction in which it is incorporated.
- (b) Each Borrower has power and authority to carry on its business as it is now being conducted and to own its property and other assets.

#### **18.2 Binding obligations**

Subject to the Legal Reservations, the obligations expressed to be assumed by each Borrower in each Finance Document and any Charter Document to which it is, or is to be, a party are or, when entered into by it, will be legal, valid, binding and enforceable obligations and each Security Document to which a Borrower is, or will be, a party, creates or will create the Security Interests which that Security Document purports to create and those Security Interests are or will be valid and effective.

#### **18.3 Power and authority**

- (a) Each Borrower has power to enter into, perform and deliver and comply with its obligations under, and has taken all necessary action to authorise its entry into, each Finance Document and any Charter Document to which it is, or is to be, a party.
- (b) No limitation on any Borrower's powers to borrow, create security or give guarantees will be exceeded as a result of any transaction under, or the entry into of, any Finance Document and any Charter Document to which such Borrower is, or is to be, a party.

#### **18.4 Non-conflict**

The entry into and performance by each Borrower of, and the transactions contemplated by the Finance Documents and the granting of the Security Interests purported to be created by the Security Documents do not and will not conflict with:

- (a) any law or regulation applicable to any Borrower;
- (b) the Constitutional Documents of any Borrower,

or constitute a default or termination event (however described) under any such agreement or instrument or result in the creation of any Security Interest (save for a Permitted Maritime Lien or under a Security Document) on any Borrower's assets, rights or revenues.

#### **18.5 Validity and admissibility in evidence**

- (a) All Authorisations required or desirable:

- (i) to enable each Borrower lawfully to enter into, exercise its rights and comply with its obligations under each Finance Document and any Charter Documents to which it is a party;
- (ii) to make each Finance Document to which it is a party admissible in evidence in its Relevant Jurisdiction; and
- (iii) to ensure that each of the Security Interests created under the Security Documents has the priority and ranking contemplated by them,

have been obtained or effected and are in full force and effect (to the extent that not obtaining such authorisations would have a Material Adverse Effect) except any authorisation or filing referred to in clause 18.3 (*No filing or stamp taxes*), which authorisation or filing will be promptly obtained or effected within any applicable period.

- (b) All authorisations necessary for the conduct of the business, trade and ordinary activities of each Borrower have been obtained or effected and are in full force and effect if failure to obtain or effect those authorisations might have a Material Adverse Effect.

#### **18.6 Governing law and enforcement**

- (a) The choice of English law or any other applicable law as the governing law of any Finance Document will be recognised and enforced in each Borrower's Relevant Jurisdictions.
- (b) Subject to the Legal Reservations, any judgment obtained in England in relation to a Borrower will be recognised and enforced in that Borrower's Relevant Jurisdictions.

#### **18.7 Information**

- (a) Any Information is to the best of the Borrowers' knowledge (having made due and careful enquiry) true and accurate in all material respects at the time it was given or made.
- (b) There are no facts or circumstances or any other information which could make the Information incomplete, untrue, inaccurate or misleading in any material respect.
- (c) The Information does not omit anything which could make the Information incomplete, untrue, inaccurate or misleading in any material respect.
- (d) All opinions, projections, forecasts or expressions of intention contained in the Information and the assumptions on which they are based have been arrived at after due and careful enquiry and consideration and were believed to be reasonable by the person who provided that Information as at the date it was given or made.
- (e) For the purposes of this clause 18.7, **Information** means: any information provided by any Borrower to any of the Finance Parties in connection with the Finance Documents or the Charter Documents or the transactions referred to in them.

#### **18.8 Original Financial Statements**

- (a) The Original Financial Statements of the Borrowers were prepared in accordance with GAAP consistently applied.
- (b) The Original Financial Statements give a true and fair view of the financial condition and results of operations of the Borrowers during the relevant financial year.

**18.9 Cash Flow Forecast**

The Cash Flow Forecast has been prepared on the basis of recent historical information and on the basis of reasonable assumptions.

**18.10 Pari passu ranking**

Each Borrower's payment obligations under the Finance Documents to which it is, or is to be, a party rank at least pari passu with all its other present and future unsecured and unsubordinated payment obligations, except for obligations mandatorily preferred by law applying to companies generally.

**18.11 Ranking and effectiveness of security**

Subject to any filing, registration or notice requirements which is referred to in any legal opinion delivered to the Agent under or in connection with this Agreement, the security created by the Security Documents has (or will have when the Security Documents have been executed) the priority which it is expressed to have in the Security Documents, the Charged Property is not subject to any Security Interest other than Permitted Security Interests and such security will constitute perfected security on the assets described in the Security Documents.

**18.12 No insolvency**

No corporate action, legal proceeding or other procedure or step described in clause 28.10 (*Insolvency proceedings*) or creditors' process described in clause 28.11 (*Creditors' process*) has been taken or, to the knowledge of any Borrower, threatened in relation to a Borrower and none of the circumstances described in clause 28.9 (*Insolvency*) applies to any Borrower.

**18.13 No filing or stamp taxes**

Under the laws of each Borrower's Relevant Jurisdictions it is not necessary that any Finance Document or any Charter Document to which it is, or is to be, party be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar Taxes or fees be paid on or in relation to any such Finance Document or any Charter Document or the transactions contemplated by the Finance Documents except any filing, recording or enrolling or any tax or fee payable in relation to any Finance Document which is referred to in any Legal Opinion and which will be made or paid promptly after the date of the relevant Finance Document.

**18.14 Deduction of tax**

(a) No Borrower is required to make any deduction for or on account of Tax imposed by the United Kingdom from any payment it may make under any Charter Document or any Finance Document to which it is, or is to be, a party where such payment is to:

(i) a UK Qualifying Lender:

(A) falling within paragraph (a) of the definition of UK Qualifying Lender; or

(B) except where a Direction has been given under section 931 of the ITA in relation to the payment concerned, falling within paragraph (b) of the definition of UK Qualifying Lender; or

- (ii) a UK Treaty Lender and the payment is one specified in a direction given by the Commissioners of Revenue & Customs under Regulation 2 of the Double Taxation Relief (Taxes on Income) (General) Regulations 1970 (SI 1970/488).
- (b) The execution or delivery or performance by any Party of the Finance Documents will not result in any Finance Party:
  - (i) having any liability in respect of Tax in any Ship's flag state;
  - (ii) having or being deemed to have a place of business in any Ship's flag state or any Relevant Jurisdiction of any Borrower.

**18.15 No Default**

- (a) No Default is continuing or might reasonably be expected to result from the making of any Utilisation or the entry into, the performance of, or any transaction contemplated by, any Finance Document or any Charter Document.
- (b) No other event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the foregoing, would constitute) a default or termination event (however described) under any other agreement or instrument which is binding on any Borrower or to which any Borrower's assets are subject which might have a Material Adverse Effect.

**18.16 No proceedings pending or threatened**

No litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body, Sanctions Authority or agency which might reasonably be expected to have a Material Adverse Effect have (to the best of any Borrower's knowledge and belief (having made due and careful enquiry)) been started or threatened against any Borrower.

**18.17 No breach of laws**

No Borrower has, to the best of its knowledge and belief having made due and careful enquiry, breached any law or regulation which breach might have a Material Adverse Effect.

**18.18 Environmental matters**

- (a) No Environmental Law applicable to any Ship and/or any Borrower has to the best of the Borrowers' knowledge, information and belief, having made due and careful enquiry been violated in a manner or circumstances which might have, a Material Adverse Effect.
- (b) All consents, licences and approvals required under such Environmental Laws have to the best of the Borrowers' knowledge and belief, having made due and careful enquiry, been obtained and are currently in force.
- (c) No Environmental Claim has to the best of the Borrowers' knowledge and belief, having made due and careful enquiry, been made or threatened or is pending against any Borrower or any Ship where that claim has a Material Adverse Effect and there has to the best of the Borrowers' knowledge, information and belief, having made due and careful enquiry, been no Environmental Incident which has given, or might give, rise to such a claim.

**18.19 Tax compliance**

- (a) No Obligor is materially overdue in the filing of any Tax returns or overdue in the payment of any amount in respect of Tax, where such overdue payment or filing results in a Material Adverse Effect.
- (b) Save in respect of the Santander Tax Claim, no claims or investigations are being, or are reasonably likely to be, made or conducted against any Obligor with respect to Taxes such that a liability of, or claim against, any Obligor is reasonably likely to arise for an amount for which adequate reserves have not been provided pursuant to clause 19 (*Information undertakings*) and which might have a Material Adverse Effect.
- (c) Each Obligor is resident for Tax purposes only in its jurisdiction of incorporation.

**18.20 Security and Financial Indebtedness**

- (a) Other than Permitted Security Interests, no Security Interest exists over all or any of the present or future assets of any Borrower in breach of this Agreement.
- (b) No Borrower has any Financial Indebtedness outstanding in breach of this Agreement.

**18.21 Legal and beneficial ownership**

Each Borrower is the sole legal and beneficial owner of the respective assets over which it purports to grant a Security Interest under the Security Documents.

**18.22 No adverse consequences**

- (a) It is not necessary under the laws of the Relevant Jurisdictions of any Obligor:
  - (i) in order to enable any Finance Party to enforce its rights under any Finance Document to which it is, or is to be, a party; or
  - (ii) by reason of the execution of any Finance Document or the performance by any Obligor of its obligations under any Finance Document,that any Finance Party should be licensed, qualified or otherwise entitled to carry on business in any of such Relevant Jurisdictions.
- (b) No Finance Party is or will be deemed to be resident, domiciled or carrying on business in any Relevant Jurisdiction by reason only of the execution, performance and/or enforcement of any Finance Document.

**18.23 No breach of any Charter Document**

No Borrower nor (so far as the Borrowers are aware) any other person is in breach of any Charter Document to which it is a party nor has anything occurred which entitles or may entitle any party to rescind or terminate it or decline to perform their obligations under it.

**18.24 No immunity**

No Obligor or any of its assets is immune to any legal action or proceeding.

#### **18.25 Ship status**

Each Ship will on the day its Mortgage is executed and registered be:

- (a) registered in the name of the relevant Borrower through the relevant Registry as a ship under the laws and flag of its flag state;
- (b) operationally seaworthy and in every way fit for service;
- (c) classed with the highest class available for such Ship with the relevant Classification Society free of all overdue requirements and recommendations of the relevant Classification Society; and
- (d) insured in the manner required by the Finance Documents.

#### **18.26 DAC 6**

No transaction contemplated by the Finance Documents nor any transaction to be carried out in connection with any transaction contemplated by the Finance Documents meets any hallmark set out in Annex IV of the Council Directive of 25 May 2018 (2018/822/EU) amending Directive 2011/16/EU (DAC 6).

#### **18.27 Sanctions**

- (a) No Obligor, nor any member of the Group, nor to the best of its knowledge any of its Relevant Persons:
  - (i) is, or has been, a Restricted Person;
  - (ii) has been or is engaged in any transaction, activity or conduct that could reasonably be expected to result in its being designated as a Restricted Person;
  - (iii) is or has been in breach of Sanctions; and/or
  - (iv) is involved in or has received notice of or is otherwise aware of, any inquiry, claim, action, suit, proceedings or investigation involving it with respect to Sanctions.
- (b) Each Obligor has instituted and maintains policies and procedures designed to promote, achieve and ensure compliance by each Obligor and each other Group Member and their respective directors, officers, employees and agents with Sanctions.

#### **18.28 Times when representations are made**

- (a) All of the representations and warranties set out in this clause 18 (other than the Ship Representation) are deemed to be made on the Restructuring Effective Date.
- (b) The Repeating Representations are deemed to be made on each Payment Date.
- (c) The Ship Representation is deemed to be made on the day its Mortgage is executed and registered for the relevant Ship.
- (d) Each representation or warranty deemed to be made after the date of this Agreement shall be deemed to be made by reference to the facts and circumstances existing at the date the representation or warranty is deemed to be made.

## **19 Information undertakings**

**19.1** Each Borrower undertakes that this clause 19 will be complied with throughout the Facility Period.

**19.2** In this clause 19:

**Annual Financial Statements** means the financial statements for a financial year of the Obligors delivered pursuant to paragraph (a) of clause 19.3 (*Financial statements*).

**Semi Annual Financial Statements** means the financial statements for a financial half year of the Obligors delivered pursuant to paragraph (b) of clause 19.3 (*Financial statements*).

### **19.3 Financial statements**

- (a) The Borrowers shall supply to the Agent as soon as the same become available, but in any event within 180 days after the end of each financial year the unaudited financial statements of the Obligors for that financial year.
- (b) The Borrowers shall supply to the Agent as soon as the same become available, but in any event within 30 days after the end of each financial half year of each of its financial years the unaudited financial statements of the Obligors for that financial half year.

### **19.4 Cash Flow Forecast**

The Borrowers shall supply to the Agent together with each Semi Annual Financial Statements delivered pursuant to clause 19.3(b) an updated Cash Flow Forecast prepared on the basis of recent historical information and on the basis of reasonable assumptions in respect of any Financial Quarters from that time until (and including) the Final Repayment Date, in substantially the same format as that of the Original Cash Flow Forecast, but always subject to form and substance satisfactory to the Agent.

### **19.5 Provision and contents of Compliance Certificate**

- (a) The Borrowers shall supply a Compliance Certificate to the Agent, with each set of Annual Financial Statements and each set of Semi Annual Financial Statements.
- (b) Each Compliance Certificate shall, amongst other things, set out (in reasonable detail) computations as to compliance with clause 20 (*Financial covenants*) together with supporting materials.
- (c) Each Compliance Certificate shall be signed by the an authorised signatory of the Borrowers.
- (d) The Borrowers shall supply further information regarding the details of calculation of matters in a Compliance Certificate (and relevant supporting documents) as may be reasonably required by the Agent within five Business Days of request.

### **19.6 Requirements as to financial statements**

- (a) The Borrowers shall procure that each set of Annual Financial Statements and Semi-Annual Financial Statements includes a profit and loss account, a balance sheet and, if available, a cashflow statement.

- (b) Each set of financial statements delivered pursuant to clauses 18.3 and 18.4 (Financial statements) shall:
  - (i) be prepared in accordance with GAAP; and
  - (ii) fairly represent the financial condition and operations of the Borrowers as at the date as at which those financial statements were drawn up.
- (a) The Borrowers shall procure that each set of financial statements delivered pursuant to clause 19.3 (*Financial statements*) shall be prepared using GAAP, accounting practices and financial reference periods consistent with those applied in the preparation of the Original Financial Statements, unless, in relation to any set of financial statements, the Borrowers notify the Agent that there has been a change in GAAP and deliver to the Agent a description of any change necessary for those financial statements to reflect the GAAP or accounting practices and reference periods upon which corresponding Original Financial Statements were prepared.
- (b) Any reference in this Agreement to any financial statements shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which the Original Financial Statements were prepared.

#### **19.7 Information: miscellaneous**

The Borrowers shall deliver to the Agent:

- (a) at the same time as they are dispatched, copies of all documents dispatched by the Borrowers to their creditors generally (or any class of them which are required to be provided by their Constitutional Documents or applicable laws in any jurisdiction);
- (b) as soon as practicable upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against any Borrower, and which might have a Material Adverse Effect;
- (c) as soon as practicable, such information as the Agent may reasonably require about the Charged Property and compliance of the Obligor with the terms of any Finance Documents;
- (d)
- (e) as soon as it is aware, to provide any new information on the status of the Santander Tax Claim.

#### **19.8 Notification of Default**

The Borrowers shall notify the Agent of any Default (and the steps, if any, being taken to remedy it) and shall notify any party to the Subordination and Assignment Deed of any Event of Default, in each case promptly upon any Borrower becoming aware of its occurrence.

#### **19.9 Sufficient copies**

The Borrowers, if so requested by the Agent, shall deliver sufficient copies of each document to be supplied under the Finance Documents to the Agent to distribute to each of the Lenders.

#### **19.10 "Know your customer" checks**

- (a) If:
- (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;
  - (ii) any change in the status of an Obligor or the composition of the shareholders of an Obligor after the date of this Agreement; or
  - (iii) a proposed assignment by a Lender of any of its rights under this Agreement to a party that is not already a Lender prior to such assignment,

obliges the Agent or any Lender (or, in the case of paragraph (c) above, any prospective new Lender) to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, the Borrowers shall promptly upon the request of the Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or any Lender (for itself or, in the case of the event described in paragraph (c) above, on behalf of any prospective new Lender in order for the Agent, such Lender or, in the case of the event described in paragraph (c) above, any prospective new Lender to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

- (b) Each Finance Party shall, promptly upon the request of the Agent or the Security Agent, supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent or the Security Agent (for itself) in order for it to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

#### **19.11 Sanctions**

The Borrowers shall supply to each Lender:

- (a) promptly upon becoming aware of it, notification in writing that it or any Relevant Person has violated any Sanctions;
- (b) promptly upon becoming aware of them, the details of any inquiry, claim, action, suit, proceeding or investigation pursuant to Sanctions against it and/or any Relevant Person as well as information on what steps are being taken with regards to answer or oppose to such inquiry, claim, action, suit proceeding or investigation; and
- (c) promptly upon becoming aware of it, notification in writing that it or any Relevant Person has been designated as a Restricted Person;
- (d) on request by a Finance Party, documentation requested for the purposes of that Finance Parties' Sanctions compliance; and
- (e) promptly upon becoming aware of it, notification in writing that it has identified a breach or violation of any representation contained in clause 18.27 (*Sanctions*) or any undertaking in clause 21.11 (*Sanctions*).

## **20 Financial covenants**

### **20.1 Undertaking to comply**

Each Borrower undertakes that this clause 20 will be complied with throughout the Facility Period.

### **20.2 Financial condition**

Each such Party shall ensure that on each Payment Date:

- (a) **Minimum Liquidity:** Free Cash shall not be lower than \$2,500,000.
- (b) **Minimum Liquidity Forward Looking:** forecasted Free Cash pursuant to the Cash Flow Forecast shall be at least \$2,500,000 for each of the next two consecutive Financial Quarters.

### **20.3 Financial testing**

The financial covenants set out in clause 20.2 (*Financial condition*) shall be calculated in accordance with GAAP and tested by reference to each of the financial statements delivered pursuant to clause 19.3 (*Financial statements*), the Cash Flow Forecast delivered pursuant to clause 19.4 (*Cash Flow Forecast*) and/or each Compliance Certificate delivered pursuant to clause 19.5 (*Provision and contents of Compliance Certificate*).

### **20.4 Consultation - forecasted Free Cash**

If any Cash Flow Forecast projects that the forecasted Free Cash for any Financial Quarter occurring after the next two consecutive Financial Quarters is less than \$2,500,000, the Borrowers and the Lenders shall consult on potential mitigations and solutions.

## **21 General undertakings**

### **21.1 Undertaking to comply**

Each Borrower undertakes that this clause 21 will be complied with throughout the Facility Period.

### **21.2 Use of proceeds**

The proceeds of Utilisations will be used exclusively for the purposes specified in clause 3 (Purpose).

### **21.3 Authorisations**

Each Borrower and each Lessor Owner will promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect; and
- (b) supply certified copies to the Agent of any Authorisation required under any law or regulation of a Relevant Jurisdiction to:
  - (i) enable it to perform its obligations under the Finance Documents and any Charter Documents;

- (ii) ensure the legality, validity, enforceability or admissibility in evidence of any Finance Document and any Charter Document; and
- (iii) carry on its business where failure to do so has, or is reasonably likely to have, a Material Adverse Effect.

#### **21.4 Compliance with laws**

Each Borrower and each Lessor Owner will, comply in all respects with all laws and regulations (including Environmental Laws) to which it may be subject when failure to do so has, or might have, a Material Adverse Effect.

#### **21.5 Tax compliance**

- (a) Each Borrower and each Lessor Owner shall pay and discharge all Taxes imposed upon it or its assets (where failure to pay has or might have a Material Adverse Effect) within such time allowed by law without incurring penalties unless and only to the extent that:
  - (i) such payment is being contested in good faith;
  - (ii) adequate reserves are being maintained for those Taxes and the costs required to contest them which have been disclosed in its latest financial statements delivered to the Agent under clauses 18.3 and 18.4 (Financial statements); and
  - (iii) such payment can be lawfully withheld and failure to pay those Taxes does not have a Material Adverse Effect.
- (b) Except as approved by the Majority Lenders (such approval not to be unreasonably withheld), each Borrower shall maintain its residence for Tax purposes in the jurisdiction in which it is incorporated and ensure that it is not resident for Tax purposes in any other jurisdiction.

#### **21.6 Change of business**

Except as approved by the Majority Lenders (such approval not to be unreasonably withheld), no substantial change will be made to the general nature of the business of the Borrowers or the Lessor Owners from that carried on at the date of this Agreement.

#### **21.7 Merger**

Except as approved by the Majority Lenders (such approval not to be unreasonably withheld), no Obligor will enter into any amalgamation, demerger, merger, consolidation, redomiciliation, legal migration or corporate reconstruction.

#### **21.8 Further assurance**

- (a) Each Obligor shall promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Agent may reasonably specify (and in such form as the Agent may reasonably require:

- (i) to perfect the Security Interests created or intended to be created by that Obligor under or evidenced by the Security Documents (which may include the execution of a mortgage, charge, assignment or other security over all or any of the assets which are, or are intended to be, the subject of the Security Documents) or for the exercise of any rights, powers and remedies of the Security Agent provided by or pursuant to the Finance Documents or by law;
  - (ii) to confer on the Security Agent Security Interests over any property and assets of that Obligor located in any jurisdiction equivalent or similar to the Security Interest intended to be conferred by or pursuant to the Security Documents;
  - (iii) to facilitate the realisation of the assets which are, or are intended to be, the subject of the Security Documents; and/or
  - (iv) to facilitate the accession by a New Lender to any Security Document following an assignment in accordance with clause 29.1 (*Assignments by the Lenders*).
- (b) Each Obligor shall take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security Interest conferred or intended to be conferred on the Security Agent by or pursuant to the Finance Documents.

#### **21.9 Negative pledge in respect of Charged Property**

Except as approved by the Majority Lenders and for Permitted Security Interests, no Obligor will grant or allow to exist any Security Interest over any Charged Property, other than a Security Interest arising out of the Finance Documents.

#### **21.10 Compliance with laws**

Each Obligor shall, and shall use its best endeavours to procure that each other Group Member and each Affiliate of any of them shall, comply in all respects with all Sanctions.

#### **21.11 Sanctions**

- (a) Each Obligor shall (and shall procure that each other Relevant Person will) comply in all respects with Sanctions.
- (b) No Obligor shall (and the Borrowers shall ensure that no other Relevant Person will) take any action, make any omission or use and/or request the use of (directly or indirectly) any proceeds of the Loan, or lend, contribute or otherwise make available the proceeds of the Loan to any Restricted Person, other person or entity (whether or not related to any member of the Group) in a manner that:
  - (i) is a breach or violation of Sanctions; and/or
  - (ii) causes (or will cause) a breach or violation of Sanctions by any Relevant Person or Finance Party, or which exposes any Relevant Person or Finance Party to the risk of adverse measures pursuant to any Sanctions; and/or
  - (iii) is for the purpose of financing the activities of, or business or transactions with any Restricted Person; and/or

- (iv) causes any Finance Party to be involved in any complaint, claim, proceeding, formal notice, investigation or other action by any regulatory or enforcement authority or third party concerning any Sanctions.
- (c) No Obligor shall (and the Borrowers shall ensure that no other Relevant Person will) directly or indirectly fund all or part of any payment or repayment of any Loan out of proceeds derived from transactions which would be prohibited by Sanctions or would otherwise cause any other person or entity to be in breach of Sanctions.
- (d) No Obligor shall (and the Borrowers shall ensure that no other Relevant Person will) take any action, make any omission and/or engage in any activities, business or transaction that result(s), or is likely to result, in it or any Finance Party becoming a Restricted Person or otherwise a target of sanctions ("**target of sanctions**" signifying an entity or person ("**Target**") that is a target of laws, regulations or orders concerning any trade, economic or financial sanctions or embargoes by virtue of prohibitions and/or restrictions being imposed on any US person or other legal or natural person subject to the jurisdiction or authority of a US Sanctions Authority which prohibit or restrict them from them engaging in trade, business or other activities with such Target without all appropriate licences or exemptions issued by all applicable US Sanctions Authorities).
- (e) The Obligors will prevent any Ship from being used, directly or indirectly:
  - (i) by, or for the benefit of, any Restricted Person;
  - (ii) in any trade which could expose the relevant Ship, any Finance Party, any manager of the Ship, the ship's crew or the Ship's insurers to enforcement proceedings or any other consequences whatsoever arising from Sanctions or otherwise in calling, trading or going to a country or territory that is, or whose government is, the subject of Sanctions broadly prohibiting dealings with such government, country, or territory; and/or
  - (iii) in any manner which would trigger the operation of any sanctions limitation or exclusion clause (or similar) in any Insurances (and/or re-insurances).
- (f) The Obligors shall not use any revenue or economic benefit derived from any activity or dealing with a Restricted Person (or otherwise prohibited by Sanctions) in discharging any obligation due or owing to the Finance Parties.
- (g) The Obligors shall procure that each Charter (including any sub-charter) shall contain, for the benefit of the relevant Obligor, language which broadly gives effect to the provisions of paragraphs (f) and (g) above and which permits refusal of employment or voyage orders if compliance would result in a breach of Sanctions or would expose any person to the risk of adverse measures pursuant to any Sanctions.
- (h) Each Obligor and each other Group Member shall not:
  - (i) become a Restricted Person;
  - (ii) be owned or controlled by, or acting directly or indirectly on behalf of or for the benefit of, a Restricted Person;
  - (iii) own or control a Restricted Person.
- (i) No Obligor shall (and shall procure that no Relevant Person will):

- (l) directly or indirectly, use the proceeds of the Facility or lend, contribute or otherwise make available the proceeds of the Facility to any Subsidiary, joint venture partner, other person or entity (whether or not related to any member of the Group):
  - (A) in breach of Sanctions;
  - (B) for the purpose of financing the activities of, or business or transactions with, any Restricted Person;
  - (C) in financing any activities, business or transactions in any Sanctioned Country;
  - (D) in any manner that causes (or will cause) any Lender to be in breach of Sanctions;
  - (E) in any manner that results, or is likely to result, in it or any Lender becoming a Restricted Person or otherwise a target of Sanctions; or
  - (F) any other manner that would result in a violation of Sanctions by any person or entity; and/or
- (j) engage in any activities, business or transactions that could result in it or any other Group Member or any Lender being designated as a Restricted Person; and/or
- (k) directly or indirectly fund all or part of any payment or repayment under the Facility out of proceeds derived from transactions which would be prohibited by Sanctions or would otherwise cause any other person or entity to be in breach of Sanctions.

## **21.12 Use of proceeds**

The Obligors shall not, and shall use their best endeavours to procure that each other member of the Group and any Affiliate of any of them shall not, permit or authorise any other person to, directly or indirectly, use, lend, make payments of, contribute or otherwise make available, all or any part of the proceeds of the Facility or other transactions contemplated by this Agreement to fund or facilitate trade, business or other activities: (a) involving or for the benefit of any Restricted Person or (b) in any other manner that could result in any Obligor or a Finance Party being in breach of any Sanctions or becoming a Restricted Person.

## **21.13 Conflicts**

In the event that it is not possible for the Borrowers to comply with the requirements of this Agreement with respect to Sanctions due to conflicting positive obligations on the Borrowers under applicable Sanctions, the Agent shall at the request of the Borrowers enter into good faith discussions with the Borrowers for such period as it considers reasonable with a view to discussing (without obligation) such changes to the terms and requirements of this Agreement with respect to Sanctions as the Agent (acting on the instructions of the Lenders) may deem appropriate.

# **22 Dealings with Ships**

## **22.1 Undertaking to comply**

Each Borrower undertakes that this clause 22 will be complied with in relation to each Mortgaged Ship whilst it is subject to a Mortgage.

## **22.2 Ship's name and registration**

- (a) The Ship's name shall only be changed after prior notice to the Agent.
- (b) The Ship shall be registered with the relevant Registry under the laws of its flag state within such maximum period as may be allowed therefor by the relevant Registry and registered with the relevant Registry under the laws of its flag state.
- (c) The flag state of a Ship shall not be changed to any other flag or at any other port and a Ship shall not fly any other flag (other than that of its flag state) except:
  - (i) with approval (such approval not to be unreasonably withheld); or
  - (ii) to another Approved Flag, subject to this Agreement being amended in a form which is approved to reflect such change, replacement Security Interests equivalent to the relevant existing Security Documents in respect of the Ship being executed and registered by the relevant Obligors in an approved manner and receipt by the Agent of such documents and evidence of the nature set out in Schedule 3 (*Conditions precedent*) as may be approved.
- (d) Nothing will be done and no action will be omitted if that might result in such registration being forfeited or imperilled or the Ship being required to be registered under the laws of another state of registry.

## **22.3 Sale or other disposal of Ship**

No Borrower and/or Lessor Owner will sell, or agree to, transfer, abandon or otherwise dispose of any Ship or any share or interest in it, other than an Approved Ship Disposal.

## **22.4 Manager**

A manager of the Ship shall not be appointed unless either (a) it is an Approved Manager or (b) that manager and the terms of its appointment are approved and, in either case, the Borrowers have exercised their best efforts to procure the delivery of a duly executed Manager's Undertaking to the Security Agent, save that the Borrowers shall deliver a Manager's Undertaking to the Security Agent if the relevant Approved Manager shall be a Group Member (other than Iver Ships B.V.).

## **22.5 Copy of Mortgage on board**

A properly certified copy of the relevant Mortgage shall be kept on board the Ship with its papers and shown to anyone having business with the Ship which might create or imply any commitment or Security Interest over or in respect of the Ship (other than a lien for crew's wages and salvage) and to any representative of the Agent or the Security Agent.

## **22.6 Notice of Mortgage**

A framed printed notice of the Ship's Mortgage shall be prominently displayed in the navigation room and in the Master's cabin of the Ship. The notice must be in plain type and read as follows:

### **"NOTICE OF MORTGAGE**

This Ship is subject to a first mortgage in favour of [here insert name of mortgagee] of [here insert address of mortgagee]. Under the said mortgage and related documents, neither the

Owner nor any charterer nor the Master of this Ship has any right, power or authority to create, incur or permit to be imposed upon this Ship any commitments or encumbrances whatsoever other than for crew's wages and salvage".

No-one will have any right, power or authority to create, incur or permit to be imposed upon the Ship any lien whatsoever other than for crew's wages and salvage.

#### **22.7 Conveyance on default**

Where the Ship is (or is to be) sold in exercise of any power conferred by the Security Documents, the relevant Borrower and/or Lessor Owner shall, upon the Agent's request, immediately execute such form of transfer of title to the Ship as the Agent may require.

#### **22.8 Chartering**

- (a) Except with approval (such approval not to be unreasonably withheld), the relevant Borrower shall not enter into any charter commitment for the Ship, which is a bareboat or demise charter or passes possession and operational control of the Ship to another person.
- (b) If a Borrower enters into a Charter, it shall provide to the Security Agent a duly executed Charter Assignment in respect of such Charter and such documents in respect of the signing of the Charter Assignment as the Security Agent may reasonably require.
- (c) The Borrowers shall use its all reasonable endeavours to seek extensions to the Irving Oil Charter or otherwise enter into contracts of employment of the Ships with an alternative charter party.
- (d) If extensions to the Irving Oil Charter or any other Charter for any Ship include additional capex requirements, the approval of all Lenders will be required unless:
  - (i) the Cash Flow Forecast evidences that (A) the Borrowers will have sufficient liquidity to repay the then remaining Fixed Amortisations and (B) the Borrowers can maintain minimum Free Cash of \$2,500,000 until the Final Repayment Date in accordance with clause 20.2 (*Financial condition*); and
  - (ii) such additional capex requirements are less than or equal to \$500,000.

#### **22.9 Variations and information**

Except with approval, the Charter Documents shall not be materially varied except for increases in the charter rate without a reduction in the tenor of the relevant Charter (where no approval is required). The Borrowers shall promptly notify the Agent of any information of which they become aware which indicates a material adverse effect on Irving Oil, the Irving Oil Charter or the relevant Borrower's performance of the Irving Oil Charter.

#### **22.10 Releases and waivers**

Except with approval, there shall be no release or application of set-off by the relevant Borrower of any obligation of any other person under the Charter Documents (including by way of novation), no waiver of any breach of any such obligation and no consent to anything which would otherwise be such a breach.

#### **22.11 Charter performance**

The relevant Borrower shall perform its obligations under the Charter Documents and use its best endeavours to ensure that each other party to them performs their obligations under the Charter Documents.

#### **22.12 Notice of assignment**

The relevant Borrower shall, if an Event of Default has occurred and is continuing or if the relevant Charterer requires a letter of quiet enjoyment from the Security Agent (in respect of which the Security Agent hereby agrees to co-operate provided such letter of quiet enjoyment is in a form and substance acceptable to the Security Agent), give notice of assignment of the Charter Documents to the other parties to them in the form specified by the Charter Assignment for that Ship and shall ensure that the Agent receives a copy of that notice acknowledged by each addressee in the form specified therein.

#### **22.13 Payment of Charter Earnings**

All Earnings which the relevant Borrower is entitled to receive under the Charter Documents shall be paid in the manner required by the Security Documents.

#### **22.14 Poseidon Principles**

- (a) The Borrowers shall, upon request of the Agent (at the request of any Lender) and at the cost of the Borrowers, on or before 31 July in each calendar year (starting on 31 July 2024), supply or procure the supply to the Agent of all information necessary in order for that Lender to comply with its obligations under the Poseidon Principles in respect of the preceding year, including, without limitation, all ship fuel oil consumption data required to be collected and reported in accordance with Regulation 22A of Annex VI and any Statement of Compliance, in each case relating to the Ships for the preceding calendar year.
- (b) No Lender shall publicly disclose such information with the identity of any Ship without the prior written consent of the Borrowers. Such information shall be "Confidential Information" for the purposes of clause 37 (*Confidential Information*) but the Borrowers acknowledge that, in accordance with the Poseidon Principles, such information will form part of the information published regarding the relevant Lender's portfolio climate alignment.

### **23 Condition and operation of Ship**

#### **23.1 Undertaking to comply**

Each Borrower undertakes that this clause 23 will be complied with in relation to each Mortgaged Ship whilst it is subject to a Mortgage.

#### **23.2 Defined terms**

In this clause 23 and in Schedule 3 (*Conditions precedent*):

**applicable code** means any code or prescribed procedures required to be observed by the Ship or the persons responsible for its operation under any applicable law (including but not limited to those currently known as the ISM Code and the ISPS Code).

**applicable law** means all laws and regulations applicable to vessels registered in the Ship's flag state or which for any other reason apply to the Ship or to its condition or operation at any relevant time.

**applicable operating certificate** means any certificates or other document relating to the Ship or its condition or operation required to be in force under any applicable law or any applicable code.

### **23.3 Repair**

The Ship shall be kept in a good, safe and efficient state of repair (same for wear and tear in the ordinary course of business). The quality of workmanship and materials used to repair the Ship or replace any damaged, worn or lost parts or equipment shall be sufficient to ensure that the Ship's value is not reduced.

### **23.4 Modification**

Except with approval, the structure, type or performance characteristics of the Ship shall not be modified in a way which materially alters the Ship and has a Material Adverse Effect, leading to a lower vessel value.

### **23.5 Removal of parts**

Except with approval, no material part of the Ship or any equipment shall be removed from the Ship if to do so would materially reduce its value (unless at the same time it is replaced with equivalent parts or equipment owned by the relevant Borrower or Lessor Owner free of any Security Interest except under the Security Documents).

### **23.6 Maintenance of class; compliance with laws and codes**

The Ship's class shall be the highest class available for such Ship with the relevant Classification Society. The Ship and every person who owns, operates or manages the Ship shall comply with all applicable laws and the requirements of all applicable codes. There shall be kept in force and on board the Ship or in such person's custody any applicable operating certificates which are required by applicable laws or applicable codes to be carried on board the Ship or to be in such person's custody.

### **23.7 Surveys**

The Ship shall be submitted to continuous surveys and any other surveys which are required for it to maintain the highest class available for such Ship with the relevant Classification Society. Copies of reports of those surveys shall be provided promptly to the Agent if it so requests, provided that the Agent may only make such a request once in every 12 month period, unless in case of an Event of Default.

### **23.8 Inspection and notice of dry-docking**

- (a) The Agent and/or its duly appointed surveyors shall be allowed to board the Ship at all reasonable times (at the expense of the Borrowers once per year or at any further time when an Event of Default has occurred and is continuing or at the expense of the Finance Parties at all other times) (without interruption to such Ship's commercial operations) to inspect it and given all proper facilities needed for that purpose.
- (b) If an Event of Default has occurred and is continuing, the Agent shall be given reasonable advance notice of any intended dry-docking of the Ship (whatever the purpose of that dry-docking).

### **23.9 Prevention of arrest**

All debts, damages, liabilities and outgoings which have given, or may give, rise to maritime, statutory or possessory liens on, or claims enforceable against, the Ship, its Earnings or Insurances shall be promptly paid and discharged where failure to do so has a Material Adverse Effect, provided that if the claim relating to such debts, damages, liabilities and outgoings is frivolous, vexatious or an abuse of the process of the court or is a claim to which the relevant Borrower has a good defence and which is being vigorously contested by such Borrower, such Borrower may continue to defend such claim.

**23.10 Release from arrest**

The Ship, its Earnings and Insurances shall promptly be released from any arrest, detention, attachment or levy, and any legal process against the Ship shall be promptly discharged, by whatever action is required to achieve that release or discharge where failure to do so has a Material Adverse Effect.

**23.11 Information about Ship**

The Agent shall promptly be given any information which it or (to the extent that an Approved Shipbroker requires such information for the purposes of providing a valuation under this Agreement) any Approved Shipbroker may reasonably require about the Ship (including class records and inspection reports) or its current employment, position, use or operation, including details of towages and salvages, and copies of all its charter commitments entered into by or on behalf of any Borrower and copies of any applicable operating certificates.

**23.12 Notification of certain events**

The Agent shall promptly be notified of:

- (a) any damage to the Ship where the cost of the resulting repairs may exceed the Major Casualty Amount for such Ship;
- (b) any occurrence which may result in the Ship becoming a Total Loss;
- (c) any requisition of the Ship for hire;
- (d) any Environmental Incident involving the Ship or an Environmental Claim being made in relation to such an incident which has a Material Adverse Effect; and
- (e) any arrest or detention of the Ship or any exercise or purported exercise of a lien or other claim on the Ship or its Earnings or Insurances.

**23.13 Codes**

The Ship and the persons responsible for its operation shall at all times comply with the requirements of any applicable code or prescribed procedures required to be observed by the Ship or in relation to its operation under any applicable law or regulation (including but not limited to these currently known as the ISM Code and the ISPS Code). The Agent shall as soon as reasonably practicable be informed of:

- (a) any actual withdrawal of any certificate issued in accordance with any such code which is or may be applicable to the Ship or its operation; and
- (b) the issue of any such certificate or the receipt of notification that any application for such a certificate has been refused.

#### **23.14 Survey report**

As soon as reasonably practicable after the Agent requests it, the Agent shall be given a report on the seaworthiness and/or safe operation of the Ship, from approved surveyors or inspectors. If any recommendations are made in such a report they shall be complied with in the way and by the time recommended in the report. Such reports shall be at the Finance Parties' expense unless an Event of Default has occurred.

#### **23.15 Lawful use**

The Ship shall not be employed:

- (a) in any way or in any activity which is unlawful under international law or the domestic laws of any relevant country;
- (b) in carrying illicit or prohibited goods; or
- (c) in a way which may make it liable to be condemned by a prize court or destroyed, seized or confiscated,

and the persons responsible for the operation of the Ship shall take all necessary and proper precautions to ensure that this does not happen.

#### **23.16 War zones**

The Ship shall not enter or remain in any zone which has been declared a war zone by any government entity or the Ship's war risk insurers without complying with any requirements of the Ship's insurers necessary to ensure that the Ship remains properly insured in accordance with the Finance Documents (including any requirement for the payment of extra insurance premiums) shall be complied with.

#### **23.17 Sanctions**

Each Obligor shall:

- (a) comply with, and shall use reasonable endeavours to ensure compliance with, all Sanctions (including obtaining any applicable consents, authorisations or licenses) in respect to each Ship;
- (b) not cause or permit any Ship to be registered in a Sanctioned Country or used by or for the benefit of a Restricted Person;
- (c) not cause or permit any Ship to be used in or otherwise to go to, stop in or call at, a Sanctioned Country;
- (d) not cause or permit any Ship to be operated by any party whose state of incorporation and/or principal place of business is in a Sanctioned Country and/or is Restricted Person;
- (e) ensure that any charterparty (including any sub-charter) in respect of any Ship shall contain contractual language which has the effect of prohibiting the use of any Ship in violation of any Sanctions; and

- (f) not cause or permit any Ship to be used in any manner or business which is prohibited by applicable anti-corruption, anti-money laundering, countering the financing of terrorism, and export and import laws and regulations.

#### **23.18 Recycling**

Each Borrower and Lessor Owner shall ensure that its Mortgaged Ship will, when they are to be recycled, be recycled at a recycling yard which conducts its recycling business in a socially and environmentally responsible manner in accordance with the standards set out in the Hong Kong Convention (whether or not the Hong Kong Convention is in force) or, if applicable to the relevant Mortgaged Ship, the EU Ship Recycling Regulation.

### **24 Insurance**

#### **24.1 Undertaking to comply**

Each Borrower undertakes that this clause 22 shall be complied with in relation to each Mortgaged Ship and its Insurances whilst it is subject to a Mortgage.

#### **24.2 Insurance terms**

In this clause 24:

**excess risks** means the proportion (if any) of claims for general average, salvage and salvage charges not recoverable under the hull and machinery insurances of a vessel in consequence of the value at which the vessel is assessed for the purpose of such claims exceeding its insured value.

**excess war risk P&I cover** means cover for claims only in excess of amounts recoverable under the usual war risk cover including (but not limited to) hull and machinery, crew and protection and indemnity risks.

**hull cover** means insurance cover against the risks identified in paragraph (a) of clause 24.3.

**minimum hull cover** means, in relation to a Mortgaged Ship, such amount as when aggregated with the insured amounts of each of the other Mortgaged Ships shall equal 120 per cent of the Loan.

**P&I risks** means the usual risks (including liability for oil pollution, excess war risk P&I cover) covered by a protection and indemnity association which is a member of the International Group of protection and indemnity associations (or, if the International Group ceases to exist, any other leading protection and indemnity association or other leading provider of protection and indemnity insurance) (including, without limitation, the proportion (if any) of any collision liability not covered under the terms of the hull cover).

#### **24.3 Coverage required**

Each Ship shall at all times be insured:

- (a) against fire and usual marine risks (including excess risks) and war risks (including war protection and indemnity risks and terrorism risks) on an agreed value basis, for at least its minimum hull cover;

- (b) against P&I risks for the highest amount then available in the insurance market for vessels of similar age, size and type as the Ship (but, in relation to liability for oil pollution, for an amount of not less than \$1,000,000,000) and a freight, demurrage and defence cover;
- (c) in respect of any other risks which may be required in accordance with applicable law; and
- (d) on terms which comply with the other provisions of this clause 24.

#### **24.4 Placing of cover**

The insurance coverage required by clause 24.3 (*Coverage required*) shall be:

- (a) in the name of the Ship's owner and (in the case of the Ship's hull cover) no other person (other than the Security Agent if required by it) (unless such other person is approved and, if so required by the Agent, has duly executed and delivered a first priority assignment of its interest in the Ship's Insurances to the Security Agent in an approved form and provided such supporting documents and opinions in relation to that assignment as the Agent requires);
- (b) in dollars or another approved currency;
- (c) arranged through approved brokers or direct with approved insurers or protection and indemnity or war risks associations; and
- (d) on approved terms and with approved insurers or associations.

#### **24.5 Fleet liens, set off and cancellations**

If the Ship's hull cover also insures other vessels, the Security Agent shall either be given an undertaking in approved terms by the brokers or (if such cover is not placed through brokers or the brokers do not, under any applicable laws or insurance terms, have such rights of set off and cancellation) the relevant insurers that the brokers or (if relevant) the insurers will not:

- (a) set off against any claims in respect of the Ship any premiums due in respect of any of such other vessels insured (other than other Mortgaged Ships); or
- (b) cancel that cover because of non-payment of premiums in respect of such other vessels,

or the Borrowers shall ensure that hull cover for the Ship and any other Mortgaged Ships is provided under a separate policy from any other vessels.

#### **24.6 Payment of premiums**

All premiums, calls, contributions or other sums payable in respect of the Insurances shall be paid punctually and the Agent shall be provided with all relevant receipts or other evidence of payment upon request.

#### **24.7 Instructions for renewal**

At least 14 days before any of the Ship's Insurances are due to expire, instructions shall be given to brokers, insurers and associations for them to be renewed or replaced on or before their expiry.

#### **24.8 Confirmation of renewal**

The Ship's Insurances shall be renewed upon their expiry in a manner and on terms which comply with this clause 22 and confirmation of such renewal given by approved brokers or insurers to the Agent at least seven days (or such shorter period as may be approved) before such expiry.

**24.9 P&I guarantees**

Any guarantee or undertaking required by any protection and indemnity or war risks association in relation to the Ship shall be provided when required by the association.

**24.10 Insurance documents**

The Agent shall be provided with pro forma copies of all insurance policies and other documentation issued by brokers, insurers and associations in connection with the Ship's Insurances as soon as they are available after they have been placed or renewed and all insurance policies and other documents relating to the Ship's Insurances shall be deposited with any approved brokers or (if not deposited with approved brokers) the Agent or some other approved person.

**24.11 Letters of undertaking**

Unless otherwise approved where the Agent is satisfied that equivalent protection is afforded by the terms of the relevant Insurances and/or any applicable law and/or a letter of undertaking provided by another person, on each placing or renewal of the Insurances, the Agent shall be provided promptly with letters of undertaking in an approved form (having regard to general insurance market practice and law at the time of issue of such letter of undertaking) from the relevant brokers, insurers and associations.

**24.12 Insurance Notices and Loss Payable Clauses**

The interest of the Security Agent as assignee of the Insurances shall be endorsed on all insurance policies and other documents by the incorporation of a Loss Payable Clause and an Insurance Notice in respect of the Ship and its Insurances signed by its owner and, unless otherwise approved, each other person assured under the relevant cover (other than the Security Agent if it is itself an assured).

**24.13 Insurance correspondence**

If so required by the Agent at any time when an Event of Default has occurred and is continuing, the Agent shall promptly be provided with copies of all written communications between the assureds and brokers, insurers and associations relating to any of the Ship's Insurances as soon as they are available.

**24.14 Independent report**

The Agent may obtain from time to time a report on the adequacy of the Ship's Insurances from an insurance adviser (Bankserve Insurance Services Limited) instructed by the Agent and the Borrowers shall reimburse the Agent for all costs and expenses incurred by the Agent in obtaining one such report per calendar year, if such report is required by the Agent.

**24.15 Collection of claims**

All documents and other information and all assistance required by the Agent to assist it and/or the Security Agent in trying to collect or recover any claims under the Ship's Insurances shall be provided promptly.

#### **24.16 Employment of Ship**

The Ship shall only be employed or operated in conformity with the terms of the Ship's Insurances (including any express or implied warranties) and not in any other way (unless the insurers have consented and any additional requirements of the insurers have been satisfied).

#### **24.17 Declarations and returns**

If any of the Ship's Insurances are on terms that require a declaration, certificate or other document to be made or filed before the Ship sails to, or operates within, an area, those terms shall be complied with within the time and in the manner required by those Insurances.

#### **24.18 Application of recoveries**

All sums paid under the Ship's Insurances to anyone other than the Security Agent shall be applied in repairing the damage and/or in discharging the liability in respect of which they have been paid except to the extent that the repairs have already been paid for and/or the liability already discharged.

#### **24.19 Settlement of claims**

Any claim under the Ship's Insurances for a Total Loss or Major Casualty shall only be settled, compromised or abandoned with prior approval.

#### **24.20 Change in insurance requirements**

The Borrowers shall not make or agree to any alteration to the terms of any Insurance or waive any right relating to any Insurance if such alteration or waiver would be materially prejudicial to the Finance Parties' position or their rights under the Finance Documents.

### **25 Valuations**

#### **25.1 Undertaking to comply**

Each Borrower undertakes that this clause 25 will be complied with throughout the Facility Period.

#### **25.2 Valuation of assets**

For the purpose of the Finance Documents, the value at any time of any Mortgaged Ship will be its value as most recently determined in accordance with this clause 25.

#### **25.3 Valuation frequency**

Valuation of each Mortgaged Ship and each such other asset in accordance with this clause 25 shall take place on each 30 June and 31 December during the Facility Period and may be required by the Agent at any other time.

#### **25.4 Expenses of Valuation**

The Borrowers shall bear, and reimburse to the Agent where incurred by the Agent, all costs and expenses of providing one valuation which is to take place on each 30 June and 31 December during the Facility Period and any other valuation when an Event of Default has occurred and is continuing.

## **25.5 Valuations procedure**

The value of any Mortgaged Ship shall be determined in accordance with, and by Approved Shipbrokers approved and appointed in accordance with, this clause 25.

## **25.6 Currency of Valuation**

Valuations shall be provided by Approved Shipbrokers in dollars or, if any Approved Shipbroker is of the view that the relevant type of vessel is generally bought and sold in another currency, in that other currency. If a valuation is provided in another currency, for the purposes of this Agreement it shall be converted into dollars at the Agent's Spot Rate of Exchange for the purchase of dollars with that other currency as at the date to which the valuation relates.

## **25.7 Basis of Valuation**

Each valuation will be addressed to the Agent and the Security Agent (in the case of the valuations mentioned in clause 25.4) and made:

- (a) without physical inspection (unless required by the Agent);
- (b) on the basis of a sale for prompt delivery for a price payable in full in cash on delivery at arm's length on normal commercial terms between a willing buyer and a willing seller; and
- (c) on a charter free basis.

## **25.8 Number of Approved Shipbrokers**

Each valuation must be carried out by two Approved Shipbrokers of whom one shall be nominated by the Agent and the other by the Borrowers. If the Borrowers fail promptly to nominate a second Approved Shipbroker then the Agent may nominate the second Approved Shipbroker.

## **25.9 Differences in Valuations**

If valuations provided by individual Approved Shipbrokers differ, the value of the relevant Ship for the purposes of the Finance Documents will be the mean average of those valuations.

# **26 Bank accounts**

## **26.1 Undertaking to comply**

Each Borrower undertakes that this clause 26 will be complied with throughout the Facility Period.

## **26.2 Operating Account**

- (a) A Borrower or all of the Borrowers jointly shall be the holder(s) of one or more Accounts with an Account Bank which is designated as an "**Operating Account**" for the purposes of the Finance Documents. In addition, a Lessor Owner or both of the Lessor Owners jointly shall be the holder(s) of one or more Accounts with an Account Bank which is designated as an "**Operating Account**" for the purposes of the Finance Documents.
- (b) The Earnings of the Mortgaged Ships and all moneys payable to the relevant Borrower and/or Lessor Owner under the Ship's Insurances shall be paid by the persons from whom they are due to an Operating Account unless required to be paid to the Security Agent under the relevant Finance Documents.

- (c) If there is no continuing Event of Default, the relevant Account Holder(s) may withdraw the following amounts from an Operating Account (in the following order of priority):
- (i) payments then due to Finance Parties under the Finance Documents; and
  - (ii) payments of any instalments of principal or interest due under this Agreement,
- and any balance shall be freely available to the Account Holders.

### **26.3 Other provisions**

Each of the Agent and the Security Agent agrees that if it is an Account Bank in respect of an Account then there will be no restrictions on creating a Security Interest over that Account as contemplated by this Agreement and it shall not (except with the approval of the Majority Lenders) exercise any right of combination, consolidation or set-off which it may have in respect of that Account in a manner adverse to the rights of the other Finance Parties.

## **27 Business restrictions**

### **27.1 Undertaking to comply**

Except as otherwise approved (such approval not to be unreasonably withheld) each Borrower undertakes that this clause 27 will be complied with throughout the Facility Period.

### **27.2 General negative pledge**

- (a) In this clause 27.2, **Quasi-Security** means an arrangement or transaction described in paragraph (b) below.
- (b) The Borrowers and the Lessor Owners shall not permit any Security Interest to exist, arise or be created or extended over all or any part of their assets, other than a Permitted Security Interest.

### **27.3 Transaction similar to security**

- (a) (Without prejudice to clauses 22.3 (*Sale or other disposal of Ship*), 27.4 (*Financial Indebtedness*) and 27.7 (*Disposals*)), no Borrower or Lessor Owner shall:
  - (i) sell, transfer or otherwise dispose of any of its assets on terms whereby that asset is or may be leased to, or re-acquired by, any other Group Member other than pursuant to disposals permitted under clause 27.7 (*Disposals*);
  - (ii) sell, transfer, factor or otherwise dispose of any of its receivables on recourse terms (except for the discounting of bills or notes in the ordinary course of business);
  - (iii) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
  - (iv) enter into any other preferential arrangement having a similar effect,

in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset except where such arrangement or transaction would be permitted by paragraph (b) below if such arrangement or transaction had been a Security Interest.

- (b) clause 27.2 (*General negative pledge*) above do not apply to any Security Interest or (as the case may be) Quasi-Security, listed below:
  - (i) those granted or expressed to be granted by any of the Security Documents;
  - (ii) in relation to a Ship, Permitted Maritime Liens;
  - (iii) in relation to any other vessel:
    - (A) unless an Event of Default is continuing, any ship repairer's or outfitter's possessory lien in respect of such vessel incurred in the ordinary course of business;
    - (B) any lien on such vessel for master's, officer's or crew's wages outstanding in the ordinary course of its trading; and
    - (C) any lien on such vessel for salvage; and
    - (D) (except in relation to Charged Property) any other lien arising by operation of law in the ordinary course of trading and not as a result of any default or omission by the Borrowers or the Lessor Owners;

#### **27.4 Financial Indebtedness**

No Obligor shall incur or permit to exist, any Financial Indebtedness owed by it to anyone else except:

- (a) Financial Indebtedness incurred under the Finance Documents;
- (b) Financial Indebtedness owed to another Obligor;
- (c) Financial Indebtedness existing at the Restructuring Effective Date and owed to Lamo Holding B.V. or any of its Subsidiaries or under any Compton Loan;
- (d) Financial Indebtedness permitted under clause 27.5 (*Guarantees*); and
- (e) Financial Indebtedness permitted under clause 27.6 (*Loans and credit*).

#### **27.5 Guarantees**

No Obligor shall give or permit to exist, any guarantee by it in respect of indebtedness of any person (except in the ordinary course of business and in respect of indebtedness in a maximum amount of \$100,000 at any time) or allow any of its indebtedness to be guaranteed by anyone else except for:

- (a) guarantees of obligations of another Group Member that are not Financial Indebtedness or obligations prohibited by any Finance Document; or
- (b) any guarantee, liability or indemnity provided under or for the purpose of:
  - (i) any fiscal unity (*fiscale eenheid*) for Dutch corporate income tax consisting solely of members of the Group and Legacy Companies (both as defined in the NewCo Facility Agreement); and

- (ii) any fiscal unity (*fiscale eenheid*) for VAT purposes consisting solely of members of the Group and Legacy Companies (both as defined in the NewCo Facility Agreement).

#### **27.6 Loans and credit**

No Obligor shall make, grant or permit to exist any loans or any credit by it to anyone else other than:

- (a) loans or credit to another Obligor permitted under clause 27.4 (*Financial Indebtedness*); and
- (b) trade credit granted by it to its customers on normal commercial terms in the ordinary course of its trading activities,

in each case, provided the Obligors maintain a sufficient level of liquidity for their own operations

#### **27.7 Disposals**

(Without prejudice to clause 22.3 (Sale or other disposal of Ship)) no Obligor shall enter into a single transaction or a series of transactions, whether related or not and whether voluntarily or involuntarily, to dispose of any asset except for any of the following disposals so long as they are not prohibited by any other provision of the Finance Documents:

- (a) disposals of assets made in (and on terms reflecting) the ordinary course of trading of the disposing entity but this shall not include any material assets necessary for it to conduct its business unless such assets are replaced with like assets simultaneously with such disposal;
- (b) disposals of assets made by the Borrowers to another Group Member;
- (c) disposals of obsolete assets, or assets which are no longer required for the purpose of the business of the Borrowers, in each case for cash on normal commercial terms and on an arm's length basis;
- (d) any disposal of receivables on a non-recourse basis on arm's length terms (including at fair market value) for non-deferred cash consideration in the ordinary course of its business;
- (e) disposals permitted by clauses 27.2 (*General negative pledge*), 27.3 (*Transaction similar to security*) or 27.4 (*Financial Indebtedness*);
- (f) dealings with trade creditors with respect to book debts in the ordinary course of trading; and
- (g) the application of cash or cash equivalents in the acquisition of assets or services in the ordinary course of its business.

#### **27.8 Contracts and arrangements with Affiliates**

No Obligor shall be party to any arrangement or contract with any of its Affiliates unless such arrangement or contract is on an arm's length basis.

#### **27.9 Subsidiaries**

No Obligor shall establish or acquire a company or other entity which would be or become a Group Member or reactivate any dormant Group Member.

#### **27.10 Acquisitions and investments**

No Obligor shall acquire any person, business, assets or liabilities or make any investment in any person or business or enter into any joint-venture arrangement except:

- (a) acquisitions of assets in the ordinary course of business (not being new businesses or vessels);
- (b) the incurrence of liabilities in the ordinary course of its business;
- (c) any loan or credit not otherwise prohibited under this Agreement;
- (d) pursuant to any Finance Documents or the Charter Documents; or
- (e) any acquisition pursuant to a disposal permitted under clause 27.7 (*Disposals*),

in each case, provided that the Borrowers maintain a sufficient level of liquidity for their own operations.

#### **27.11 Distributions and other payments**

No Obligor shall, without prior approval of the Majority Lenders:

- (a) declare or pay (including by way of set-off, combination of accounts or otherwise) any dividend, charge, fee or other distribution (or interest on any unpaid dividend, charge, fee or other distribution) (whether in cash or in kind) on or in respect of its share capital (or any class of its share capital) or any warrants for the time being in issue;
- (b) repay or distribute any dividend or share premium reserve;
- (c) redeem, repurchase, defease, retire or repay any of its share capital or resolve to do so; or
- (d) make any payment (including by way of set-off, combination of accounts or otherwise) by way of interest, or repayment, redemption, purchase or other payment, in respect of any shareholder loan, loan stock or similar instrument,

in each case, other than a Permitted Payment.

#### **27.12 Borrowers' share capital**

The Borrowers and the Lessor Owners shall not permit any Security Interest to exist, arise or be created or extended over all or any part of the share capital of the Borrowers (other than a Permitted Security Interest).

### **28 Events of Default**

- 28.1** Each of the events or circumstances set out in this clause 28 (except clause 28.24 (*Acceleration*)) is an Event of Default.

## **28.2 Non-payment**

The Borrowers do not pay on the due date any amount payable pursuant to a Finance Document at the place at and in the currency in which it is expressed to be payable unless its failure to pay is caused by:

- (a) administrative or technical error; or
- (b) a Disruption Event,

and, in each case, payment is made within two Business Days of its due date.

## **28.3 Financial covenants**

- (a) Subject to paragraph (b) below, the Borrowers do not comply with clause 20 (*Financial covenants*).
- (b) An Event of Default under this clause 28.3 shall only occur if the Borrowers non-compliance under the financial covenant set out in paragraph (b) of clause 20.2 (*Financial condition*) relates to both next two consecutive Financial Quarters.

## **28.4 Information**

The Obligors do not comply with clause 19 (*Information undertakings*) insofar as compliance is required for the operation of clause 20 (*Financial covenants*) (for the avoidance of doubt, other non-compliance with clause 19 (*Information undertakings*) shall be subject to clause 28.6 (*Other obligations*)).

## **28.5 Insurance**

- (a) The Insurances of a Mortgaged Ship are not placed and kept in force in the manner required by clause 24 (*Insurance*) and, if the Agent considers such event to be capable of remedy, the failure is not remedied within ten Business Days.
- (b) Any insurer either:
  - (i) cancels any such Insurances; or
  - (ii) disclaims liability under them by reason of any mis-statement or failure or default by any person; and
- (i) if the Agent considers such event to be capable of remedy, the circumstances in paragraphs (i) and (ii) above are not remedied within ten Business Days.

## **28.6 Other obligations**

- (a) The Borrowers do not comply with any provision of the Finance Documents (other than those referred to in clause 28.2 (*Non-payment*), clause 28.3 (*Financial covenants*) and clause 28.5 (*Insurance*)).
- (b) No Event of Default under paragraph (a) above will occur if the Agent considers that the failure to comply is capable of remedy (which shall not be the case if the failure relates to Sanctions) and the failure is remedied within ten (10) Business Days of the earlier of (A)

the Agent giving notice to the Borrowers and (B) any of the Borrowers becoming aware of the failure to comply.

## **28.7 Misrepresentation**

Any representation or statement made or deemed to be made by a Borrower in the Finance Documents or any other document delivered by or on behalf of a Borrower under or in connection with any Finance Document is or proves to have been incorrect or misleading in any material respect when made or deemed to be made.

## **28.8 Cross default**

- (a) Any Financial Indebtedness of any Borrower or any Lessor Owner is not paid when due nor within any originally applicable grace period.
- (b) Any Financial Indebtedness of any Borrower or any Lessor Owner is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).
- (c) Any commitment for any Financial Indebtedness of any Obligor is cancelled or suspended by a creditor of that Obligor as a result of an event of default (however described).
- (d) Any creditor of any Obligor becomes entitled to declare any Financial Indebtedness of that Obligor due and payable prior to its specified maturity as a result of an event of default (howsoever described).
- (e) No Event of Default will occur under paragraphs (a) to (d) above if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (a) to (d) above is less than \$5,000,000 (or its equivalent in any other currency or currencies).
- (f) An Event of Default (as defined in the NewCo Facility Agreement) occurs under clauses 29.10 (*Insolvency*) or 29.11 (*Insolvency Proceedings*) of the NewCo Facility Agreement.
- (g) The Financial Indebtedness under the NewCo Facility Agreement is declared to be or otherwise becomes due or payable prior to its specified maturity for any reason.

## **28.9 Insolvency**

- (a) An Obligor is unable or admits inability to pay its debts as they fall due, is deemed to, or is declared to, be unable to pay its debts under applicable law, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors (excluding any Finance Party in its capacity as such) with a view to rescheduling any of its indebtedness.
- (b) The value of the assets of any Obligor is less than its liabilities (taking into account contingent and prospective liabilities).
- (c) A moratorium is declared in respect of any indebtedness of an Obligor. If a moratorium occurs, the ending of the moratorium will not remedy any Event of Default caused by that moratorium.

## **28.10 Insolvency proceedings**

- (a) Any corporate action, legal proceedings or other procedure or step is taken in relation to:
  - (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of Obligor;
  - (ii) a composition, compromise, assignment or arrangement with any creditor of any Obligor;
  - (iii) the appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of any Obligor or any of its assets (including the directors of any Obligor requesting a person to appoint any such officer in relation to it or any of its assets); or
  - (iv) enforcement of any Security Interest over any assets of any Obligor,or any analogous procedure or step is taken in any jurisdiction.
- (b) Paragraph (b) above shall not apply to any winding-up petition (or analogous procedure or step) which is frivolous or vexatious and is discharged, stayed or dismissed within seven days of commencement or, if earlier, the date on which it is advertised.

## **28.11 Creditors' process**

- (a) Any expropriation, attachment, sequestration, distress, execution or any other analogous process or enforcement action affects any asset or assets (including enforcement by a landlord) of any Obligor and is not discharged within seven days.
- (b) Any judgment or order for an amount is made against any Obligor which if is not stayed or complied with, might have a Material Adverse Effect, is not stayed or complied with within seven days.

## **28.12 Unlawfulness and invalidity**

- (a) It is or becomes unlawful for an Obligor to perform any of its obligations under the Finance Documents or any Security Interest created or expressed to be created or evidenced by the Security Documents ceases to be effective in a manner which has a Material Adverse Effect.
- (b) Any obligation or obligations of an Obligor under any Finance Documents are not (subject to the Legal Reservations) or cease to be legal, valid, binding or enforceable in a manner which has a Material Adverse Effect.
- (c) Any Finance Document or any Security Interest created or expressed to be created or evidenced by the Security Documents ceases to be in full force and effect or is alleged by a party to it (other than a Finance Party) to be ineffective for any reason.
- (d) Any Security Document does not create legal, valid, binding and enforceable security over the assets charged under that Security Document or the ranking or priority of such security is adversely affected.

- (e) No Event of Default under paragraph (a) above will occur if the Majority Lenders consider that the relevant circumstances are capable of remedy and the failure is remedied within 15 Business Days of the earlier of (i) the Agent giving notice to the Borrowers and (ii) an Obligor becoming aware of such relevant circumstances.

**28.13 Cessation of business**

Any Obligor suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business.

**28.14 Expropriation**

The authority or ability of any Obligor to conduct its business is limited or wholly or substantially curtailed by any seizure, expropriation, nationalisation, intervention, restriction or other action by or on behalf of any governmental, regulatory or other authority or other person in relation to any Obligor or any of its assets.

**28.15 Repudiation and rescission of Finance Documents**

An Obligor rescinds or purports to rescind or repudiates or purports to repudiate a Finance Documents or evidences an intention to rescind or repudiate a Finance Documents.

**28.16 Litigation**

Any litigation, alternative dispute resolution, arbitration or administrative proceeding is taking place, or threatened against any Obligor or any of its assets, rights or revenues which might have a Material Adverse Effect.

**28.17 Material Adverse Effect**

Any Environmental Incident or other event or circumstance or series of events (including any change of law) occurs which the Majority Lenders reasonably believe has, or is reasonably likely to have, a Material Adverse Effect.

**28.18 Security enforceable**

Any Security Interest (other than a Permitted Maritime Lien) in respect of Charged Property becomes enforceable and which has a Material Adverse Effect and is not remedied within 20 Business Days.

**28.19 Arrest of Ship**

Any Mortgaged Ship is arrested, confiscated, seized, taken in execution, impounded, forfeited, detained in exercise or purported exercise of any possessory lien or other claim and the relevant Borrower fails to procure the release of such Ship within a period of 15 days thereafter (or such longer period as may be approved (such approval not to be unreasonably withheld)).

**28.20 Ship registration**

Except with approval (such approval not to be unreasonably withheld), the registration of any Mortgaged Ship under the laws and flag of its flag state is cancelled or terminated or, where applicable, not renewed or, if such Ship is only provisionally registered on the date of its Mortgage, such Ship is not permanently registered under such laws within 90 days of such date.

**28.21 Political risk**

The flag state of any Mortgaged Ship or any Relevant Jurisdiction of an Obligor becomes involved in hostilities or civil war or there is a seizure of power in such flag state or any such Relevant Jurisdiction by unconstitutional means if, in any such case, such event or circumstance has a Material Adverse Effect and, within 15 days of notice from the Agent to do so, such action as the Agent may require to ensure that such event or circumstance will not have such an effect has not been taken by the Borrowers.

**28.22 Final Judgment**

To the extent it has a Material Adverse Effect, an Obligor fails to comply with a final and conclusive judgment issued by a court of competent jurisdiction.

**28.23 Lessor Owners**

There is a change in the legal and beneficial ownership of the shares in either of the Lessor Owners, unless such change shall be a transfer of shares from Santander to a Group Member.

**28.24 Acceleration**

On and at any time after the occurrence of an Event of Default which is continuing the Agent may, and shall if so directed by the Majority Lenders, by notice to the Borrowers:

- (a) cancel the Total Commitments at which time they shall immediately be cancelled; and/or
- (b) declare that all or part of the Loan, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, at which time they shall become immediately due and payable; and/or
- (c) declare that all or part of the Loan be payable on demand, at which time it shall immediately become payable on demand by the Agent on the instructions of the Majority Lenders; and/or
- (d) declare that no withdrawals be made from any Account; and/or
- (e) exercise or direct the Security Agent and/or any other beneficiary of the Security Documents to exercise any or all of its rights, remedies, powers or discretions under the Finance Documents.

**Section 8 - Changes to Parties**

**29 Changes to the Lenders**

**29.1 Assignments by the Lenders**

Subject to this clause 29, a Lender (the **Existing Lender**) may assign any of its rights under this Agreement to another bank or financial institution or to a trust, fund or other entity which is

regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets (the **New Lender**).

## **29.2 Conditions of assignment**

- (a) The consent of the Borrowers (such consent not to be unreasonably withheld) is required for an assignment by a Lender, unless the assignment is to another Lender or an Affiliate of a Lender or an Event of Default is continuing. The Agent will immediately advise the Borrowers of the assignment.
- (b) For the avoidance of doubt, the Borrowers shall not be required to provide to any New Lender "Know Your Customer" documentation on a more onerous basis than the "Know Your Customer" requirements as required by the relevant existing Lender on or before the date of this Agreement.
- (c) If:
  - (i) a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; and
  - (ii) as a result of circumstances existing at the date the assignment, transfer or change occurs, an Obligor would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under clause 14 (*Increased Costs*) or clause 13.2 (*Tax gross-up*),

then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under that clause to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred.

- (d) Clause 2 of Schedule 11 (*Administration, agency and other provisions*) shall apply to this clause 29.

## **30 Changes to the Obligors**

### **30.1 Assignment and transfers by Obligors**

No Obligor may assign any of its rights or transfer any of its rights or obligations under the Finance Documents.

## **Section 9 - Administration**

### **31 Set-off**

A Finance Party may set off any obligation due from an Obligor under the Finance Documents (to the extent beneficially owned by that Finance Party) against any obligation owed by that Finance Party to that Obligor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

### **32 Notices**

#### **32.1 Communications in writing**

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by e-mail or letter or in accordance with clause 32.6 (*Use of websites*).

#### **32.2 Addresses**

The address, and e-mail number (and the department or officer, if any, for whose attention the communication is to be made) of each Obligor or Finance Party for any communication or document to be made or delivered under or in connection with the Finance Documents is:

- (a) in the case of any Obligor which is a Party, that identified with its name in Schedule 1 (The original parties);
- (b) in the case of any Obligor which is not a Party, that identified in any Finance Document to which it is a party;
- (c) in the case of the Security Agent, the Agent and any other original Finance Party that identified with its name in Schedule 1 (The original parties); and
- (d) in the case of each Lender or other Finance Party, that notified in writing to the Agent on or prior to the date on which it becomes a Party in the relevant capacity,

or, in each case, any substitute address, email, or department or officer as an Obligor or Finance Party may notify to the Agent (or the Agent may notify to the other Parties, if a change is made by the Agent) by not less than five Business Days' notice.

#### **32.3 Delivery**

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

- (a) 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; or
- (b) if by way of e-mail, when actually received in readable form; or
- (c) if by way of a secure website, when actually made available in readable form,

and, if a particular department or officer is specified as part of its address details provided under clause 32.2 (*Addresses*), if addressed to that department or officer.

#### **32.4 Notification of address and e-mail address**

Promptly upon receipt of notification of an address or e-mail address or change of address or e-mail address pursuant to clause 32.2 (*Addresses*) or changing its own address or e-mail address, the Agent shall notify the other Parties.

#### **32.5 Communication when Agent is Impaired Agent**

If the Agent is an Impaired Agent the Parties may, instead of communicating with each other through the Agent, communicate with each other directly and (while the Agent is an Impaired Agent) all the provisions of the Finance Documents which require communications to be made or notices to be given to or by the Agent shall be varied so that communications may be made and notices given to or by the relevant Parties directly. This provision shall not operate after a replacement Agent has been appointed.

#### **32.6 Use of websites**

- (a) The Borrowers may satisfy their obligation under this Agreement to deliver any information in relation to those Lenders (the **Website Lenders**) who accept this method of communication by posting this information onto an electronic website designated by the Borrowers and the Agent (the **Designated Website**) if:
  - (i) the Agent expressly agrees (after consultation with each of the Lenders) that it will accept communication of the information by this method;
  - (ii) both the Borrowers and the Agent are aware of the address of and any relevant password specifications for the Designated Website;
  - (iii) the Borrowers have access to only one folder on the Designated Website, which is established for the purpose of uploading information from the Borrowers only and its access to the Designated Website is otherwise restricted; and
  - (iv) the information is in a format previously agreed between the Borrowers and the Agent.
- (b) If any Lender (a **Paper Form Lender**) does not agree to the delivery of information electronically then the Agent shall notify the Borrowers accordingly and the Borrowers shall supply the information to the Agent (in sufficient copies for each Paper Form Lender) in paper form. In any event the Borrowers shall supply the Agent with at least one copy in paper form of any information required to be provided by it.
- (c) The Agent shall supply each Website Lender with the address of and any relevant password specifications for the Designated Website following designation of that website by the Borrowers and the Agent.
- (d) The Borrowers shall promptly upon becoming aware of its occurrence notify the Agent if:
  - (i) the Designated Website cannot be accessed due to technical failure;
  - (ii) the password specifications for the Designated Website change;

- (iii) any new information which is required to be provided under this Agreement is posted onto the Designated Website;
  - (iv) any existing information which has been provided under this Agreement and posted onto the Designated Website is amended; or
  - (v) the Borrowers becomes aware that the Designated Website or any information posted onto the Designated Website is or has been infected by any electronic virus or similar software.
- (e) If the Borrowers notifies the Agent under paragraph (d)(i) or paragraph (d)(v) above, all information to be provided by the Borrowers under this Agreement after the date of that notice shall be supplied in paper form unless and until the Agent and each Website Lender is satisfied that the circumstances giving rise to the notification are no longer continuing.
  - (f) Any Website Lender may request, through the Agent, one paper copy of any information required to be provided under this Agreement which is posted onto the Designated Website. The Borrowers shall comply with any such request within ten (10) Business Days.

### **32.7 English language**

- (a) Any notice given under or in connection with any Finance Document must be in English.
- (b) All other documents provided under or in connection with any Finance Document must be:
  - (i) in English; or
  - (ii) if not in English, and if so required by the Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

## **33 Calculations and certificates**

### **33.1 Accounts**

In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by a Finance Party are *prima facie* evidence of the matters to which they relate.

### **33.2 Certificates and determinations**

Any certification or determination by a Finance Party of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

### **33.3 Day count convention and interest calculation**

- (a) Any interest, commission or fee accruing under a Finance Document will accrue from day to day and the amount of any such interest, commission or fee is calculated:
  - (i) on the basis of the actual number of days elapsed and a year of 360 days (or, in any case where the practice in the Relevant Market differs, in accordance with that market practice); and

- (ii) subject to paragraph (b) below, without rounding.
- (b) The aggregate amount of any accrued interest, commission or fee which is, or becomes payable, by an Obligor under a Finance Document shall be rounded to 2 decimal places.

### **34 Partial invalidity**

If, at any time, any provision of a Finance Document 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 such provision under the law of any other jurisdiction will in any way be affected or impaired.

### **35 Remedies and waivers**

No failure to exercise, nor any delay in exercising, on the part of any Finance Party, any right or remedy under a Finance Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any Finance Document. No election to affirm any Finance Document on the part of any Finance Party shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in each Finance Document are cumulative and not exclusive of any rights or remedies provided by law.

### **36 Amendments and waivers**

#### **36.1 Required consents**

- (a) Subject to clause 36.2 (*All Lender matters*) and clause 36.3 (*Other exceptions*) any term of the Finance Documents may be amended or waived with the consent of the Agent (acting on the instructions of the Majority Lenders and, if it affects the rights and obligations of the Agent or the Security Agent, the consent of the Agent or the Security Agent) and any such amendment or waiver agreed or given by the Agent will be binding on all the Finance Parties.
- (b) The Agent may (or, in the case of the relevant Security Documents, instruct the Security Agent to) effect, on behalf of any Finance Party, any amendment or waiver permitted by this clause 36.
- (c) Without prejudice to the generality of clause 3.9 of Schedule 11 (*Administration, agency and other provisions*), the Agent may engage, pay for and rely on the services of lawyers in determining the consent level required for and effecting any amendment, waiver or consent under this Agreement.
- (d) Each Obligor agrees to any such amendment or waiver permitted by this clause 36 which is agreed to by the Borrowers.

#### **36.2 All Lender matters**

Subject to clause 36.4 (*Changes to reference rates*) an amendment, waiver or discharge or release or a consent of, or in relation to, any term of any Finance Document that has the effect of changing or which relates to:

- (a) the definition of "Majority Lenders" in clause 1.1 (*Definitions*);

- (b) the definition of "Last Availability Date" in clause 1.1 (*Definitions*);
- (c) an extension to the date of payment of any amount under the Finance Documents;
- (d) a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable or the rate at which they are calculated;
- (e) an increase in, or an extension of, any Commitment or any requirement that a cancellation of Commitments reduces the Commitments of the Lenders rateably under the Facility;
- (f) a change to the Borrowers or any other Obligor;
- (g) any provision which expressly requires the consent or approval of all the Lenders;
- (a) clause 2.2 (*Finance Parties' rights and obligations*), clause 29 (*Changes to the Lenders*), clause 5.1 (*Payments to Finance Parties*) of Schedule 11 (*Administration, agency and other provisions*), this clause 36, clause 41 (*Governing law*) or clause 42.1 (*Jurisdiction of English courts*);
- (b) the order of distribution under clause 6.5 (*Partial payments*) of Schedule 11 (*Administration, agency and other provisions*);
- (c) the order of distribution under clause 3.24 (*Order of application*) of Schedule 11 (*Administration, agency and other provisions*);
- (d) the currency in which any amount is payable under any Finance Document;
- (e) an increase in any Commitment or the Total Commitments, an extension of any period within which the Facility is available for Utilisation or any requirement that a cancellation of Commitments reduces the Commitments rateably;
- (f) the nature or scope of the Charged Property or the manner in which the proceeds of enforcement of the Security Documents are distributed;
- (g) the Sanctions provisions and definitions relevant to the application of Sanctions provisions;
- (h) the nature or scope of the guarantee and indemnity granted under the Guarantees; or
- (i) the circumstances in which the security constituted by the Security Documents are permitted or required to be released under any of the Finance Documents,

shall not be made, or given, without the prior consent of all the Lenders.

### **36.3 Other exceptions**

- (a) An amendment or waiver which relates to the rights or obligations of the Agent, the Security Agent or the Arranger in their respective capacities as such (and not just as a Lender) may not be effected without the consent of the Agent, Security Agent or the Arranger (as the case may be).
- (b) Notwithstanding clauses 36.1 (*Required consents*) and 36.2 (*All Lender matters*) and paragraph (a) above, the Agent may make technical amendments to the Finance Documents arising out of manifest errors on the face of the Finance Documents, where

such amendments would not prejudice or otherwise be adverse to the interests of any Finance Party without any reference or consent of the Finance Parties.

#### **36.4 Changes to reference rates**

- (a) Subject to clause 36.3 (*Other exceptions*), if an RFR Replacement Event has occurred any amendment or waiver which relates to:
  - (i) providing for the use of a Replacement Reference Rate in place of the RFR; and
  - (ii)
    - (A) aligning any provision of any Finance Document to the use of that Replacement Reference Rate;
    - (B) enabling that Replacement Reference Rate to be used for the calculation of interest under this Agreement (including, without limitation, any consequential changes required to enable that Replacement Reference Rate to be used for the purposes of this Agreement);
    - (C) implementing market conventions applicable to that Replacement Reference Rate;
    - (D) providing for appropriate fallback (and market disruption) provisions for that Replacement Reference Rate; or
    - (E) adjusting the pricing to reduce or eliminate, to the extent reasonably practicable, any transfer of economic value from one Party to another as a result of the application of that Replacement Reference Rate (and if any adjustment or method for calculating any adjustment has been formally designated, nominated or recommended by the Relevant Nominating Body, the adjustment shall be determined on the basis of that designation, nomination or recommendation),

may be made with the consent of the Agent (acting on the instructions of the Majority Lenders) and the Borrowers.

- (b) In this clause 36.4:

**RFR Replacement Event** means:

- (a) the methodology, formula or other means of determining the RFR has, in the opinion of the Majority Lenders, and the Borrowers materially changed;
- (b)
  - (i)
    - (A) the administrator of the RFR or its supervisor publicly announces that such administrator is insolvent; or
    - (B) information is published in any order, decree, notice, petition or filing, however described, of or filed with a court, tribunal, exchange, regulatory authority or

similar administrative, regulatory or judicial body which reasonably confirms that the administrator of the RFR is insolvent,

provided that, in each case, at that time, there is no successor administrator to continue to provide the RFR;

- (ii) the administrator of the RFR publicly announces that it has ceased or will cease, to provide the RFR permanently or indefinitely and, at that time, there is no successor administrator to continue to provide the RFR;
  - (iii) the supervisor of the administrator of the RFR publicly announces that such RFR has been or will be permanently or indefinitely discontinued;
  - (iv) the administrator of the RFR or its supervisor announces that the RFR may no longer be used; or
- (c) the administrator of the RFR determines that the RFR should be calculated in accordance with its reduced submissions or other contingency or fallback policies or arrangements and either:
- (i) the circumstance(s) or event(s) leading to such determination are not (in the opinion of the Majority Lenders and the Borrower) temporary; or
  - (ii) the RFR is calculated in accordance with any such policy or arrangement for a period no less than the period specified as the **RFR Contingency Period** in the Reference Rate Terms; or
- (d) in the opinion of the Majority lenders and the Borrower, the RFR is otherwise no longer appropriate for the purposes of calculating interest under this Agreement.

**Relevant Nominating Body** means any applicable central bank, regulator or other supervisory authority or a group of them, or any working group or committee sponsored or chaired by, or constituted at the request of, any of them or the Financial Stability Board.

**Replacement Reference Rate** means a reference rate which is:

- (a) formally designated, nominated or recommended as the replacement for a RFR by:
- (i) the administrator of the RFR (provided that the market or economic reality that such reference rate measures is the same as that measured by the RFR); or
  - (ii) any Relevant Nominating Body,
- and if replacements have, at the relevant time, been formally designated, nominated or recommended under both paragraphs, the **Replacement Reference Rate** will be the replacement under paragraph (ii) above;
- (b) in the opinion of the Majority Lenders and the Borrowers, generally accepted in the international or any relevant domestic syndicated loan markets as the appropriate successor to the RFR; or
- (c) in the opinion of the Majority Lenders and the Borrowers, an appropriate successor to the RFR.

## **37 Confidential Information**

### **37.1 Confidential Information**

- (a) Each Finance Party agrees to keep all Confidential Information, as defined in Schedule 11 (*Administration, agency and other provisions*) confidential and not to disclose it to anyone, save to the extent permitted by clause 37.2 (*Disclosure of Confidential Information*), and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.
- (b) With respect to any Confidential Information relating to the Commitment of a Lender, each other Finance Party undertakes to that Lender that it shall keep such Confidential Information confidential and not disclose it to anyone, save to the extent permitted by clause 37.2 (*Disclosure of Confidential Information*), and shall ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

### **37.2 Disclosure of Confidential Information**

Any Finance Party may disclose to any of its Affiliates and any other person:

- (a) in the case of a Lender, to (or through) whom that Lender assigns (or may potentially assign) all or any of its rights and obligations under the Finance Documents;
- (b) in the case of a Lender, to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security Interest (or may do so) pursuant to clause 2.6 (*Security over Lenders' rights*) of Schedule 11 (*Administration, agency and other provisions*);
- (c) in the case of a Lender, with (or through) whom that Lender enters into (or may potentially enter into) any sub-participation in relation to, or any other transaction under which payments are to be made by reference to, the Finance Documents or any Obligor; or
- (d) to whom, and to the extent that, information is required to be disclosed by any applicable law or regulation,

and any Finance Party may disclose to a rating agency or its professional advisers or (with the consent of the Borrowers) any other person, any information about any Obligor, the Group and the Finance Documents as that Finance Party shall consider appropriate.

### **37.3 Entire agreement**

This clause 37 constitutes the entire agreement between the Parties in relation to the obligations of the Finance Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

### **37.4 Inside information**

Each of the Finance Parties acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and each of the Finance Parties undertakes not to use any Confidential Information for any unlawful purpose.

### **37.5 Notification of disclosure**

Each of the Finance Parties agrees (to the extent permitted by law and regulation) to inform the Borrowers upon becoming aware that Confidential Information has been disclosed in breach of this clause 37 (*Confidential Information*).

### **37.6 Continuing obligations**

The obligations in this clause 37 are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of twelve months from the earlier of:

- (a) the date on which all amounts payable by the Obligors under or in connection with the Finance Documents have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and
- (b) the date on which such Finance Party otherwise ceases to be a Finance Party.

### **37.7 DAC 6**

Nothing in any Finance Document shall prevent disclosure of any Confidential Information or other matter to the extent that preventing that disclosure would otherwise cause any transaction contemplated by the Finance Documents or any transaction carried out in connection with any transaction contemplated by the Finance Documents to become an arrangement described in Part II A 1 of Annex IV of Council Directive of 25 May 2018 (2018/822/EU) amending Directive 2011/16/EU.

## **38 Confidentiality of Funding Rates**

### **38.1 Confidentiality and disclosure**

- (a) The Agent and each Borrower agree to keep each Funding Rate confidential and not to disclose it to anyone, save to the extent permitted by paragraphs (b) and (c) below.
- (b) The Agent may disclose:
  - (i) any Funding Rate to the Borrowers pursuant to clause 9.4 (*Notifications*); and
  - (ii) any Funding Rate to any person appointed by it to provide administration services in respect of one or more of the Finance Documents to the extent necessary to enable such service provider to provide those services if the service provider to whom that information is to be given has entered into a confidentiality agreement substantially in the form of the Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Agent and the relevant Lender.
- (c) The Agent may disclose any Funding Rate, and each Borrower may disclose any Funding Rate, to:
  - (i) any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives if any person to whom that Funding Rate is to be given pursuant to this paragraph (i) is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional

obligations to maintain the confidentiality of that Funding Rate or is otherwise bound by requirements of confidentiality in relation to it;

- (ii) any person to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation if the person to whom that Funding Rate is to be given is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Agent or the relevant Obligor, as the case may be, it is not practicable to do so in the circumstances;
- (iii) any person to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes if the person to whom that Funding Rate is to be given is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Agent or the relevant Obligor, as the case may be, it is not practicable to do so in the circumstances; and
- (iv) any person with the consent of the relevant Lender.

### **38.2 Related obligations**

- (a) The Agent and each Borrower acknowledge that each Funding Rate is or may be price-sensitive information and that its use may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and the Agent and each Obligor undertake not to use any Funding Rate for any unlawful purpose.
- (b) The Agent and each Borrower agree (to the extent permitted by law and regulation) to inform the relevant Lender:
  - (i) of the circumstances of any disclosure made pursuant to clause 38.1 (*Confidentiality and disclosure*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
  - (ii) upon becoming aware that any information has been disclosed in breach of this clause 38.

### **38.3 No Event of Default**

No Event of Default will occur under clause 28.6 (*Other obligations*) by reason only of a Borrower's failure to comply with this clause 38.

## **39 Counterparts**

Each Finance Document 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 the Finance Document.

## 40 Contractual recognition of bail-in

Notwithstanding any other term of any Finance Document or any other agreement, arrangement or understanding between the Parties, each Party (and any other Obligor who is a party to any other Finance Document to which this clause is expressed by the terms of that other Finance Document to apply) acknowledges and accepts that any liability of any Finance Party to another Finance Party or to an Obligor under or in connection with the Finance Documents may be subject to Bail-In Action by the relevant Resolution Authority and acknowledges and accepts to be bound by the effect of:

- (a) any Bail-In Action in relation to any such liability, including (without limitation):
  - (i) a reduction, in full or in part, in the principal amount, or outstanding amount due (including any accrued but unpaid interest) in respect of any such liability;
  - (ii) a conversion of all, or part of, any such liability into shares or other instruments of ownership that may be issued to, or conferred on, it; and
  - (iii) a cancellation of any such liability; and
- (b) a variation of any term of any Finance Document to the extent necessary to give effect to any Bail-In Action in relation to any such liability.

In this clause 40:

**Article 55 BRRD** means Article 55 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms.

**Bail-In Action** means the exercise of any Write-down and Conversion Powers.

**Bail-In Legislation** means:

- (a) in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 BRRD, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time;
- (b) in relation to any other state other than such an EEA Member Country and the United Kingdom, any analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation; and
- (c) in relation to the United Kingdom, the UK Bail-In Legislation.

**EEA Member Country** means any member state of the European Union, Iceland, Liechtenstein and Norway.

**EU Bail-In Legislation Schedule** means the document described as such and published by the Loan Market Association (or any successor person) from time to time.

**Resolution Authority** means any body which has authority to exercise any Write-down and Conversion Powers.

**UK Bail-In Legislation** means Part I of the United Kingdom Banking Act 2009 and any other law or regulation applicable in the United Kingdom relating to the resolution of unsound or failing

banks, investment firms or other financial institutions or their affiliates (otherwise than through liquidation, administration or other insolvency proceedings).

**Write-down and Conversion Powers means:**

- (a) in relation to any Bail-In Legislation described in the EU Bail-In Legislation Schedule from time to time, the powers described as such in relation to that Bail-In Legislation in the EU Bail-In Legislation Schedule;
- (b) in relation to any other applicable Bail-In Legislation other than the UK Bail-In Legislation:
  - (i) any powers under that Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers; and
  - (ii) any similar or analogous powers under that Bail-In Legislation; and
- (c) in relation to any UK Bail-In Legislation, any powers under that UK Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that UK Bail-In Legislation that are related to or ancillary to any of those powers.

## **Section 10 - Governing Law and Enforcement**

### **41 Governing law**

- (a) This Agreement other than clause 7 (*Parallel Debt*) of Schedule 11 (*Administration, agency and other provisions*), and any non-contractual obligations connected with it are governed by English law.
- (b) Clause 7 (*Parallel Debt*) of Schedule 11 (*Administration, agency and other provisions*), and any non-contractual obligations connected with it are governed by Dutch law.

### **42 Enforcement**

#### **42.1 Jurisdiction of English courts**

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (other than disputes arising out of or in connection with clause 7 (*Parallel Debt*) of Schedule 11 (*Administration, agency and other provisions*), hereinafter referred to as **Parallel Debt Disputes**) or any non-contractual obligations connected with it (including a dispute regarding the existence, validity or termination of this Agreement) (a **Dispute**).
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) The Parties agree that the courts of Amsterdam, the Netherlands are the most appropriate and convenient courts to settle Parallel Debt Disputes and accordingly no Party will argue to the contrary.
- (d) This clause 42.1 is for the benefit of the Finance Parties only. As a result, no Finance Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Finance Parties may take concurrent proceedings in any number of jurisdictions.

#### **42.2 Service of process**

Without prejudice to any other mode of service allowed under any relevant law, each Obligor which is a Party (other than an Obligor incorporated in England and Wales):

- (a) irrevocably appoints the person named in Schedule 1 (*The original parties*) as that Obligor's English process agent as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document;
- (b) agrees that failure by a process agent to notify the relevant Obligor of the process will not invalidate the proceedings concerned; and
- (c) if any person appointed as process agent for an Obligor is unable for any reason to act as agent for service of process, that Obligor must immediately (and in any event within ten days of such event taking place) appoint another agent on terms acceptable to the Agent. Failing this, the Agent may appoint another agent for this purpose.

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

**Schedule 1**  
**The original parties**

**Borrowers**

<b>Name:</b>	FB Tankship I Inc.
<b>Jurisdiction of incorporation</b>	New Brunswick, Canada
<b>Registration number (or equivalent, if any)</b>	614033
<b>English process agent (if not incorporated in England)</b>	Vroon Shipping U.K Limited c/o Endeavour Partnership LLP Tobias House St. Mark's Court Teesdale Business Park TS17 6QW Teesside
<b>Registered office</b>	1 Germain Street, Suite 1500 Saint John, New Brunswick E2L 4V1 P.O. Box 1324 Saint John, New Brunswick E2L 4H8
<b>Address for service of notices</b>	1 Germain Street, Suite 1500 Saint John, New Brunswick E2L 4V1 P.O. Box 1324 Saint John, New Brunswick E2L 4H8  With copy to:  Attn: Treasury Department
<b>Shareholder(s) and percentage of the issued share capital held</b>	Vroon Vessel Participations I B.V. (100%)

<b>Name:</b>	FB Tankship III Limited
<b>Jurisdiction of incorporation</b>	England
<b>Registration number (or equivalent, if any)</b>	05216675
<b>English process agent (if not incorporated in England)</b>	N/A

<b>Registered office</b>	Tobias House St Mark's Court Teesdale Business Park Teesside TS17 6QW United Kingdom
<b>Address for service of notices</b>	Tobias House St Mark's Court Teesdale Business Park Teesside TS17 6QW United Kingdom  With copy to:  Attn:Treasury Department
<b>Shareholder(s) and percentage of the issued share capital held</b>	Vroon Shipping U.K Limited (100%)

<b>Name:</b>	FB Tankship IV Limited
<b>Jurisdiction of incorporation</b>	England
<b>Registration number (or equivalent, if any)</b>	05216677
<b>English process agent (if not incorporated in England)</b>	N/A
<b>Registered office</b>	Tobias House St Mark's Court Teesdale Business Park Teesside TS17 6QW United Kingdom
<b>Address for service of notices</b>	Tobias House St Mark's Court Teesdale Business Park Teesside TS17 6QW United Kingdom  With copy to:  Attn: Treasury Department
<b>Shareholder(s) and percentage of the issued share capital held</b>	Vroon Shipping U.K Limited (100%)

<b>Name:</b>	FC Tankship I Ltd
<b>Jurisdiction of incorporation</b>	England
<b>Registration number (or equivalent, if any)</b>	05006774
<b>English process agent (if not incorporated in England)</b>	N/A
<b>Registered office</b>	Tobias House St Mark's Court Teesdale Business Park Teesside TS17 6QW United Kingdom
<b>Address for service of notices</b>	Tobias House St Mark's Court Teesdale Business Park Teesside TS17 6QW United Kingdom  With copy to:  Attn: Treasury Department
<b>Shareholder(s) and percentage of the issued share capital held</b>	Vroon Shipping U.K Limited (100%)

<b>Name:</b>	FC Tankship II Ltd
<b>Jurisdiction of incorporation</b>	England
<b>Registration number (or equivalent, if any)</b>	05006764
<b>English process agent (if not incorporated in England)</b>	N/A
<b>Registered office</b>	Tobias House St Mark's Court Teesdale Business Park Teesside TS17 6QW United Kingdom
<b>Address for service of notices</b>	Tobias House St Mark's Court Teesdale Business Park

	<p>Teesside TS17 6QW United Kingdom</p> <p>With copy to:</p> <p>Attn: Treasury Department</p>
<b>Shareholder(s) and percentage of the issued share capital held</b>	Vroon Shipping U.K Limited (100%)

#### The Lessor Owners

<b>Name:</b>	FB Shipping Limited
<b>Jurisdiction of incorporation</b>	England
<b>Registration number (or equivalent, if any)</b>	05161386
<b>English process agent (if not incorporated in England)</b>	N/A
<b>Registered office</b>	<p>Tobias House St Mark's Court Teesdale Business Park Teesside TS17 6QW United Kingdom</p>
<b>Address for service of notices</b>	<p>Tobias House St Mark's Court Teesdale Business Park Teesside TS17 6QW United Kingdom</p> <p>With copy to:</p> <p>Attn: Treasury Department</p>
<b>Shareholder(s) and percentage of the issued share capital held</b>	Vroon Shipping U.K Limited 25% and Santander Asset Finance plc (75%)

<b>Name:</b>	FC Shipping Limited
<b>Jurisdiction of incorporation</b>	England


<b>Registration number (or equivalent, if any)</b>	05085910
<b>English process agent (if not incorporated in England)</b>	N/A
<b>Registered office</b>	Tobias House St Mark's Court Teesdale Business Park Teesside TS17 6QW United Kingdom
<b>Address for service of notices</b>	Tobias House St Mark's Court Teesdale Business Park Teesside TS17 6QW United Kingdom  With copy to:  Attn: Treasury Department
<b>Shareholder(s) and percentage of the issued share capital held</b>	Vroon Shipping U.K Limited 25% and Santander Asset Finance plc (75%)

#### Original Lenders and their Commitments


<b>Name</b>	ABN AMRO Bank N.V. Gustav Mahlerlaan 10 1082 PP Amsterdam The Netherlands  Attn: Willem Holterman and Ewout Verhagen  Email: [REDACTED] [REDACTED]
<b>Commitment \$</b>	24,070,498.47
<b>Treaty Passport scheme reference number and jurisdiction of tax residence (where relevant)</b>	
<b>Name</b>	Bank of America Europe Designated Activity Company  Two Park Place Hatch Street

	Dublin 2 Ireland  Attention: Bank Loan Corporate Actions  Email: <a href="mailto:corporate.actions@bankofamerica.com">corporate.actions@bankofamerica.com</a>
<b>Commitment \$</b>	3,282,340.70
<b>Treaty Passport scheme reference number and jurisdiction of tax residence (where relevant)</b>	
<b>TOTAL</b>	\$27,352,839.17

#### The Agent

<b>Name</b>	ABN Amro Bank N.V.
<b>Facility Office, address, email and attention details for notices</b>	Address: Gustav Mahlerlaan 10 1082 PP Amsterdam The Netherlands  Attn: Agency Syndicated Loans / Shipping Team / PAC HQ8042  Email:  <a href="mailto:abn.amro.agency.team.1@nl.abnamro.com">abn.amro.agency.team.1@nl.abnamro.com</a>

#### The Security Agent

<b>Name</b>	ABN Amro Bank N.V.
<b>Facility Office, address, email number and attention details for notices</b>	Address: Gustav Mahlerlaan 10 1082 PP Amsterdam The Netherlands  Attn: Agency Syndicated Loans / Shipping Team / PAC HQ8042  Email:  <a href="mailto:abn.amro.agency.team.1@nl.abnamro.com">abn.amro.agency.team.1@nl.abnamro.com</a>

## Schedule 2 Ship information

<b>Name of Ship:</b>	ACADIAN
<b>Owner:</b>	FB Tankship I Inc.
<b>Flag state:</b>	Canada
<b>Port of Registry:</b>	Saint John NB
<b>Official Number:</b>	827578
<b>IMO Number:</b>	9298715
<b>Charter description:</b>	Time charter dated 21 October 2004 and made between, inter alios, the Owner and Irving Oil
<b>Charterer:</b>	Irving Oil
<b>commercial manager/ technical manager</b>	Iver Ships B.V.  Norbulk Shipping UK Ltd
<b>Classification:</b>	+100 A1 , Oil/Chem.tank.(3)+LMC+UMS+IWS+SCM+ESP
<b>Classification Society:</b>	Lloyds Register
<b>Major Casualty Amount:</b>	\$1,000,000
<b>Date upon which the Ship is 15 years of age:</b>	20-07-2020

<b>Name of Ship:</b>	EAST COAST
<b>Owner:</b>	FB Tankship I Inc.
<b>Flag state:</b>	Canada
<b>Port of Registry:</b>	Saint John NB
<b>Official Number:</b>	838504
<b>IMO Number</b>	9298703
<b>Charter description:</b>	Time charter dated 24 March 2004 and made between, inter alios, the Owner and Irving Oil
<b>Charterer:</b>	Irving Oil

<b>commercial manager/ technical manager</b>	Iver Ships B.V.  Norbulk Shipping UK Ltd
<b>Classification:</b>	+100 A1 , Oil/Chem.tank.(3)+LMC+UMS+IWS+SCM+ESP
<b>Classification Society:</b>	Lloyds Register
<b>Major Casualty Amount:</b>	\$1,000,000
<b>Date upon which the Ship is 15 years of age:</b>	23-02-2020

<b>Name of Ship:</b>	GREAT EASTERN
<b>Owner:</b>	FB Shipping Limited
<b>Bareboat charterer:</b>	FB Tankship IV Ltd.
<b>Flag state:</b>	Marshall Islands
<b>Port of Registry:</b>	Majuro
<b>Official Number:</b>	2221
<b>IMO Number:</b>	9298739
<b>Charter description:</b>	Time charter dated 24 March 2004 and made between, inter alios, the Owner and Irving Oil
<b>Charterer:</b>	Irving Oil
<b>commercial manager/ technical manager</b>	Iver Ships B.V.  Norbulk Shipping UK Ltd
<b>Classification:</b>	+100 A1 , Oil/Chem.tank.(3)+LMC+UMS+IWS+SCM+ESP
<b>Classification Society:</b>	Lloyds Register
<b>Major Casualty Amount:</b>	\$1,000,000
<b>Date upon which the Ship is 15 years of age:</b>	20-10-2020

<b>Name of Ship:</b>	IVER PROSPERITY
<b>Owner:</b>	FC Shipping Limited

<b>Bareboat charterer:</b>	FC Tankship II Ltd.
<b>Flag state:</b>	Marshall Islands
<b>Port of Registry:</b>	Majuro
<b>Official Number:</b>	2784
<b>IMO Number:</b>	9351921
<b>Charter description:</b>	Time charter dated 27 August 2013 and made between, inter allos, the Owner and STI Chartering and Trading
<b>Charterer:</b>	Irving Oil
<b>commercial manager/ technical manager</b>	Iver Ships B.V. Norbulk Shipping UK Ltd
<b>Classification:</b>	+100 A1 , Oil/Chem.tank.(3)+LMC+UMS+IWS+SCM+ESP
<b>Classification Society:</b>	Lloyds Register
<b>Major Casualty Amount:</b>	\$1,000,000
<b>Date upon which the Ship is 15 years of age:</b>	02-04-2022

<b>Name of Ship:</b>	NEW ENGLAND
<b>Owner:</b>	FB Shipping Limited
<b>Bareboat charterer:</b>	FB Tankship III Ltd.
<b>Flag state:</b>	Marshall Islands
<b>Port of Registry:</b>	Majuro
<b>Official Number:</b>	2220
<b>IMO Number:</b>	9298727
<b>Charter description:</b>	Time charter dated 24 March 2004 and made between, inter allos, the Owner and Irving Oil
<b>Charterer:</b>	Irving Oil
<b>commercial manager/ technical manager</b>	Iver Ships Ltd Norbulk Shipping UK Ltd

<b>Classification:</b>	+100 A1 , Oil/Chem.tank.(3)+LMC+UMS+IWS+SCM+ESP
<b>Classification Society:</b>	Lloyds Register
<b>Major Casualty Amount:</b>	\$1,000,000
<b>Date upon which the Ship is 15 years of age:</b>	07-11-2020

<b>Name of Ship:</b>	IVER PROGRESS (TBR NOR EASTER)
<b>Owner:</b>	FC Shipping Limited
<b>Bareboat charterer:</b>	FC Tankship I Ltd.
<b>Flag state:</b>	Marshall Islands
<b>Port of Registry:</b>	Majuro
<b>Official Number:</b>	2783
<b>IMO Number:</b>	9350642
<b>Charter description:</b>	Time charter dated 19 September 2014 and made between, inter alios, the Owner and Irving Oil
<b>Charterer:</b>	Irving Oil
<b>commercial manager/ technical manager</b>	Iver Ships B.V. Norbulk Shipping UK Ltd
<b>Classification:</b>	+100 A1 , Oil/Chem.tank.(3)+LMC+UMS+IWS+SCM+ESP
<b>Classification Society:</b>	Lloyds Register
<b>Major Casualty Amount:</b>	\$1,000,000
<b>Date upon which the Ship is 15 years of age:</b>	18-01-2022

## **Schedule 3**

### **Conditions precedent**

#### **Part 1**

#### **Conditions precedent to any Utilisation**

##### **1 Original Obligor's corporate documents**

- (a) A copy of the Constitutional Documents of each Original Obligor (other than Compton Investments Limited) and the Guarantor.
- (b) A copy of a resolution of the board of directors of each Original Obligor (other than Compton Investments Limited) and the Guarantor (or, if applicable, any committee of such board empowered to approve and authorise the following matters):
  - (i) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party (**Relevant Documents**) and resolving that it execute the Relevant Documents to which it is a party;
  - (ii) authorising a specified person or persons to execute the Relevant Documents to which it is a party on its behalf; and
  - (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Utilisation Request and any Selection Notice) to be signed and/or despatched by it under or in connection with the Relevant Documents to which it is a party.
- (c) If applicable, a copy of a resolution of the board of directors of the relevant company, establishing any committee referred to in paragraph (b) above and conferring authority on that committee.
- (d) A specimen of the signature of each person authorised by the resolution referred to in paragraph (b) above in relation to the Finance Documents and related documents.
- (e) If applicable, a copy of a resolution signed by all the holders of the issued shares in each Original Obligor (other than Compton Investments Limited), approving the terms of, and the transactions contemplated by, the Relevant Documents to which such Original Obligor (other than Compton Investments Limited) is a party.
- (f) A copy of any power of attorney under which any person is to execute any of the Relevant Documents on behalf of any Original Obligor (other than Compton Investments Limited) or the Guarantor.
- (g) A certificate of an authorised signatory of the relevant Original Obligor (other than Compton Investments Limited) or, as the case may be, the Guarantor certifying that each copy document relating to it specified in this Part of this Schedule is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the date of this Agreement and that any such resolutions or power of attorney have not been revoked.

##### **2 Legal opinions**

The following legal opinions, each addressed to the Agent, the Security Agent and the Original Lenders and capable of being relied upon by any persons who become Lenders pursuant to the primary syndication of the Facility:

- (a) A legal opinion of Norton Rose Fulbright LLP, London addressed to the Arranger, the Security Agent and the Agent on matters of English law, substantially in the form approved by the Agent prior to signing this Agreement.
- (b) A legal opinion of the legal advisers to the Arranger, the Security Agent and the Agent in England and also each jurisdiction (other than England and Wales) in which an Obligor and the Guarantor is incorporated and/or which is or is to be the flag state of a Mortgaged Ship, or in which an Account opened at the relevant time is established substantially in the form approved prior to signing this Agreement.

### **3 Other documents and evidence**

- (a) Evidence that any process agent referred to in clause 42.2 (*Service of process*) or any equivalent provision of any other Finance Document entered into on or before the first Utilisation Date has accepted its appointment.
- (b) A copy of any other authorisation or other document, opinion or assurance which the Agent considers to be necessary or desirable (if it has notified the Borrowers accordingly) in connection with the entry into and performance of the transactions contemplated by any Finance Document or for the validity and enforceability of any Finance Document.
- (c) The Original Financial Statements.
- (d) Evidence that the fees, commissions, costs and expenses then due from the Borrowers pursuant to clause 12 (*Fees*) and clause 17 (*Costs and expenses*) have been paid or will be paid by the first Utilisation Date.

### **4 Hedging Master Agreements and Hedging Contract Security**

(In respect of any Utilisation other than for an Acadian Advance or an East Coast Advance) evidence that:

- (a) each of the Hedging Master Agreements has been executed by the Borrowers and the relevant Hedging Provider;
- (b) the Borrowers have executed the Hedging Contract Security in favour of the Security Agent; and
- (c) any notice required to be given to a Hedging Provider under the Hedging Contract Security has been given to it and acknowledged by it in the manner required by the Hedging Contract Security.

### **5 Guarantee**

The Guarantee duly executed by the Guarantor.

### **6 Charter Documents**

- (a) A copy certified as a true and complete copy by an approved person, of each Charter Document (such Charter Documents to include the Irving Oil Charter).

- (b) The Irving Oil Charter shall evidence time charter employment for all of the Irving Oil Ships for a period in excess of the Final Repayment Date in respect of each Advance relating to an Irving Oil Ship and at a daily charter rate of not less than an approved amount per day up to and including the year 2020 and a mark-up of an approved amount once each Scrubber has been installed on an Irving Oil Ship.
- (c) Evidence of a "back-log" of Irving Oil's payment behaviour towards the Group since 2005.

**7 "Know your customer" information**

Such documentation and information as any Finance Party may reasonably request through the Agent to comply with "know your customer" or similar identification procedures under all laws and regulations applicable to that Finance Party.

**Part 2**  
**Ship and security conditions precedent**

**1 Corporate documents**

- (a) A certificate of an authorised signatory of the relevant Borrower certifying that each copy document relating to it specified in Part 1 of this Schedule remains correct, complete and in full force and effect as at a date no earlier than a date approved for this purpose and that any resolutions or power of attorney referred to in Part 1 of this Schedule in relation to it have not been revoked or amended.
- (b) A certificate of an authorised signatory of each other Obligor which is party to any of the Original Security Documents required to be executed at or before Utilisation certifying that each copy document relating to it specified in Part 1 of this Schedule remains correct, complete and in full force and effect as at a date no earlier than a date approved for this purpose and that any resolutions or power of attorney referred to in Part 1 of this Schedule in relation to it have not been revoked or amended or delivery of the documents required by Part 1 of this Schedule in the case of the relevant Lessor Owner (in respect of any Utilisation other than for an Acadian Advance or an East Coast Advance).
- (c) If the Owner of the Ship is a Lessor Owner, such corporate documents in respect of such Lessor Owner as the Agent may reasonably require.

**2 Security**

- (a) The Mortgage and the Deed of Covenant or General Assignment in respect of the relevant Ship duly executed by the relevant Borrower and/or (if applicable) Lessor Owner.
- (b) The Charter Assignment in respect of the relevant Ship duly executed by the relevant Borrower.
- (c) Any Manager's Undertaking in respect of the relevant Ship pursuant to the Finance Documents duly executed by the relevant manager.
- (d) The Subordination and Assignment Deed duly executed.
- (e) Duly executed notices of assignment and acknowledgements of those notices as required by any of the above Security Documents.
- (f) If the Owner is a Lessor Owner the relevant Lessor Owner Guarantee duly executed by the relevant Lessor Owner.

**3 Registration of Ship**

Evidence that the relevant Ship:

- (a) is legally and beneficially owned by the relevant Borrower and/or (if applicable) Lessor Owner and registered in the name of the relevant owner through the relevant Registry as a ship under the laws and flag of the relevant flag state;
- (b) is classed with the highest class available for such Ship with the Classification Society free of all overdue requirements and recommendations of the relevant Classification Society;
- (c) is insured in the manner required by the Finance Documents;

- (d) has been delivered, and accepted for service, under its Charter; and
- (e) is free of any other charter commitment which would require approval under the Finance Documents.

#### **4 Mortgage registration**

Evidence that the Mortgage in respect of the relevant Ship has been registered against the relevant Ship through the relevant Registry under the laws and flag of the relevant flag state.

#### **5 Bank Accounts**

Evidence that any Account relative to the Ship which is the subject of a Utilisation required to be established under clause 26 (*Bank accounts*) has been opened and established, that any Account Security relative to the Ship which is the subject of a Utilisation in respect of each such Account has been executed and delivered by the relevant Account Holder in favour of the Security Agent and that any notice required to be given to an Account Bank under that Account Security has been given to it and acknowledged by it in the manner required by that Account Security and that an amount has been credited to it.

#### **6 Legal opinions**

The following further legal opinions, each addressed to the Agent, the Security Agent and the Original Lenders and capable of being relied upon by any persons who become Lenders pursuant to the primary syndication of the Facility:

- (a) A legal opinion of Norton Rose Fulbright LLP, London addressed to the Security Agent and the Agent on matters of English law, substantially in the form approved by the Agent prior to signing this Agreement in relation to Security Documents.
- (b) A legal opinion of the legal advisers to the Security Agent and the Agent in each jurisdiction (other than England and Wales) in which an Obligor is incorporated and/or which is or is to be the flag state of a Mortgaged Ship, or in which an Account opened at the relevant time is established substantially in the form approved by the Agent prior to signing this Agreement.

#### **7 Insurance**

In relation to the relevant Ship's Insurances:

- (a) an opinion from insurance consultants appointed by the Agent on such Insurances;
- (b) evidence that such Insurances have been placed in accordance with clause 24 (*Insurance*); and
- (c) evidence that approved brokers, insurers and/or associations have issued or will issue letters of undertaking in favour of the Security Agent in an approved form in relation to the Insurances.

## **8 ISM and ISPS Code**

Copies of:

- (a) the document of compliance issued in accordance with the ISM Code to the person who is the operator of the relevant Ship for the purposes of that code;
- (b) the safety management certificate in respect of the relevant Ship issued in accordance with the ISM Code;
- (c) the international ship security certificate in respect of the relevant Ship issued under the ISPS Code; and
- (d) if so requested by the Agent, any other certificates issued under any applicable code required to be observed by the relevant Ship or in relation to its operation under any applicable law.

## **9 Value of security**

Two valuations obtained (for the purpose of determining the amount of Tranche A and Tranche B) (not more than 45 days before the relevant Utilisation Date) in accordance with clause 25 (*Valuations*) one valuation from the Borrowers and the Agent respectively (at their own cost).

## **10 Fees and expenses**

Evidence that the fees, commissions, costs and expenses that are due from the Borrowers pursuant to clause 12 (*Fees*) and clause 17 (*Costs and expenses*) have been paid or will be paid by the relevant Utilisation Date.

## **11 Environmental matters**

If applicable, copies of the relevant Ship's certificate of financial responsibility and vessel response plan required under United States law and evidence of their approval by the appropriate United States government entity and (if requested by the Agent) an environmental report in respect of the relevant Ship from an approved person.

## **12 Management Agreement**

Where a manager of the relevant Ship has been approved in accordance with clause 22.4 (*Manager*), a copy, certified by an approved person to be a true and complete copy, of the agreement between the relevant Borrower and the manager relating to the appointment of the manager.

## **13 Share Security**

The Share Security in respect of the relevant Borrower and, if applicable, the relevant Lessor Owner duly executed by the persons specified as such in Schedule 1 (*The original parties*) together with all letters, transfers, certificates and other documents required to be delivered under the Share Security.

## **14 Permitted Security Interests**

In respect of any Utilisation (other than for the Acadian Tranche A Advance, the Acadian Tranche C Advance, the East Coast Tranche A Advance or the East Coast Tranche C Advance), a

proceeds deed or an intercreditor agreement dated after the date of this Agreement between, inter alios, the Security Agent, the Borrowers or any of them, the Lessor Owners or either of them and Santander Asset Finance plc in an approved form in respect of such Ship, pursuant to which the Security Agent shall, in an approved manner, consent to a second priority mortgage (and related three party deed) in favour of Santander Asset Finance plc.

**15 Other conditions**

If the owner of the relevant Ship is a Lessor Owner, such other documents and evidence in relation thereto as the Agent may reasonably require.

**Part 3**  
**Conditions precedent on Utilisation of Advances of Tranche B**

**1 Corporate documents**

A certificate of an authorised signatory of the relevant Borrower certifying that each copy document relating to it specified in Part 1 of this Schedule remains correct, complete and in full force and effect as at a date no earlier than a date approved for this purpose and that any resolutions or power of attorney referred to in Part 1 of this Schedule in relation to it have not been revoked or amended.

**2 Fees and expenses**

Evidence that the fees, commissions, costs and expenses that are due from the Borrowers pursuant to clause 12 (*Fees*) and clause 17 (*Costs and expenses*) have been paid or will be paid by the relevant Utilisation Date.

**3 Scrubber contract**

A copy, certified as a true and complete copy by an approved person, of the contract for the acquisition of the Scrubber for the relevant Ship and evidence satisfactory to the Agent of the cost of acquisition and installation of the relevant Scrubber.

**Schedule 4**  
**Utilisation Request**

*[Intentionally omitted]*

**Schedule 5**  
**Selection Notice**

[Intentionally omitted]

## **Schedule 6**

### **Form of Transfer Certificate**

To: ABN AMRO Bank N.V. as Agent

From: [The Existing Lender] (the Existing Lender) and [The New Lender] (the New Lender)

Dated:

**\$95,000,000 Facility Agreement originally dated 24 December 2014 (as amended and restated on [•] 2023)**

- 1 We refer to the Agreement. This is a Transfer Certificate. Terms defined in the Agreement have the same meaning in this Transfer Certificate unless given a different meaning in this Transfer Certificate.
- 2 We refer to clause 2.4 (*Procedure for assignment*) of Schedule 11 (*Administration, agency and other provisions*):
  - (a) The Existing Lender assigns absolutely to the New Lender all the rights of the Existing Lender under the Agreement and the other Finance Documents which relate to that portion of the Existing Lender's Commitment(s) and participations in the Loan under the Agreement as specified in the Schedule.
  - (b) The Existing Lender is released from all the obligations of the Existing Lender which correspond to that portion of the Existing Lender's Commitment(s) and participations in the Loan under the Agreement specified in the Schedule.
  - (c) The New Lender becomes a Party as a Lender and is bound by obligations equivalent to those from which the Existing Lender is released under paragraph (b) above.
  - (d) The proposed Transfer Date is [•].
  - (e) The Facility Office and address, email and attention details for notices of the New Lender for the purposes of clause 32.2 (*Addresses*) are set out in the Schedule.
- 3 The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in clause 2.3 (*Limitation of responsibility of Existing Lenders*) of Schedule 11 (*Administration, agency and other provisions*).
- 4 The New Lender confirms, for the benefit of the Agent and without liability to any Obligor, that it is:
  - (a) [a UK Qualifying Lender (other than a UK Treaty Lender);]
  - (b) [a UK Treaty Lender;]
  - (c) [not a UK Qualifying Lender].<sup>1</sup>

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<sup>1</sup> Delete as applicable. Each New Lender is required to confirm which of these three categories it falls within.

- 5 [The New Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:
- (a) a company resident in the United Kingdom for United Kingdom tax purposes;
  - (b) a partnership each member of which is:
    - (i) a company so resident in the United Kingdom; or
    - (ii) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA; or
  - (c) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company.]<sup>2</sup>
- 6 [The New Lender confirms that it holds a passport under the HM Revenue & Customs DT Treaty Passport scheme (reference number [●]) and is tax resident in [●]<sup>3</sup>, so that interest payable to it by borrowers is generally subject to full exemption from UK withholding tax, and requests that the Agent notify each UK Borrower which is a Party as a Borrower as at the Transfer Date that it wishes that scheme to apply to the Agreement.]<sup>4</sup>
- 7 This Transfer Certificate 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 Transfer Certificate.
- 8 This Transfer Certificate and any non-contractual obligations connected with it are governed by English law.
- 9 This Transfer Certificate has been entered into on the date stated at the beginning of this Transfer Certificate.

**Note: The execution of this Transfer Certificate may not assign a proportionate share of the Existing Lender's interest in the Security Documents in all jurisdictions. It is the responsibility of the New Lender to ascertain whether any other documents or other formalities are required to perfect an assignment of such a share in the Security Documents in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.**

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<sup>2</sup> Include if New Lender comes within paragraph (ii) of the definition of Qualifying Lender in Clause 13.1 (*Definitions*).

<sup>3</sup> Insert jurisdiction of tax residence.

<sup>4</sup> Include if New Lender holds a passport under the HM Revenue & Customs DT Treaty Passport scheme and wishes that scheme to apply to the Agreement.

## **The Schedule**

**Rights to be assigned and obligations to be released and undertaken**

**[insert relevant details]**

**[Facility Office address, email and attention details for notices and account details for payments.]**

**[Existing Lender]**

**[New Lender]**

By:

By:

This is accepted by the Agent as a Transfer Certificate and the Transfer Date is confirmed as [ ].

Signature of this Transfer Certificate by the Agent constitutes confirmation by the Agent of receipt of notice of the assignment referred to herein, which notice the Agent receives on behalf of each Finance Party.

**[Agent]**

By:

**Schedule 7**  
**Form of Compliance Certificate**

To: ABN AMRO Bank N.V. as Agent

From: [Borrowers] as Borrowers

Dated: [●]

**\$95,000,000 Facility Agreement originally dated 24 December 2014 (as amended and restated on [●] 2023) (the Facility Agreement)**

- 1 I refer to the Facility Agreement. This is a Compliance Certificate. Terms defined in the Facility Agreement have the same meaning when used in this Compliance Certificate unless given a different meaning in this Compliance Certificate.
- 2 I confirm that as at [insert relevant testing date] (the **Test Date**):  
  
***[Insert details of covenants to be certified]***
- 3 Attached are relevant calculations establishing the figures in paragraph 2 above and demonstrating compliance with the financial covenants set forth in clause 20 (*Financial covenants*).
- 4 [I confirm that no Default is continuing neither at the Test Date nor as at the date of this Compliance Certificate.] **[If this statement cannot be made, the certificate should identify any Default that is continuing and the steps, if any, being taken to remedy it.]**

Signed by:

.....  
**Authorised Signatory**  
**[Borrowers]**

## Schedule 8 Reference Rate Terms

<b>Currency</b>	Dollars.
<b>Cost of funds as a fallback</b>	Cost of funds will not apply as a fallback.

### **Definitions**

<b>Additional Business Days</b>	An RFR Banking Day.
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<b>Baseline CAS</b>	<b>Length of Interest Period</b>	<b>Applicable Baseline CAS (per cent. per annum)</b>
	three Months	0.26161

<b>Break Costs</b>	No breakage costs or prepayment fees will be payable.
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<b>Business Day Conventions (definition of "Month" and clause 10.2 (Non-Business Days)):</b>	<p>(a) If any period is expressed to accrue by reference to a Month or any number of Months then, in respect of the last Month of that period:</p> <p>(i) subject to paragraph (iii) below, if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day;</p> <p>(ii) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month; and</p> <p>(iii) if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end.</p> <p>(b) If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period will instead end on the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).</p>
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**Central Bank Rate**

- (c) The short-term interest rate target set by the US Federal Open Market Committee as published by the Federal Reserve Bank of New York from time to time; or
- (d) if that target is not a single figure, the arithmetic mean of:
  - (i) the upper bound of the short-term interest rate target range set by the US Federal Open Market Committee and published by the Federal Reserve Bank of New York; and
  - (ii) the lower bound of that target range.

**Central Bank Rate Adjustment**

In relation to the Central Bank Rate prevailing at close of business on any RFR Banking Day, the 20 per cent. trimmed arithmetic mean (calculated by the Agent) of the Central Bank Rate Spreads for the five most immediately preceding RFR Banking Days for which the RFR is available.

**Central Bank Rate Spread**

In relation to any RFR Banking Day, the difference (expressed as a percentage rate per annum) calculated by the Agent (or by any other Finance Party which agrees with the Borrowers and the Agent to do so in place of the Agent) of:

- (a) the applicable RFR for that RFR Banking Day; and
- (b) the applicable Central Bank Rate prevailing at close of business on that RFR Banking Day.

**Daily Rate**

The **Daily Rate** for any RFR Banking Day is:

- (a) the RFR for that RFR Banking Day; or
- (b) if the RFR is not available for that RFR Banking Day, the percentage rate per annum which is the aggregate of:
  - (i) the Central Bank Rate for that RFR Banking Day; and
  - (ii) the applicable Central Bank Rate Adjustment; or

(c) if paragraph (b) above applies but the Central Bank Rate for that RFR Banking Day is not available, the percentage rate per annum which is the aggregate of:

(i) the most recent Central Bank Rate for a day which is no more than 5 RFR Banking Days before that RFR Banking Day; and

(ii) the applicable Central Bank Rate Adjustment,

rounded, in either case, to four decimal places and if, in either case, that rate is less than zero, the Daily Rate shall be deemed to be zero.

**Lookback Period** Five RFR Banking Days.

**Margin** 2.5 per cent. per annum

**Market Disruption Rate** The percentage rate per annum which is the aggregate of:

(a) the Cumulative Compounded RFR Rate for the Interest Period of the Loan; and

(b) the applicable Baseline CAS,

and if that rate is less than zero, the Market Disruption Rate shall be deemed to be zero.

**Relevant Market** The market for overnight cash borrowing collateralised by US Government securities.

**Reporting Day** The Business Day which follows the day which is the Lookback Period prior to the last day of the Interest Period.

**RFR** The secured overnight financing rate (SOFR) administered by the Federal Reserve Bank of New York (or any other person which takes over the administration of that rate) published by the Federal Reserve Bank of New York (or any other person which takes over the publication of that rate).

**RFR Banking Day** Any day other than:

(a) a Saturday or Sunday; and

(b) a day on which the Securities Industry and Financial Markets Association (or any successor organisation) recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in US Government securities.

**RFR Contingency Period** 15 RFR Banking Days

## **Reporting Times**

Deadline for Lenders to report market disruption in accordance with clause 11.2 (*Market disruption*)

Close of business in London on the Reporting Day for the Loan.

Deadline for Lenders to report their cost of funds in accordance with clause 11.3 (*Cost of funds*)

Close of business on the date falling two (2) Business Days after the Reporting Day for the Loan (or, if earlier, on the date falling two (2) Business Days before the date on which interest is due to be paid in respect of the Interest Period for the Loan.

## Schedule 9

### Daily Non-Cumulative Compounded RFR Rate

The **Daily Non-Cumulative Compounded RFR Rate** for any RFR Banking Day  $i$  during an Interest Period for a Loan is the percentage rate per annum (without rounding, to the extent reasonably practicable for the Finance Party performing the calculation, taking into account the capabilities of any software used for that purpose) calculated as set out below:

$$(UCCDR_i - UCCDR_{i-1}) \times \frac{dcc}{n_i}$$

where:

**UCCDR $_i$**  means the Unannualised Cumulative Compounded Daily Rate for that RFR Banking Day  $i$ ;

**UCCDR $_{i-1}$**  means, in relation to that RFR Banking Day  $i$ , the Unannualised Cumulative Compounded Daily Rate for the immediately preceding RFR Banking Day (if any) during that Interest Period;

**dcc** means 360 or, in any other case where market practice in the Relevant Market is to use a different number for quoting the number of days in a year, that number);

**$n_i$**  means the number of calendar days from, and including, that RFR Banking Day  $i$  up to, but excluding, the following RFR Banking Day; and

the **Unannualised Cumulative Compounded Daily Rate** for any RFR Banking Day (the **Cumulated RFR Banking Day**) during that Interest Period is the result of the below calculation (without rounding, to the extent reasonably practicable for the Finance Party performing the calculation, taking into account the capabilities of any software used for that purpose):

$$ACCDR \times \frac{tn_i}{dcc}$$

where:

**ACCDR** means the Annualised Cumulative Compounded Daily Rate for that Cumulated RFR Banking Day;

**$tn_i$**  means the number of calendar days from, and including, the first day of the Cumulation Period to, but excluding, the RFR Banking Day which immediately follows the last day of the Cumulation Period;

**Cumulation Period** means the period from, and including, the first RFR Banking Day of that Interest Period to, and including, that Cumulated RFR Banking Day;

**dcc** has the meaning given to that term above; and

the **Annualised Cumulative Compounded Daily Rate** for that Cumulated RFR Banking Day is the percentage rate per annum (rounded to four decimal places) calculated as set out below:

$$\left[ \prod_{i=1}^{d_0} \left( 1 + \frac{\text{DailyRate}_{i-LP} \times n_i}{\text{dcc}} \right) - 1 \right] \times \frac{\text{dcc}}{\text{tn}_i}$$

where:

**d0** means the number of RFR Banking Days in the Cumulation Period;

**Cumulation Period** has the meaning given to that term above;

**i** means a series of whole numbers from one to d0, each representing the relevant RFR Banking Day in chronological order in the Cumulation Period;

**Daily Rate<sub>i-LP</sub>** means, for any RFR Banking Day i in the Cumulation Period, the Daily Rate for the RFR Banking Day which is the applicable Lookback Period prior to that RFR Banking Day i;

**n<sub>i</sub>** means, for any RFR Banking Day i in the Cumulation Period, the number of calendar days from, and including, that RFR Banking Day i up to, but excluding, the following RFR Banking Day;

**dcc** has the meaning given to that term above; and

**tn<sub>i</sub>** has the meaning given to that term above.

## Schedule 10

### Cumulative Compounded RFR Rate

The **Cumulative Compounded RFR Rate** for any Interest Period for a Loan is the percentage rate per annum (rounded to the same number of decimal places as is specified in the definition of **Annualised Cumulative Compounded Daily Rate** in Schedule 9 (*Daily Non-Cumulative Compounded RFR Rate*)) calculated as set out below:

$$\left[ \prod_{i=1}^{d_0} \left( 1 + \frac{\text{DailyRate}_{i-LP} \times n_i}{\text{dcc}} \right) - 1 \right] \times \frac{\text{dcc}}{d}$$

where:

**$d_0$**  means the number of RFR Banking Days during the Interest Period;

**$i$**  means a series of whole numbers from one to  $d_0$ , each representing the relevant RFR Banking Day in chronological order during the Interest Period;

**$\text{DailyRate}_{i-LP}$**  means for any RFR Banking Day  $i$  during the Interest Period, the Daily Rate for the RFR Banking Day which is the applicable Lookback Period prior to that RFR Banking Day  $i$ ;

**$n_i$**  means, for any RFR Banking Day  $i$ , the number of calendar days from, and including, that RFR Banking Day  $i$  up to, but excluding, the following RFR Banking Day;

**$\text{dcc}$**  means 360 or, in any case where market practice in the Relevant Market is to use a different number for quoting the number of days in a year, that number; and

**$d$**  means the number of calendar days during that Interest Period.

## **Schedule 11**

### **Administration, agency and other provisions**

#### **1 Definitions**

In this Agreement and (unless otherwise defined in the relevant Finance Document) the other Finance Documents:

**Basel II Accord** means the "International Convergence of Capital Measurement and Capital Standards, a Revised Framework" published by the Basel Committee on Banking Supervision in June 2004 as updated prior to, and in the form existing on, the date of this Agreement, excluding any amendment thereto arising out of the Basel III Accord.

**Basel Accords** means the Basel II Accord, Basel III Accord and Reformed Basel III.

**Basel Regulation** means either a Basel II Regulation or a Basel III Regulation.

**Basel II Approach** means, in relation to any Finance Party, either the Standardised Approach or the relevant Internal Ratings Based Approach (each as defined in the Basel II Accord) adopted by that Finance Party (or any of its Affiliates) for the purposes of implementing or complying with the Basel II Accord.

**Basel II Increased Cost** means an Increased Cost which is attributable to the implementation or application of or compliance with any Basel II Regulation in force as at the date hereof (whether such implementation, application or compliance is by a government, regulator, Finance Party or any of its Affiliates).

**Basel II Regulation** means:

- (a) any Applicable Law in force as at the date hereof implementing the Basel II Accord, (including the relevant provisions of the CRR) to the extent only that such Applicable Law re-enacts and/or implements the requirements of the Basel II Accord but excluding any provision of such Applicable Law implementing the Basel III Accord or Reformed Basel III; or
- (b) any Basel II Approach adopted by a Finance Party or any of its Affiliates.

**Basel III Accord** means, together:

- (a) the agreements on capital requirements, a leverage ratio and liquidity standards contained in "Basel III: A global regulatory framework for more resilient banks and banking systems", "Basel III: International framework for liquidity risk measurement, standards and monitoring" and "Guidance for national authorities operating the countercyclical capital buffer" published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated;
- (b) the rules for global systemically important banks contained in "Global systemically important banks: assessment methodology and the additional loss absorbency requirement - Rules text" published by the Basel Committee on Banking Supervision in November 2011, as amended, supplemented or restated; and
- (c) any further guidance or standards published by the Basel Committee on Banking Supervision relating to "Basel III",

but excluding, in each such case, Reformed Basel III.

**Basel III Increased Cost** means an Increased Cost which is attributable to the implementation or application of or compliance with any Basel III Regulation (whether such implementation, application or compliance is by a government, regulator, Finance Party or any of its Affiliates) and includes a CRR Increased Cost.

**Basel III Regulation** means any Applicable Law implementing the Basel III Accord (including the relevant provisions of the CRR and CRR-II) save and to the extent that it re-enacts a Basel II Regulation and excluding any provision of such Applicable Law implementing Reformed Basel III;

**CRR** means either CRR-EU or, as the context may require, CRR-UK.

**CRR-EU** means regulation 575/2013 of the European Union on prudential requirements for credit institutions and investment firms and regulation 2019/876 of the European Union amending Regulation (EU) No 575/2013 and all delegated and implementing regulations supplementing that Regulation.

**CRR Increased Cost** means an Increased Cost which is attributable to the implementation or application of or compliance with the CRR (whether such implementation, application or compliance is by a government, regulator, Finance Party or any of its Affiliates).

**CRR-UK** means CRR-EU as amended and transposed into the laws of the United Kingdom by the European Union (Withdrawal) Act 2018 and the European Union (Withdrawal Agreement) Act 2020 and as further amended from time to time.

**Confidential Information** means all information relating to an Obligor, the Group, the Finance Documents or the Facility of which a Finance Party becomes aware in its capacity as, or for the purpose of becoming, a Finance Party or which is received by a Finance Party in relation to, or for the purpose of becoming a Finance Party under, the Finance Documents or the Facility from either:

- (a) any member of the Group or any of its advisers; or
- (b) another Finance Party, if the information was obtained by that Finance Party directly or indirectly from any member of the Group or any of its advisers,

in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that:

- (a) is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of clause 37 (*Confidential Information*); or
- (b) is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers; or
- (c) is known by that Finance Party before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with the Group and which, in either case, as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

**Participating Member State** means any member state of the European Union that has the euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union.

## **2 Changes to the Lenders**

### **2.1 Conditions of Assignment**

- (a) An assignment under clause 29.1 (*Assignment by the Lenders*) of Section 8 will only be effective:
  - (i) on receipt by the Agent of written confirmation from the New Lender (in form and substance satisfactory to the Agent) that the New Lender will assume the same obligations to the Borrowers and the other Finance Parties as it would have been under if it was an Original Lender;
  - (ii) on the New Lender entering into any documentation required for it to accede as a party to any Security Document to which the Original Lender is a party in its capacity as a Lender and, in relation to such Security Documents, completing any filing, registration or notice requirements;
  - (iii) if that Existing Lender assigns equal fractions of its Commitment and participation in the Loan and each Utilisation (if any) under the Facility.
- (b) Each New Lender, by executing the relevant Transfer Certificate, confirms, for the avoidance of doubt, that the Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with the Finance Documents on or prior to the date on which the assignment becomes effective in accordance with the Finance Documents and that it is bound by that decision to the same extent as the Existing Lender would have been had it remained a Lender.

### **2.2 Fee and expenses**

The New Lender shall, on the date upon which an assignment takes effect, pay to the Agent (for its own account) a fee of \$3,500 and shall, promptly on demand, pay the Agent and the Security Agent the amount of:

- (a) all costs and expenses (including legal fees) reasonably incurred by the Agent or the Security Agent in connection with any such assignment; and
- (b) any cost, loss or liability the Agent or the Security Agent incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any such assignment.

### **2.3 Limitation of responsibility of Existing Lenders**

- (a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:
  - (i) the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents or any other documents;
  - (ii) the financial condition of any Obligor;

- (iii) the performance and observance by any Obligor or any other person of its obligations under the Finance Documents or any other documents;
- (iv) the application of any Basel Regulation to the transactions contemplated by the Finance Documents; or
- (v) the accuracy of any statements (whether written or oral) made in or in connection with any Finance Document or any other document,

and any representations or warranties implied by law are excluded.

(b) Each New Lender confirms to the Existing Lender and the other Finance Parties that it:

- (vi) has made (and shall continue to make) its own independent investigation and assessment of:
  - (A) the financial condition and affairs of the Obligors and their related entities in connection with its participation in this Agreement; and
  - (B) the application of any Basel Regulation to the transactions contemplated by the Finance Documents,

and has not relied exclusively on any information provided to it by the Existing Lender or any other Finance Party in connection with any Finance Document;

- (c) will continue to make its own independent appraisal of the application of any Basel Regulation to the transactions contemplated by the Finance Documents; and
- (d) will continue to make its own independent appraisal of the creditworthiness of each Obligor and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.
- (e) Nothing in any Finance Document obliges an Existing Lender to:
  - (i) accept a re-assignment from a New Lender of any of the rights assigned under clause 29 (*Changes to the Lenders*) of Section 8; or
  - (ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Obligor of its obligations under the Finance Documents or by reason of the application of any Basel II Regulation to the transactions contemplated by the Finance Documents or otherwise.

## 2.4 Procedure for assignment

- (a) Subject to the conditions set out in clause 29.2 (*Conditions of assignment*) of Section 8 and clause 2.1 (*Conditions of assignment*) an assignment may be effected in accordance with paragraph (d) below when (i) the Agent executes or otherwise duly completed a Transfer Certificate and (ii) the Agent executes any document required under clause 2.1 (*Conditions of assignment*) which it may be necessary for it to execute in each case delivered to it by the Existing Lender and the New Lender duly executed by them and, in the case of any such other document, any other relevant person. The Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a Transfer Certificate and any such other document each duly completed, appearing on its face to comply with the

terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Transfer Certificate and such other document.

- (b) The Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the assignment to such New Lender.
- (c) The Obligors and the other Finance Parties irrevocably authorise the Agent to execute any Transfer Certificate on their behalf without any consultations with them.
- (d) On the Transfer Date:
  - (i) the Existing Lender will assign absolutely to the New Lender the rights under the Finance Documents expressed to be the subject of the assignment in the Transfer Certificate;
  - (ii) the Existing Lender will be released by each Obligor and the other Finance Parties from the obligations owed by it (the **Relevant Obligations**) and expressed to be the subject of the release in the Transfer Certificate (but the obligations owed by the Obligors under the Finance Documents shall not be released); and
  - (iii) the New Lender shall become a Party to the Finance Documents as a "Lender" for the purposes of all the Finance Documents and will be bound by obligations equivalent to the Relevant Obligations.
- (e) Lenders may utilise procedures other than those set out in this clause 2.4 to assign their rights under the Finance Documents (but not, without the consent of the relevant Obligor or unless in accordance with this clause 2.4 to obtain a release by that Obligor from the obligations owed to that Obligor by the Lenders nor the assumption of equivalent obligations by a New Lender) provided that they comply with the conditions set out in clause 29.2 (*Conditions of assignment*) of Section 8 and clause 2.1 (*Conditions of assignment*).

## **2.5 Copy of Transfer Certificate to Borrowers**

The Agent shall, as soon as reasonably practicable after it has executed a Transfer Certificate and any other document required under clause 2.1 (*Conditions of assignment*), send a copy of that Transfer Certificate and such other documents to the Borrowers.

## **2.6 Security over Lenders' rights**

In addition to the other rights provided to Lenders under clause 29 (*Changes to the Lenders*) of Section 8, each Lender may, in respect of (a) below, without consulting with or obtaining consent from an Obligor and, in respect of (b) below, with the consent of the Borrowers, at any time charge, assign or otherwise create a Security Interest in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Lender including, without limitation:

- (a) any charge, assignment or other Security Interest to secure obligations to a federal reserve or central bank; and
- (b) in the case of any Lender which is a fund, any charge, assignment or other Security Interest granted to any holders (or trustee or representatives of holders) of obligations owed, or

securities issued, by that Lender as security for those obligations or securities, except that no such charge, assignment or Security Interest shall:

- (i) release a Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or Security Interest for the Lender as a party to any of the Finance Documents; or
- (ii) require any payments to be made by an Obligor other than or in excess of, or grant to any person any more extensive rights than, those required to be made or granted to the relevant Lender under the Finance Documents.

### **3 Roles of Agent, Security Agent and Arranger**

#### **3.1 Appointment of the Agent**

- (a) Each other Finance Party (other than the Security Agent) appoints the Agent to act as its agent under and in connection with the Finance Documents.
- (b) Each such other Finance Party authorises the Agent:
  - (i) to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions; and
  - (ii) to execute each of the Security Documents and all other documents that may be approved by the Majority Lenders for execution by it.

#### **3.2 Instructions to Agent**

- (a) The Agent shall:
  - (i) unless a contrary indication appears in a Finance Document, exercise or refrain from exercising any right, power, authority or discretion vested in it as Agent in accordance with any instructions given to it by:
  - (ii) all Lenders if the relevant Finance Document stipulates the matter is an all Lender decision; and
  - (iii) in all other cases, the Majority Lenders; and
  - (iv) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with sub-paragraph (i) above.
- (b) The Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Lenders (or, if the relevant Finance Document stipulates the matter is a decision for any other Lender or group of Lenders, from that Lender or group of Lenders) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Agent may refrain from acting unless and until it receives those instructions or that clarification.

- (c) Save in the case of decisions stipulated to be a matter for any other Lender or group of Lenders under the relevant Finance Document and unless a contrary indication appears in a Finance Document, any instructions given to the Agent by the Majority Lenders shall override any conflicting instructions given by any other Parties and will be binding on all Finance Parties save for the Security Agent.
- (d) The Agent may refrain from acting in accordance with any instructions of any Lender or group of Lenders until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Finance Documents and which may include payment in advance) for any cost, loss or liability which it may incur in complying with those instructions.
- (e) In the absence of instructions, the Agent may act (or refrain from acting) as it considers to be in the best interest of the Lenders.
- (f) The Agent is not authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings relating to any Finance Document. This clause 3.2 shall not apply to any legal or arbitration proceeding relating to the perfection, preservation or protection of rights under the Security Documents or enforcement of the Security Documents.

### **3.3 Period without role for Agent**

- (a) In this clause 3, a "Non-Agent Period" means the period in which the Agent has no role pursuant to paragraph (b) below.
- (b) The Agent shall not have a role under this Agreement, other than entering into the Finance Documents in its capacity as Agent, and the other provisions of this clause 3 shall not apply to the extent that they relate to the Agent until one of the following conditions is satisfied:
  - (i) the Lenders are not only the Original Lenders;
  - (ii) a Default is continuing or the Original Lenders (acting reasonably) have determined that a Default has occurred and is continuing and the Original Lenders have notified the Borrowers in writing that they have instructed the Agent to commence acting in its role as the Agent; or
  - (iii) the Borrowers have requested the Agent (with a copy to the Original Lenders) to commence acting in its role as the Agent.

### **3.4 During a Non-Agent Period:**

- (a) Subject to paragraph (c) below, all reference to "the Agent" (other than in this clause 3) and all references to "the Agent", or "a Party" in any Finance Document shall, where it relates to the Agent, be construed as references to "the Original Lenders".
- (b) All payments which are expressed to be made to, received by or made available to or by the Agent (as applicable), must be made to, received by or made available to or by the Original Lenders.
- (c) The reference to the "Agent" in
  - (i) clause 3.10 (*Responsibility for documentation and other matters*) to and including clause 3.12 (*Exclusion of liability*);

- (ii) clause 15.2 (*Other indemnities*) of Section 6; and
- (iii) clause 17 (*Costs and Expenses*) of Section 6,

must at all times be construed as reference to each of the Agent and the Original Lenders in its former and/or existing role of the Agent pursuant to paragraph (a) above.

- (d) For each full calendar quarter which qualifies as a Non-Agent Period, no agency fee or other fees will be payable to the Agent.

### **3.5 Duties of the Agent**

- (a) The Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
- (b) The Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Agent for that Party by any other Party.
- (c) Without prejudice to clause 2.5 (*Copy of Transfer Certificate to Borrowers*), paragraph (b) above shall not apply to any Transfer Certificate.
- (d) Except where a Finance Document specifically provides otherwise, the Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (e) If the Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.
- (f) If the Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than the Agent or the Arranger or the Security Agent, for their own account) under this Agreement it shall promptly notify the other Finance Parties.
- (g) The Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied).

### **3.6 Role of the Arranger**

- (a) Except as specifically provided in the Finance Documents, the Arranger has no obligations of any kind to any other Party under or in connection with any Finance Document or the transactions contemplated by the Finance Documents.

### **3.7 No fiduciary duties**

- (a) Nothing in this Agreement constitutes the Agent or the Arranger as a trustee or fiduciary of any other person.
- (b) None of the Agent, the Security Agent or the Arranger shall be bound to account to any Lender for any sum or the profit element of any sum received by it for its own account or have any obligations to the other Finance Parties beyond those expressly stated in the Finance Documents.

### **3.8 Business with the Group**

The Agent, the Security Agent and the Arranger may accept deposits from, lend money to and generally engage in any kind of banking or other business with any Obligor or other Group Members or their Affiliates.

### **3.9 Rights and discretions of the Agent**

(a) The Agent may

- (i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
- (ii) assume that:
  - (A) any instructions received by it from the Majority Lenders, any Lenders or any group of Lenders are duly given in accordance with the terms of the Finance Documents; and
  - (B) unless it has received notice of revocation, that those instructions have not been revoked; and
- (iii) rely on a certificate from any person:
  - (A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
  - (B) to the effect that such person approves of any particular dealing, transaction, step, action or thing,

as sufficient evidence that that is the case and, in the case of paragraph (i) above, may assume the truth and accuracy of that certificate.

(b) The Agent may assume (unless it has received notice to the contrary in its capacity as agent for the other Finance Parties) that:

- (i) no Default has occurred (unless it has actual knowledge of a Default arising under clause 28.2 (*Non-payment*) of Section 7);
- (ii) any right, power, authority or discretion vested in any Party or any group of Lenders has not been exercised; and
- (iii) any notice or request made by a Borrower (other than a Utilisation Request) is made on behalf of and with the consent and knowledge of all the Obligors.

(c) The Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts in the conduct of its obligations and responsibilities under the Finance Documents.

(d) Without prejudice to the generality of paragraph (c) above or paragraph (e) below, the Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Agent (and so separate from any lawyers instructed by the Lenders) if the Agent in its reasonable opinion deems this to be desirable.

- (e) The Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- (f) The Agent may act in relation to the Finance Documents through its officers, employees and agents and the Agent shall not:
  - (i) be liable for any error of judgment made by any such person; or
  - (ii) be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part, of any such person,
 unless such error or such loss was directly caused by the Agent's gross negligence or wilful misconduct.
- (g) Unless a Finance Document expressly provides otherwise, the Agent may disclose to any other Party any information it reasonably believes it has received as agent under this Agreement.
- (h) Notwithstanding any other provision of any Finance Document to the contrary, neither the Agent nor the Arranger is obliged to do or omit to do anything if it would or might in its reasonable opinion constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality. The Agent and the Arranger may do anything which in its opinion, is necessary or desirable to comply with any law or regulation of any jurisdiction.
- (i) Notwithstanding any provision of any Finance Document to the contrary, the Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.
- (j) Neither the Agent nor the Arranger shall be obliged to request any certificate, opinion or other information under clause 19 (Information undertakings) of Section 7 unless so required in writing by a Lender, in which case the Agent shall promptly make the appropriate request of the Borrowers if such request would be in accordance with the terms of this Agreement.

### **3.10 Responsibility for documentation and other matters**

Neither the Agent nor the Arranger is responsible or liable for:

- (a) the adequacy, accuracy and/or completeness of any information (whether oral or written) supplied by the Agent, the Arranger, an Obligor or any other person given in or in connection with any Finance Document or the transactions contemplated in the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or of any representations in any Finance Document or of any copy of any document delivered under any Finance Document;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or Charter Document or any other agreement, arrangement or document entered into, made

or executed in anticipation of, under or in connection with any Finance Document or Charter Document;

- (c) the application of any Basel Regulation to the transactions contemplated by the Finance Documents;
- (d) any loss to the Trust Property arising in consequence of the failure, depreciation or loss of any Charged Property or any investments made or retained in good faith or by reason of any other matter or thing;
- (e) accounting to any person for any sum or the profit element of any sum received by it for its own account;
- (f) the failure of any Obligor or any other party to perform its obligations under any Finance Document or Charter Document or the financial condition of any such person;
- (g) ascertaining whether all deeds and documents which should have been deposited with it (or the Security Agent) under or pursuant to any of the Security Documents have been so deposited;
- (h) investigating or making any enquiry into the title of any Obligor to any of the Charged Property or any of its other property or assets;
- (i) failing to register any of the Security Documents with the Registrar of Companies or any other public office;
- (j) failing to register any of the Security Documents in accordance with the provisions of the documents of title of any Obligor to any of the Charged Property;
- (k) failing to take or require any Obligor to take any steps to render any of the Security Documents effective as regards property or assets outside England or Wales or to secure the creation of any ancillary charge under the laws of the jurisdiction concerned;
- (l) (unless it is the same entity as the Security Agent) the Security Agent and/or any other beneficiary of a Security Document failing to perform or discharge any of its duties or obligations under the Security Documents; or
- (m) any determination as to whether any information provided or to be provided to any Finance Party is non-public information the use of which may be regulated or prohibited by any applicable law or regulation relating to insider dealing or otherwise.

### **3.11 No duty to monitor**

The Agent shall not be bound to enquire:

- (a) whether or not any Default has occurred;
- (b) as to the performance, default or any breach by any Party of its obligations under any Finance Document; or
- (c) whether any other event specified in any Finance Document has occurred.

### **3.12 Exclusion of liability**

- (a) Without limiting paragraph (b) below (and without prejudice to any other provision of the Finance Documents excluding or limiting the liability of the Agent) the Agent will not be liable (including, without limitation, for negligence or any other category of liability whatsoever) 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 Finance Document or the Charged Property, 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 Finance Document, the Charged Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Finance Document or the Charged Property; or
  - (iii) without prejudice to the generality of paragraphs (a) and (b) above, any damages, costs or losses to any person, 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 (including any Disruption Event); 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 Agent) may take any proceedings against any officer, employee or agent of the Agent in respect of any claim it might have against the Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document and any officer, employee or agent of the Agent may rely on this clause subject to clause 1.4 (*Third party rights*) of Section 1 and the provisions of the Third Parties Act.
- (c) The Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Agent if the Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Agent for that purpose.
- (d) Nothing in this Agreement shall oblige the Agent or the Arranger 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 Lender,

on behalf of any Lender and each Lender confirms to the Agent and the Arranger 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 Agent or the Arranger.

- (e) Without prejudice to any provision of any Finance Document excluding or limiting the Agent's liability, any liability of the Agent arising under or in connection with any Finance Document or the Charged Property shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (as determined by reference to the date of default of the Agent or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Agent at any time which increase the amount of that loss. In no event shall the Agent be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Agent has been advised of the possibility of such loss or damages.

### **3.13 Lenders' indemnity to the Agent**

- (a) Each Lender shall (in proportion (if no part of the Loan is then outstanding) to its share of the Total Commitments or (at any other time) to its participation in the Loan) indemnify the Agent, within three Business Days of demand, against:
  - (i) any Losses for negligence or any other category of liability whatsoever incurred by such Lenders' Representative in the circumstances contemplated pursuant to clause 6.10 (*Disruption to payment systems etc.*) notwithstanding the Agent's negligence, gross negligence, or any other category of liability whatsoever but not including any claim based on the fraud of the Agent); and
  - (ii) any other Losses (otherwise than by reason of the Agent's gross negligence or wilful misconduct) including the costs of any person engaged in accordance with clause 3.9 (*Rights and discretions of the Agent*) and any Receiver in acting as its agent under the Finance Documents,

in each case incurred by the Agent in acting as such under the Finance Documents (unless the Agent has been reimbursed by an Obligor pursuant to a Finance Document or out of the Trust Property).

- (b) Subject to paragraph (c) below, the Borrowers shall immediately on demand reimburse any Lender for any payment that Lender makes to the Agent pursuant to paragraph (a) above.
- (c) Paragraph (b) above shall not apply to the extent that the indemnity payment in respect of which the Lender claims reimbursement relates to a liability of the Agent to an Obligor.

### **3.14 Resignation of the Agent**

- (a) The Agent may resign and appoint one of its Affiliates as successor by giving notice to the Lenders, the Security Agent and the Borrowers.
- (b) Alternatively the Agent may resign by giving 30 days notice to the other Finance Parties and the Borrowers, in which case the Majority Lenders (after consultation with the Borrowers) may appoint a successor Agent.
- (c) If the Majority Lenders have not appointed a successor Agent in accordance this paragraph (c) within 20 days after notice of resignation was given, the retiring Agent (after consultation with the Borrowers) may appoint a successor Agent.

- (d) If the Agent wishes to resign because (acting reasonably) it has concluded that it is no longer appropriate for it to remain as agent and the Agent is entitled to appoint a successor Agent under paragraph (b) above, the Agent may (if it concludes (acting reasonably) that it is necessary to do so in order to persuade the proposed successor Agent to become a party to this Agreement as Agent) agree with the proposed successor Agent amendments to this clause 3 and any other term of this Agreement dealing with the rights or obligations of the Agent consistent with then current market practice for the appointment and protection of corporate trustees together with any reasonable amendments to the agency fee payable under this Agreement which are consistent with the successor Agent's normal fee rates and those amendments will bind the Parties.
- (e) The retiring Agent shall, at its own cost, make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.
- (f) The Agent's resignation notice shall only take effect upon the appointment of a successor.
- (g) The appointment of the successor Agent shall take effect on the date specified in the notice from the Majority Lenders to the retiring Agent. As from this date, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (d) above) but shall remain entitled to the benefit of clause 15.3 (*Indemnity to the Agent and the Security Agent*) of Section 6 and this clause 3 (and any agency fees for the account of the retiring Agent shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- (h) The Agent shall resign in accordance with paragraph (d) above (and, to the extent applicable, shall use reasonable endeavours to appoint a successor Agent pursuant to paragraph (c) above) if on or after the date which is three months before the earliest FATCA Application Date relating to any payment to the Agent under the Finance Document either:
  - (i) the Agent fails to respond to a request under clause 13.9 (*FATCA Information*) of Section 6 and the Borrowers or a Lender reasonably believes that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;
  - (ii) the information supplied by the Agent pursuant to 13.9 (*FATCA Information*) of Section 6 indicates that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or
  - (iii) the Agent notifies the Borrowers and the Lenders that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date,
 and (in each case) the Borrowers or a Lender reasonably believes that a Party will be required to make a FATCA Deduction that would not be required if the Agent were a FATCA Exempt Party, and the Borrowers or that Lender, by notice to the Agent, requires it to resign.
- (i) Any proposed Agent shall only be appointed as a successor Agent if it has promptly upon the request of any Lender supplied, or procured the supply of, such documentation and other evidence as is reasonably requested by that Lender in order for that Lender to carry out and be satisfied it has complied with all necessary "know your customer" or other similar

checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

### 3.15 Replacement of the Agent

- (a) After consultation with the Borrowers, the Majority Lenders may, by giving 30 days' notice to the Agent (or, at any time the Agent is an Impaired Agent, by giving any shorter notice determined by the Majority Lenders) replace the Agent by appointing a successor Agent.
- (b) The retiring Agent shall (at its own cost if it is an Impaired Agent and otherwise at the expense of the Lenders) make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.
- (c) The appointment of the successor Agent shall take effect on the date specified in the notice from the Majority Lenders to the retiring Agent. As from this date, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (b) above) but shall remain entitled to the benefit of clause 15.3 (*Indemnity to the Agent and the Security Agent*) of Section 6 and this clause 3 (and any agency fees for the account of the retiring Agent shall cease to accrue from (and shall be payable on) that date).
- (d) Any successor Agent and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.

### 3.16 Impaired Agent

- (a) If, at any time, the Agent becomes an Impaired Agent, the Borrowers or a Lender which is required to make a payment under the Finance Documents to the Agent may instead either:
  - (i) pay that amount direct to the required recipient(s); or
  - (ii) if in its absolute discretion it considers that it is not reasonably practicable to pay that amount direct to the required recipient(s), pay that amount or the relevant part of that amount to an interest-bearing account held with an Acceptable Bank within the meaning of paragraph (a) of the definition of "Acceptable Bank" and in relation to which no Insolvency Event has occurred and is continuing, in the name of the Borrowers or the Lender making the payment (the **Paying Party**) and designated as a trust account for the benefit of the Party or Parties beneficially entitled to that payment under the Finance Documents (the **Recipient Party** or **Recipient Parties**).

In each case such payments must be made on the due date for payment under the Finance Documents.

- (b) All interest accrued on the amount standing to the credit of the trust account shall be for the benefit of the Recipient Party or the Recipient Parties *pro rata* to their respective entitlements.
- (c) A Party which has made a payment in accordance with this clause 3.16 shall be discharged of the relevant payment obligation under the Finance Documents and shall not take any credit risk with respect to the amounts standing to the credit of the trust account.

- (d) Promptly upon the appointment of a successor Agent in accordance with clause 3.15 (*Replacement of the Agent*), each Paying Party shall (other than to the extent that that Party has given an instruction pursuant to paragraph (e) below) give all requisite instructions to the bank with whom the trust account is held to transfer the amount (together with any accrued interest) to the successor Agent for distribution to the relevant Recipient Party or Recipient Parties in accordance with clause 5.2 (*Redistribution of payments*).
- (e) A Paying Party shall, promptly upon request by a Recipient Party and to the extent:
  - (i) that it has not given an instruction pursuant to paragraph (d) above; and
  - (ii) that it has been provided with the necessary information by that Recipient Party,

give all requisite instructions to the bank with whom the trust account is held to transfer the relevant amount (together with any accrued interest) to that Recipient Party.

### **3.17 Confidentiality**

- (a) In acting as agent for the Finance Parties, the Agent shall be regarded as acting through its department, division or team directly responsible for the management of the Finance Documents which shall be treated as a separate entity from any other of its divisions, departments or teams.
- (b) If information is received by another division or department of the Agent, it may be treated as confidential to that division or department and the Agent shall not be deemed to have notice of it.
- (c) Notwithstanding any other provision of any Finance Document to the contrary, neither the Agent nor the Arranger is obliged to disclose to any other person (a) any confidential information or (b) any other information if the disclosure would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty.

### **3.18 Credit appraisal by the Finance Parties**

Without affecting the responsibility of any Obligor for information supplied by it or on its behalf in connection with any Finance Document, each Lender confirms to each other Finance Party that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including but not limited to:

- (a) the financial condition, status and nature of each Obligor and any other Group Member;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or Charter Document and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or Charter Document;
- (c) the application of any Basel Regulation to the transactions contemplated by the Finance Documents;
- (d) whether any Finance Party has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other

agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Charged Property;

- (e) the adequacy, accuracy and/or completeness of any information provided by the Agent, any Party or by any other person under or in connection with any Finance Document or Charter Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or Charter Document; and
- (f) the right or title of any person in or to, or the value or sufficiency of, any part of the Charged Property, the priority of the Security Documents or the existence of any Security Interest affecting the Charged Property.

### **3.19 Deduction from amounts payable by the Agent**

If any Party owes an amount to the Agent under the Finance Documents the Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Agent would otherwise be obliged to make under the Finance Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents that Party shall be regarded as having received any amount so deducted.

### **3.20 Common parties**

Although the Agent and the Security Agent may from time to time be the same entity, that entity will have entered into the Finance Documents (to which it is party) in its separate capacities as agent for the Finance Parties and (as appropriate) security agent and trustee for the Finance Parties. Where any Finance Document provides for the Agent or Security Agent to communicate with or provide instructions to the other, while they are the same entity, such communication or instructions will not be necessary.

### **3.21 Security Agent**

- (a) Each other Finance Party appoints the Security Agent to act as its agent and (to the extent permitted under any applicable law) trustee under and in connection with the Security Documents and confirms that the Security Agent shall have a lien on the Security Documents and the proceeds of the enforcement of those Security Documents for all moneys payable to the beneficiaries of those Security Documents.
- (b) Each other Finance Party authorises the Security Agent:
  - (i) to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Security Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions; and
  - (ii) to execute each of the Security Documents and all other documents that may be approved by the Agent and/or the Majority Lenders for execution by it.
- (c) The Security Agent accepts its appointment under clause 3.21 (*Security Agent*) as trustee of the Trust Property with effect from the date of this Agreement and declares that it holds the Trust Property on trust for itself, the other Finance Parties (for so long as they are Finance Parties) on and subject to the terms set out in clauses 3.21 to 3.27 (inclusive) and the Security Documents to which it is a party.

### **3.22 Application of certain clauses to Security Agent**

- (a) Clause 3.9 (*Rights and discretions of the Agent*), clause 3.10 (*Responsibility for documentation and other matters*), clause 3.11 (*No duty to monitor*), clause 3.12 (*Exclusion of liability*), clause 3.13 (*Lenders' indemnity to the Agent*), clause 3.14 (*Resignation of the Agent*), clauses 3.15 (*Replacement of Agent*) clause 3.17 (*Confidentiality*), clause 3.18 (*Credit appraisal by the Lenders*) and clause 3.19 (*Deduction from amounts payable by the Agent*) shall each extend so as to apply to the Security Agent in its capacity as such and for that purpose each reference to the "Agent" in these clauses shall extend to include in addition a reference to the "Security Agent" in its capacity as such and, in clauses 3.9 (*Rights and discretions of the Agent*), references to the Lenders and a group of Lenders shall refer to the Agent.
- (b) In addition, clause 3.14 (*Resignation of the Agent*) shall, for the purposes of their application to the Security Agent pursuant to clause 3.22, have the following additional clause inserted after them:

*At any time after the appointment of a successor, the retiring Security Agent shall do and execute all acts, deeds and documents reasonably required by its successor to transfer to it (or its nominee, as it may direct) any property, assets and rights previously vested in the retiring Security Agent pursuant to the Security Documents and which shall not have vested in its successor by operation of law. All such acts, deeds and documents shall be done or, as the case may be, executed at the cost of the retiring Security Agent (except where the Security Agent is retiring under clause 3.15 as extended to it by clause 3.22, in which case such costs shall be borne by the Lenders (in proportion (if no part of the Loan is then outstanding) to their shares of the Total Commitments or (at any other time) to their participations in the Loan).*

### **3.23 Instructions to Security Agent**

- (a) The Security Agent shall:
  - (i) unless a contrary indication appears in a Finance Document, exercise or refrain from exercising any right, power, authority or discretion vested in it as Security Agent in accordance with any instructions given to it by the Agent; and
  - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with sub-paragraph (i) above.
- (b) The Security Agent shall be entitled to request instructions, or clarification of any instruction, from the Agent as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Security Agent may refrain from acting unless and until it receives those instructions or that clarification.
- (c) Unless a contrary indication appears in a Finance Document, any instructions given to the Security Agent by the Agent shall override any conflicting instructions given by any other Parties and will be binding on all Finance Parties.
- (d) The Security Agent may refrain from acting in accordance with any instructions of the Agent until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Finance Documents and which may include payment in advance) for any cost, loss or liability which it may incur in complying with those instructions.

- (e) In the absence of instructions, the Security Agent may act (or refrain from acting) as it considers to be in the best interest of the Lenders.
- (f) The Security Agent is not authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings relating to any Finance Document. This paragraph (f) shall not apply to any legal or arbitration proceeding relating to the perfection, preservation or protection of rights under the Security Documents or enforcement of the Security Documents.

### **3.24 Order of application**

- (a) The Security Agent agrees to apply the Trust Property and each other beneficiary of the Security Documents agrees to apply all moneys received by it in the exercise of its rights under the Security Documents in accordance with the following respective claims:
  - (i) **first**, as to a sum equivalent to the amounts payable to the Security Agent under the Finance Documents (excluding any amounts received by the Security Agent pursuant to clause 3.13 (*Lenders' indemnity to the Agent*) as extended to the Security Agent pursuant to clause 3.22 (*Application of certain clauses to Security Agent*)), for the Security Agent absolutely;
  - (ii) **secondly**, as to a sum equivalent to the aggregate amount then due and owing to the other Finance Parties under the Finance Documents, for those Finance Parties absolutely for application between them in accordance with clauses 6.5 (*Partial payments*);
  - (iii) **thirdly**, until such time as the Security Agent is satisfied that all obligations owed to the Finance Parties have been irrevocably and unconditionally discharged in full, held by the Security Agent on a suspense account for payment of any further amounts owing to the Finance Parties under the Finance Documents and further application in accordance with this clause 3.24 as and when any such amounts later fall due;
  - (iv) **fourthly**, to such other persons (if any) as are legally entitled thereto in priority to the Obligors; and
  - (v) **fifthly**, as to the balance (if any), for the Obligors by or from whom or from whose assets the relevant amounts were paid, received or recovered or other person entitled to them.
- (b) The Security Agent and each other beneficiary of the Security Documents shall make each application as soon as is practicable after the relevant moneys are received by, or otherwise become available to, it save that (without prejudice to any other provision contained in any of the Security Documents) the Security Agent (acting on the instructions of the Agent) any other beneficiary of the Security Documents or any receiver or administrator may credit any moneys received by it to a suspense account for so long and in such manner as the Security Agent), any other beneficiary of the Security Documents or such receiver or administrator may from time to time determine with a view to preserving the rights of the Finance Parties or any of them to prove for the whole of their respective claims against the Borrowers or any other person liable.
- (c) The Security Agent and/or any other beneficiary of the Security Documents shall obtain a good discharge in respect of the amounts expressed to be due to the other Finance Parties

as referred to in paragraphs (a) and (b) above by paying such amounts to the Agent for distribution in accordance with clause 6 (*Payment mechanics*).

### **3.25 Powers and duties of the Security Agent as trustee of the security**

In its capacity as trustee in relation to the Trust Property, the Security Agent:

- (a) shall, without prejudice to any of the powers, discretions and immunities conferred upon trustees by law (and to the extent not inconsistent with the provisions of this Agreement or any of the Security Documents), have all the same powers and discretions as a natural person acting as the beneficial owner of such property and/or as are conferred upon the Security Agent by this Agreement and/or any Security Document but so that the Security Agent may only exercise such powers and discretions to the extent that it is authorised to do so by the provisions of this Agreement;
- (b) shall (subject to clause 3.24 (*Order of application*)) be entitled (in its own name or in the names of nominees) to invest moneys from time to time forming part of the Trust Property or otherwise held by it as a consequence of any enforcement of the security constituted by any Finance Document which, in the reasonable opinion of the Security Agent, it would not be practicable to distribute immediately, by placing the same on deposit in the name or under the control of the Security Agent as the Security Agent may think fit without being under any duty to diversify the same and the Security Agent shall not be responsible for any loss due to interest rate or exchange rate fluctuations except for any loss arising from the Security Agent's gross negligence or wilful misconduct;
- (c) may, in the conduct of its obligations under and in respect of the Security Documents (otherwise than in relation to its right to make any declaration, determination or decision), instead of acting personally, employ and pay any agent (whether being a lawyer or any other person) to transact or concur in transacting any business and to do or concur in doing any acts required to be done by the Security Agent (including the receipt and payment of money) and on the basis that (i) any such agent engaged in any profession or business shall be entitled to be paid all usual professional and other charges for business transacted and acts done by him or any partner or employee of his or her in connection with such employment and (ii) the Security Agent shall not be bound to supervise, or be responsible for any loss incurred by reason of any act or omission of, any such agent if the Security Agent shall have exercised reasonable care in the selection of such agent; and
- (d) may place all deeds and other documents relating to the Trust Property which are from time to time deposited with it pursuant to the Security Documents in any safe deposit, safe or receptacle selected by the Security Agent exercising reasonable care or with any firm of solicitors or company whose business includes undertaking the safe custody of documents selected by the Security Agent exercising reasonable care and may make any such arrangements as it thinks fit for allowing the Obligors access to, or its solicitors or auditors possession of, such documents when necessary or convenient and the Security Agent shall not be responsible for any loss incurred in connection with any such deposit, access or possession if it has exercised reasonable care in the selection of a safe deposit, safe, receptacle or firm of solicitors or company (save that it shall take reasonable steps to pursue any person who may be liable to it in connection with such loss).

### **3.26 All enforcement action through the Security Agent**

- (a) None of the other Finance Parties shall have any independent power to enforce any of those Security Documents which are executed in favour of the Security Agent only or to

exercise any rights, discretions or powers or to grant any consents or releases under or pursuant to such Security Documents or otherwise have direct recourse to the security and/or guarantees constituted by such Security Documents except through the Security Agent.

- (b) None of the other Finance Parties shall have any independent power to enforce any of those Security Documents which are executed in their favour or to exercise any rights, discretions or powers or to grant any consents or releases under or pursuant to such Security Documents or otherwise have direct recourse to the security and/or guarantees constituted by such Security Documents except through the Security Agent. If any Finance Party (other than the Security Agent) is a party to any Security Document it shall promptly upon being requested by the Agent to do so grant a power of attorney or other sufficient authority to the Security Agent to enable the Security Agent to exercise any rights, discretions or powers or to grant any consents or releases under such Security Document.

### **3.27 Co-operation to achieve agreed priorities of application**

The other Finance Parties shall co-operate with each other and with the Security Agent and any receiver or administrator under the Security Documents in realising the property and assets subject to the Security Documents and in ensuring that the net proceeds realised under the Security Documents after deduction of the expenses of realisation are applied in accordance with clause 3.24 (*Order of application*).

### **3.28 Indemnity from Trust Property**

- (a) In respect of all liabilities, costs or expenses for which the Obligor is liable under this Agreement, the Security Agent and each Affiliate of the Security Agent and each officer or employee of the Security Agent or its Affiliate (each a **Relevant Person**) shall be entitled to be indemnified out of the Trust Property in respect of all liabilities, damages, costs, claims, charges or expenses whatsoever properly incurred or suffered by such Relevant Person:
  - (i) in the execution or exercise or bona fide purported execution or exercise of the trusts, rights, powers, authorities, discretions and duties created or conferred by or pursuant to the Finance Documents;
  - (ii) as a result of any breach by an Obligor of any of its obligations under any Finance Document;
  - (iii) in respect of any Environmental Claim made or asserted against a Relevant Person which would not have arisen if the Finance Documents had not been executed; and
  - (iv) in respect of any matter or thing done or omitted in any way in accordance with the terms of the Finance Documents relating to the Trust Property or the provisions of any of the Finance Documents.
- (b) The rights conferred by clause 3.28 are without prejudice to any right to indemnity by law given to trustees generally and to any provision of the Finance Documents entitling the Security Agent or any other person to an indemnity in respect of, and/or reimbursement of, any liabilities, costs or expenses incurred or suffered by it in connection with any of the Finance Documents or the performance of any duties under any of the Finance Documents. Nothing contained in this clause 3.28 shall entitle the Security Agent or any other person to be indemnified in respect of any liabilities, damages, costs, claims, charges or expenses

to the extent that the same arise from such person's own gross negligence or wilful misconduct.

### **3.29 Finance Parties to provide information**

The other Finance Parties shall provide the Security Agent with such written information as it may reasonably require for the purposes of carrying out its duties and obligations under the Security Documents and, in particular, with such necessary directions in writing so as to enable the Security Agent to make the calculations and applications contemplated by clause 3.24 (*Order of application*) above and to apply amounts received under, and the proceeds of realisation of, the Security Documents as contemplated by the Security Documents, clause 6.5 (*Partial payments*) and clause 3.24 (*Order of application*).

### **3.30 Release to facilitate enforcement and realisation**

Each Finance Party acknowledges that pursuant to any enforcement action by the Security Agent (or a Receiver) carried out on the instructions of the Agent it may be desirable for the purpose of such enforcement and/or maximising the realisation of the Charged Property being enforced against, that any rights or claims of or by the Security Agent (for the benefit of the Finance Parties) and/or any Finance Parties against any Obligor and/or any Security Interest over any assets of any Obligor (in each case) as contained in or created by any Finance Document, other than such rights or claims or security being enforced, be released in order to facilitate such enforcement action and/or realisation and, notwithstanding any other provision of the Finance Documents, each Finance Party hereby irrevocably authorises the Security Agent (acting on the instructions of the Agent) to grant any such releases to the extent necessary to fully effect such enforcement action and realisation including, without limitation, to the extent necessary for such purposes to execute release documents in the name of and on behalf of the Finance Parties. Where the relevant enforcement is by way of disposal of shares in a Borrower, the requisite release shall include releases of all claims (including under guarantees) of the Finance Parties and/or the Security Agent against such Borrower and of all Security Interests over the assets of such Borrower.

### **3.31 Undertaking to pay**

Each Obligor which is a Party undertakes with the Security Agent on behalf of the Finance Parties that it will, on demand by the Security Agent, pay to the Security Agent all money from time to time owing, and discharge all other obligations from time to time incurred, by it under or in connection with the Finance Documents.

### **3.32 Additional trustees**

The Security Agent shall have power by notice in writing to the other Finance Parties and the Borrowers to appoint any person approved by the Borrowers (such approval not to be unreasonably withheld or delayed) either to act as separate trustee or as co-trustee jointly with the Security Agent:

- (a) if the Security Agent reasonably considers such appointment to be in the best interests of the Finance Parties;
- (b) for the purpose of conforming with any legal requirement, restriction or condition in any jurisdiction in which any particular act is to be performed; or
- (c) for the purpose of obtaining a judgment in any jurisdiction or the enforcement in any jurisdiction against any person of a judgment already obtained,

and any person so appointed shall (subject to the provisions of this Agreement) have such rights (including as to reasonable remuneration), powers, duties and obligations as shall be conferred or imposed by the instrument of appointment. The Security Agent shall have power to remove any person so appointed. At the request of the Security Agent, the other parties to this Agreement shall forthwith execute all such documents and do all such things as may be required to perfect such appointment or removal and each such party irrevocably authorises the Security Agent in its name and on its behalf to do the same. Such a person shall accede to this Agreement as a Security Agent to the extent necessary to carry out their role on terms satisfactory to the Security Agent and (subject always to the provisions of this Agreement) have such trusts, powers, authorities, liabilities and discretions (not exceeding those conferred on the Security Agent by this Agreement and the other Finance Documents) and such duties and obligations as shall be conferred or imposed by the instrument of appointment (being no less onerous than would have applied to the Security Agent but for the appointment). The Security Agent shall not be bound to supervise, or be responsible for any loss incurred by reason of any act or omission of, any such person if the Security Agent shall have exercised reasonable care in the selection of such person.

### **3.33 Non-recognition of trust**

It is agreed by all the parties to this Agreement that:

- (a) in relation to any jurisdiction the courts of which would not recognise or give effect to the trusts expressed to be constituted by this clause 3.33, the relationship of the Security Agent and the other Finance Parties shall be construed as one of principal and agent, but to the extent permissible under the laws of such jurisdiction, all the other provisions of this Agreement shall have full force and effect between the parties to this Agreement; and
- (b) the provisions of this clause 3.33 insofar as they relate to the Security Agent in its capacity as trustee for the Finance Parties and the relationship between themselves and the Security Agent as their trustee may be amended by agreement between the other Finance Parties and the Security Agent. The Security Agent may amend all documents necessary to effect the alteration of the relationship between the Security Agent and the other Finance Parties and each such other party irrevocably authorises the Security Agent in its name and on its behalf to execute all documents necessary to effect such amendments.

## **4 Conduct of business by the Finance Parties**

### **Finance Parties tax affairs**

No provision of this Agreement will:

- (a) interfere with the right of any Finance Party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;
- (b) oblige any Finance Party to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or
- (c) oblige any Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

### **4.2 Finance Parties acting together**

- (a) Notwithstanding clause 2.2 (*Finance Parties' rights and obligations*) of Section 2, if the Agent makes a declaration under clause 28.24 (*Acceleration*) of Section 7 the Agent shall,

in the names of all the Finance Parties, take such action on behalf of the Finance Parties and conduct such negotiations with the Borrowers and any Group Members and generally administer the Facility in accordance with the wishes of the Majority Lenders. All the Finance Parties shall be bound by the provisions of this clause and no Finance Party shall be entitled to take action independently against any Obligor or any of its assets without the prior consent of the Majority Lenders.

- (b) Paragraph (a) above shall not override clause 3 (*Roles of Agent, Security Agent and Arranger*) as it applies to the Security Agent.

#### **4.3 Majority Lenders**

- (a) Where any Finance Document provides for any matter to be determined by reference to the opinion of, or to be subject to the consent, approval or request of, the Majority Lenders or for any action to be taken on the instructions of the Majority Lenders (a **majority decision**), such majority decision shall (as between the Lenders) only be regarded as having been validly given or issued by the Majority Lenders if all the Lenders shall have received prior notice of the matter on which such majority decision is required and the relevant majority of Lenders shall have given or issued such majority decision. However (as between any Obligor and the Finance Parties) the relevant Obligor shall be entitled (and bound) to assume that such notice shall have been duly received by each Lender and that the relevant majority shall have been obtained to constitute Majority Lenders when notified to this effect by the Agent whether or not this is the case.
- (b) If, within ten Business Days of the Agent despatching to each Lender a notice requesting instructions (or confirmation of instructions) from the Lenders or the agreement of the Lenders to any amendment, modification, waiver, variation or excuse of performance for the purposes of, or in relation to, any of the Finance Documents, the Agent has not received a reply specifically giving or confirming or refusing to give or confirm the relevant instructions or, as the case may be, approving or refusing to approve the proposed amendment, modification, waiver, variation or excuse of performance, then (irrespective of whether such Lender responds at a later date) the Agent shall treat any Lender which has not so responded as having indicated a desire to be bound by the wishes of 66<sup>2</sup>/<sub>3</sub> per cent of those Lenders (measured in terms of the total Commitments of those Lenders) which have so responded.
- (c) For the purposes of paragraph (b) above, any Lender which notifies the Agent of a wish or intention to abstain on any particular issue shall be treated as if it had not responded.
- (d) Paragraphs (b) and (c) above shall not apply in relation to those matters referred to in, or the subject of, clause 5.5 (*Exceptions*).

#### **4.4 Conflicts**

- (a) Each Borrower acknowledges that the Arranger and its parent undertaking, subsidiary undertakings and fellow subsidiary undertakings (together an **Arranger Group**) may be providing debt finance, equity capital or other services (including financial advisory services) to other persons with which the Borrowers may have conflicting interests in respect of the Facility or otherwise.
- (b) No member of an Arranger Group shall use confidential information gained from any Obligor by virtue of the Facility or its relationships with any Obligor in connection with their performance of services for other persons. This shall not, however, affect any obligations

that any member of an Arranger Group has as Agent in respect of the Finance Documents. The Borrowers also acknowledge that no member of an Arranger Group has any obligation to use or furnish to any Obligor information obtained from other persons for their benefit.

- (c) The terms **parent undertaking**, **subsidiary undertaking** and **fellow subsidiary undertaking** when used in this clause have the meaning given to them in sections 1161 and 1162 of the Companies Act 2006.

## **5 Sharing among the Finance Parties**

### **5.1 Payments to Finance Parties**

If a Finance Party (a **Recovering Finance Party**) receives or recovers any amount from an Obligor other than in accordance with clause 6 (*Payment mechanics*) (a **Recovered Amount**) and applies that amount to a payment due under the Finance Documents then:

- (a) the Recovering Finance Party shall, within three Business Days, notify details of the receipt or recovery, to the Agent;
- (b) the Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Agent and distributed in accordance with clause 6 (*Payment mechanics*), without taking account of any Tax which would be imposed on the Agent in relation to the receipt, recovery or distribution; and
- (c) the Recovering Finance Party shall, within three Business Days of demand by the Agent, pay to the Agent an amount (the **Sharing Payment**) equal to such receipt or recovery less any amount which the Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with clause 6.5 (*Partial payments*).

### **5.2 Redistribution of payments**

The Agent shall treat the Sharing Payment as if it had been paid by the relevant Obligor and distribute it between the Finance Parties (other than the Recovering Finance Party) (the **Sharing Finance Parties**) in accordance with clause 6.5 (*Partial payments*) towards the obligations of that Obligor to the Sharing Finance Parties.

### **5.3 Recovering Finance Party's rights**

On a distribution by the Agent under clause 5.2 (*Redistribution of payments*) of a payment received by a Recovering Finance Party from an Obligor or a Guarantor, as between the relevant Obligor and the Recovering Finance Party, an amount of the Recovered Amount equal to the Sharing Payment will be treated as not having been paid by that Obligor or that Guarantor.

### **5.4 Reversal of redistribution**

If any part of the Sharing Payment received or recovered by a Recovering Finance Party becomes repayable and is repaid by that Recovering Finance Party, then:

- (a) each Sharing Finance Party shall, upon request of the Agent, pay to the Agent for the account of that Recovering Finance Party an amount equal to the appropriate part of its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Finance Party for its proportion of any interest on the Sharing Payment which that Recovering Finance Party is required to pay) (the **Redistributed Amount**); and

- (b) as between the relevant Obligor and each relevant Sharing Finance Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by that Obligor or that Guarantor.

## **5.5 Exceptions**

- (a) This clause 5 shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this clause, have a valid and enforceable claim against the relevant Obligor or the relevant Guarantor.
- (b) A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:
  - (i) it notified that other Finance Party of the legal or arbitration proceedings;
  - (ii) the taking legal or arbitration proceedings was in accordance with the terms of this Agreement; and
  - (iii) that other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

## **6 Payment mechanics**

### **6.1 Payments to the Agent**

- (a) On each date on which an Obligor or a Lender is required to make a payment under a Finance Document, that Obligor or the Lender shall make the same available to the Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
- (b) Payment shall be made to such account in the principal financial centre of the country of that currency and with such bank as the Agent, in each case, specifies.

### **6.2 Distributions by the Agent**

Each payment received by the Agent under the Finance Documents for another Party shall, subject to clause 6.3 (*Distributions to an Obligor or a Guarantor*) and clause 6.4 (*Clawback and pre-funding*) be made available by the Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Agent by not less than five Business Days' notice with a bank specified by that Party in the principal financial centre of the country of that currency.

### **6.3 Distributions to an Obligor or a Guarantor**

The Agent may (with the consent of the Obligor or in accordance with clause 31 (*Set-off*) of Section 9) apply any amount received by it for that Obligor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Obligor under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

### **6.4 Clawback and pre-funding**

- (a) Where a sum is to be paid to the Agent under the Finance Documents for another Party, the Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.
- (b) Unless paragraph (c) below applies, if the Agent pays an amount to another Party and it proves to be the case that the Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Agent shall on demand refund the same to the Agent together with interest on that amount from the date of payment to the date of receipt by the Agent, calculated by the Agent to reflect its cost of funds.
- (c) If the Agent has notified the Lenders that it is willing to make available amounts for the account of a Borrower before receiving funds from the Lenders then if and to the extent that the Agent does so but it proves to be the case that it does not then receive funds from a Lender in respect of a sum which it paid to a Borrower:
  - (i) the Agent shall notify the Borrowers of that Lender's identity and the Borrowers shall on demand refund it to the Agent; and
  - (ii) the Lender by whom those funds should have been made available or, if that Lender fails to do so, the Borrowers, shall on demand pay to the Agent the amount (as certified by the Agent) which will indemnify the Agent against any funding cost incurred by it as a result of paying out that sum before receiving those funds from that Lender.

## 6.5 Partial payments

- (a) If the Agent receives a payment for application against amounts in respect of any Finance Documents that is insufficient to discharge all the amounts then due and payable by an Obligor under those Finance Documents, the Agent shall apply that payment towards the obligations of that Obligor under those Finance Documents in the following order:
  - (i) **first**, in or towards payment pro rata of any unpaid amount owing to the Agent, the Security Agent or the Arranger under those Finance Documents;
  - (ii) **secondly**, in or towards payment to the Lenders pro rata of any amount owing to the Lenders under clause 3.13 (*Lenders' indemnity to the Agent*) including any amount owing to the Lenders under 3.13 (*Lenders' indemnity to the Agent*) as a result of clause 3.13 (*Lenders' indemnity to the Agent*) being extended to the Security Agent by clause 3.22 (*Application of certain clauses to Security Agent*);
  - (iii) **thirdly**, in or towards payment to the Lenders pro rata of any accrued interest, fee or commission due to them but unpaid under those Finance Documents;
  - (iv) **fourthly**, in or towards payment to the Lenders pro rata of any principal; and
  - (v) **fifthly**, in or towards payment pro rata of any other sum due but unpaid under the Finance Documents.
- (b) The Agent shall, if so directed by the Majority Lenders, vary the order set out in subparagraphs (i) to (v) of paragraph (a) above.
- (c) Paragraphs (a) and (b) above will override any appropriation made by an Obligor.

#### **6.6 No set-off by Obligors or Guarantors**

All payments to be made by an Obligor under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

#### **6.7 Business Days**

- (a) Any payment under the Finance Documents which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (b) During any extension of the due date for payment of any principal or Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

#### **6.8 Currency of account**

- (a) Subject to paragraphs (b) and (c) below, dollars is the currency of account and payment for any sum due from an Obligor under any Finance Document.
- (b) A repayment of all or part of the Loan or an Unpaid Sum and each payment of interest shall be made in dollars on its due date.
- (c) Each payment in respect of the amount of any costs, expenses or Taxes or other losses shall be made in dollars and, if they were incurred in a currency other than dollars, the amount payable under the Finance Documents shall be the equivalent in dollars of the relevant amount in such other currency on the date on which it was incurred.
- (d) All moneys received or held by the Security Agent or by a Receiver under a Security Document in a currency other than dollars may be sold for dollars and the Obligor which executed that Security Document shall indemnify the Security Agent against the full cost in relation to the sale. Neither the Security Agent nor such Receiver will have any liability to that Obligor in respect of any loss resulting from any fluctuation in exchange rates after the sale.

#### **6.9 Change of currency**

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
  - (i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Agent (after consultation with the Borrowers); and
  - (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Agent (acting reasonably).
- (b) If a change in any currency of a country occurs, this Agreement will, to the extent the Agent (acting reasonably and after consultation with the Borrowers) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Interbank Market and otherwise to reflect the change in currency.

#### **6.10 Disruption to payment systems etc.**

If either the Agent determines (in its discretion) that a Disruption Event has occurred or the Agent is notified by the Borrowers that a Disruption Event has occurred:

- (a) the Agent may, and shall if requested to do so by the Borrowers, consult with the Borrowers with a view to agreeing with the Borrowers such changes to the operation or administration of the Facility as the Agent may deem necessary in the circumstances;
- (b) the Agent shall not be obliged to consult with the Borrowers in relation to any changes mentioned in paragraph (a) above if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;
- (c) the Agent may consult with the Finance Parties in relation to any changes mentioned in paragraph (a) above but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;
- (d) any such changes agreed upon by the Agent and the Borrowers shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of clause 36 (*Amendments and waivers*) of Section 8;
- (e) the Agent shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including, without limitation for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this clause 6.10; and
- (f) the Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (d) above.

#### **7 Parallel Debt**

- (a) Each Borrower hereby undertakes with the Security Agent to pay the Security Agent, as a creditor in its own right and not as a representative of the other Finance Parties, amounts equal to and in the currency of the amounts payable by that Borrower in respect of the Principal Obligations as they may exist from time to time as and when the same become due, and that the Security Agent will have its own independent right to demand payment, repayment, discharge or performance by each Borrower of any Principal Obligation owed by it. The payment undertaking of each Borrower to the Security Agent under this clause 7 is hereinafter referred to as "**Parallel Debt**".
- (b) Each Borrower and the Security Agent acknowledges that:
  - (i) each Parallel Debt constitutes an undertaking, obligation and liability of each Borrower to the Security Agent which is separate and independent from, and without prejudice to, the Principal Obligations; and
  - (ii) each Parallel Debt represents the Security Agent's own separate and independent claim (*eigen en zelfstandige vordering*) to receive payment of such Parallel Debt from the relevant Borrower.
- (c) For the avoidance of doubt, each Borrower and the Security Agent confirms that the claim of the Security Agent against any Borrower in respect of a Parallel Debt and the claims of

any one or more of the Finance Parties against the relevant Borrower in respect of the Principal Obligations payable by that Borrower to those Finance Parties do not constitute common property (*gemeenschap*) within the meaning of article 3:166 of the Dutch Civil Code and that the provisions relating to common property shall not apply. If, however, it shall be held that such claim of the Security Agent and such claims of any one or more of the Finance Parties do constitute common property and the provisions relating to common property do apply, each Borrower, the Security Agent and the other Finance Parties agree that this Deed shall constitute the administration agreement (*beheersregeling*) within the meaning of article 3:168 of the Dutch Civil Code.

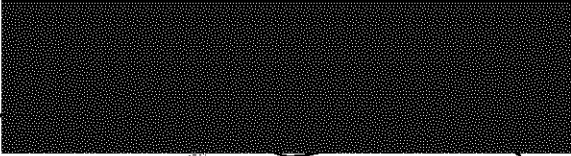
- (d) Any amount recovered by the Security Agent in payment of a Parallel Debt shall be applied in accordance with the terms of this Agreement. Any payment, repayment, discharge or performance of any of the Principal Obligations to any of the Finance Parties shall, to that extent, satisfy the corresponding Parallel Debt and any payment, repayment, discharge or performance of a Parallel Debt to the Security Agent shall, to that extent, satisfy the corresponding Principal Obligations.
- (e) In the event of the appointment of a new Security Agent, the retiring Security Agent shall assign (*cederen*) the Parallel Debt owed to it to its successor security trustee, shall transfer all its other rights and obligations to its successor security trustee under this clause 6 by way of transfer of contract (*contractsoverneming*) and shall take all further steps necessary to assign the Parallel Debt, to transfer such contract and to ensure that the Finance Parties will have the benefit of the security (*zekerheidsrecht*).

SIGNATURES

THE BORROWERS

EXECUTED AS A DEED

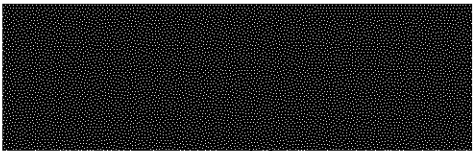
FB TANKSHIP I INC.



Name: S. Quist

Title: Authorised signatory

in the presence of:



....  
(Signature of Witness)

*S.v.d. Bogaert*  
.....  
(Name of Witness)

*Lage Molen 17*  
.....  
(Address of Witness)

*Management Assistant*  
.....  
(Occupation of Witness)

By: .....

Name:

Title:

EXECUTED AS A DEED

FB TANKSHIP III LTD.

By:  .....

Name: G. Sheach

Title: Authorised signatory

in the presence of:

By: .....

Name:

Title:



(Signature of Witness)

PETER MACASKILL .....

(Name of Witness)

4TH FLOOR, REGENT CENTRE, ABERDEEN .....

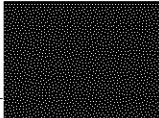
(Address of Witness)

ACCOUNTANT .....

(Occupation of Witness)

EXECUTED AS A DEED

FB TANKSHIP IV LTD.

By:   
Name: G. Sheach  
Title: Authorised signatory  
in the presence of:

By: .....  
Name:  
Title:

  
(Signature of Witness)

PETER MACASKILL  
(Name of Witness)

4th Floor, Regent Centre Aberdeen  
(Address of Witness)

ACCOUNTANT  
(Occupation of Witness)

EXECUTED AS A DEED

FC TANKSHIP I LTD.

By: 

Name: G. Sheach

Title: Authorised signatory

in the presence of:

  
(Signature of Witness)

PETER MALASKILL  
(Name of Witness)

4th floor, Relent Centre, ASERDEN  
(Address of Witness)

ACCOUNTANT  
(Occupation of Witness)

By: .....

Name:

Title:

EXECUTED AS A DEED

FC TANKSHIP II LTD.

By: 

Name: G. Sheach

Title: Authorised signatory

in the presence of:

By: .....

Name:

Title:



(Signature of Witness)

PETER MACASKILL

(Name of Witness)

4th Floor, Regent Centre, Aberdeen

(Address of Witness)

ACCOUNTANT

(Occupation of Witness)

**EXECUTED AS A DEED**

**THE ARRANGER**

**ABN AMRO BANK N.V.**

By:   
Name: **Katie Phipps**  
Title: **Attorney-In-Fact**  
in the presence of:

By: .....  
Name:  
Title:

  
.....  
(Signature of Witness)

.....  
(Name of Witness)

.....  
(Address of Witness)

.....  
(Occupation of Witness)

 **NORTON ROSE FULBRIGHT**


Norton Rose Fulbright LLP  
3 More London Riverside  
London SE1 2AQ United Kingdom  
nortonrosefulbright.com

Georgina Leith  
Trainee Solicitor

**THE AGENT**

**EXECUTED AS A DEED**

**ABN AMRO BANK N.V.**


By: 

Name: **Katie Phipps**  
Title: **Attorney-In-Fact**  
in the presence of:

By: .....

Name:

Title:

  
.....  
(Signature of Witness)

.....  
(Name of Witness)

.....  
(Address of Witness)

.....  
(Occupation of Witness)

 **NORTON ROSE FULBRIGHT**

Norton Rose Fulbright LLP  
3 More London Riverside  
London SE1 2AQ United Kingdom  
nortonrosefulbright.com


Georgina Leith  
Trainee Solicitor

THE SECURITY AGENT

EXECUTED AS A DEED

ABN AMRO BANK N.V.

By:   
Name: **Katie Phipps**  
Title: **Attorney-In-Fact**  
in the presence of:

  
(Signature of Witness)

.....  
(Name of Witness)

.....  
(Address of Witness)

.....  
(Occupation of Witness)

By: .....  
Name:  
Title:

^  
**NORTON ROSE FULBRIGHT**

Norton Rose Fulbright LLP  
3 More London Riverside  
London SE1 2AQ United Kingdom  
nortonrosefulbright.com

Georgina Leith  
Trainee Solicitor

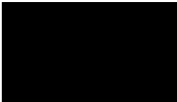
**THE LENDERS**

**EXECUTED AS A DEED**

**ABN AMRO BANK N.V.**

By:   
Name: **Katie Phipps**  
Title: **Attorney-In-Fact**  
in the presence of:

By: .....  
Name:  
Title:

  
.....  
(Signature of Witness)

.....  
(Name of Witness)

.....  
(Address of Witness)

.....  
(Occupation of Witness)

 **NORTON ROSE FULBRIGHT**

Norton Rose Fulbright LLP  
3 More London Riverside  
London SE1 2AQ United Kingdom  
nortonrosefulbright.com

Georgina Leith  
Trainee Solicitor

**EXECUTED AS A DEED**


**BANK OF AMERICA EUROPE DESIGNATED ACTIVITY COMPANY**

By: 

Name: Peter Cole

Title: Vice President

in the presence of:

  
...  
(Signature of Witness)

2 King Edward Street, London EC1A 1HQ

...  
(Address of Witness)

Banker  
...  
(Occupation of Witness)

THE LESSOR OWNERS

EXECUTED AS A DEED

FB SHIPPING LIMITED

By: 

Name: G. Sheach

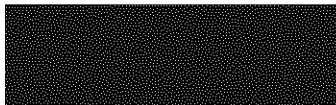
Title: Authorised signatory

in the presence of:

By: .....

Name:

Title:



(Signature of Witness)

PETER MACASKILL

(Name of Witness)

4th Floor, Regent Centre, Aberdeen

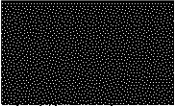
(Address of Witness)

ACCOUNTANT

(Occupation of Witness)

EXECUTED AS A DEED

FC SHIPPING LIMITED

By: 

Name: G. Sheach

Title: Authorised signatory

in the presence of:

By: .....

Name:

Title:



(Signature of Witness)

PETER MACASKILL

(Name of Witness)

Unit 102, Regent Centre, Aberdeen

(Address of Witness)

ACCOUNTANT

(Occupation of Witness)

THE SHAREHOLDERS

EXECUTED AS A DEED

VROON SHIPPING U.K LIMITED

By:  .....

Name: G. Sheach


Title: Authorised signatory

in the presence of:

By: .....

Name:

Title:

  
(Signature of Witness)

PETER MACASKILL  
(Name of Witness)

4th Floor, Regent Centre, ASERDEN  
(Address of Witness)

ACCOUNTANT  
(Occupation of Witness)

**EXECUTED AS A DEED**

**VROON VESSEL PARTICIPATIONS I B.V.**

By:

Name: R. Schuijt

Title: Authorised signatory

in the presence of:

director of Scheepsbeheer B.V.

By: .....

Name:

Title:

.....  
(Signature of Witness)

.....  
(Name of Witness)

.....  
(Address of Witness) the Netherlands

.....  
(Occupation of Witness)