



Registration of a Charge

Company Name: **CRETE TRADER SHIPPING LIMITED**

Company Number: **13656443**



Received for filing in Electronic Format on the: **05/11/2021**

XAGNMZBT

Details of Charge

Date of creation: **01/11/2021**

Charge code: **1365 6443 0001**

Persons entitled: **HAYFIN SERVICES LLP**

Brief description: **THE COMPANY CREATES A FIRST PRIORITY LIBERIAN MORTGAGE OVER ITS SHIP "CRETE TRADER" (IMO NUMBER 9395264) REGISTERED IN THE LIBERIAN SHIP REGISTRY WITH OFFICIAL NUMBER 20398.**

Contains fixed charge(s).

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: **NATALIA GOLOVATAYA (SOLICITOR)**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 13656443

Charge code: 1365 6443 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 1st November 2021 and created by CRETE TRADER SHIPPING LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 5th November 2021 .

Given at Companies House, Cardiff on 8th November 2021

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**

DATED 01 NOVEMBER 2021

(1) CRETE TRADER SHIPPING LIMITED
as Owner

(2) HAYFIN SERVICES LLP
as Security Agent and Trustee

FIRST PREFERRED LIBERIAN MORTGAGE

m.v. "CRETE TRADER"

EXECUTION VERSION

Reed Smith LLP
The Broadgate Tower
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THIS FIRST PREFERRED LIBERIAN MORTGAGE is made on 01 November 2021

BY

- (1) **CRETE TRADER SHIPPING LIMITED**, a private limited liability company incorporated under the laws of England & Wales with company number 13656443 whose registered address is at 13-14 Hobart Place, London SW1W 0HH and also registered as a foreign maritime entity under the laws of the Republic of Liberia, as owner (the "**Owner**"),

IN FAVOR OF

- (2) **HAYFIN SERVICES LLP**, acting in its capacity as security agent and trustee for the Finance Parties (as defined in the Facility Agreement, as defined below) (the "**Mortgagee**", which expression includes its successors and assigns).

BACKGROUND

- (A) The Owner is the sole owner of the whole of the vessel "CRETE TRADER" registered under the laws and flag of the Republic of Liberia with Official Number 20398.
- (B) Pursuant to a facility agreement (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "**Facility Agreement**") dated 28 October 2021 and made between (i) Syros Trader Shipping Limited and Crete Trader Shipping Limited as joint and several borrowers (the "**Borrowers**"), (ii) Dahlia Shipholdings Limited as intermediate holdco and guarantor, (iii) Fuchsia Shipholdings Limited as holdco and guarantor, (iv) each of the entities listed in Part I of Schedule 1 thereto as collateral vessel facility borrowers, collateral vessel facility intermediate holdco and collateral vessel facility holdco (v) the banks and financial institutions listed in Part II of Schedule 1 thereto as lenders (collectively, the "**Lenders**"), (v) Hayfin Services LLP as agent and (vi) the Security Agent, the Lenders agreed to make available to the Borrowers the Facility on the terms and conditions set out therein. A copy of the Facility Agreement (without exhibits) is annexed to this Mortgage as Exhibit A and made an integral part hereof.
- (C) Pursuant to clause 30 (*Role of the Agent and the Security Agent*) of the Facility Agreement, it was agreed that the Mortgagee would hold this Mortgage on trust for the benefit of the Secured Parties.
- (D) It is one of the conditions precedent to Utilisation (as defined under the Facility Agreement) that the Owner executes and delivers this Mortgage in favor of the Mortgagee, for the benefit of the Finance Parties, as security for the Secured Obligations (as defined below) and for its performance and observance of and compliance with the covenants, terms and conditions contained in the Finance Documents (as defined in the Facility Agreement) to which the Owner is or is to become a party.
- (E) The Owner has authorized the execution and delivery of this Mortgage under and pursuant to Chapter 3 of Title 21 of the Liberian Code of Laws of 1956, as amended.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

- 1.1 **Defined expressions.** Words and expressions defined in the Facility Agreement shall have the same meanings when used in this Mortgage (including the Recitals) unless the context otherwise requires.

- 1.2 **Definitions.** In this Mortgage, unless the contrary intention appears:

"**Facility Agreement**" has the meaning set forth in Recital (B);

"**Secured Obligations**" means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) of the Owner

to any Finance Party under or in connection with any Finance Document to which the Owner is or is to become a party;

"Security Period" means the period from and including the date of this Mortgage to and including the date on which all Secured Obligations have been fully paid and discharged; and

"Vessel" means the vessel described in Recital (A) and includes any share or interest in that vessel and its engines, machinery, boats, tackle, outfit, spare gear, fuel, consumable or other stores, belongings and appurtenances whether on board or ashore and whether now owned or later acquired.

- 1.3 **Application of construction and interpretation provisions of Facility Agreement.** Clause 1.2 (*Construction*) of the Facility Agreement applies, with any necessary modifications, to this Mortgage.

2. MORTGAGE

- 2.1 **Mortgage.** In consideration of the Lenders agreeing to make available the Loan to the Borrowers and other good and valuable consideration, the Owner hereby grants, conveys, mortgages, pledges, confirms, assigns, transfers and sets over the whole of the Vessel to the Mortgagee as security for:

- (a) the due and punctual payment of the Secured Obligations; and
- (b) its performance and observance of and compliance with its covenants, terms and conditions contained in the Finance Documents to which it is or is to become a party.

- 2.2 **Extent of Property Mortgaged.** This Mortgage shall not cover property other than the Ship as the term "Vessel" is used in Sub division 1 of Section 106 of Chapter 3 of Title 21 of the Liberian Code of Laws of 1956 as amended.

- 2.3 **Void provisions.** Any provision of this Mortgage construed as waiving the preferred status of this Mortgage shall, to such extent, be void and of no effect.

- 2.4 **Continuing security.** This Mortgage shall remain in force until the end of the Security Period as a continuing security and, in particular:

- (a) the security interests created by Clause 2.1 shall not be satisfied by any intermediate payment or satisfaction of the Secured Obligations;
- (b) the security interests created by Clause 2.1, and the rights of the Mortgagee under this Mortgage, are only capable of being extinguished, limited or otherwise adversely affected by an express and specific term in a document signed by or on behalf of the Mortgagee;
- (c) no failure or delay by or on behalf of the Mortgagee to enforce or exercise a security interest created by Clause 2.1 or a right of the Mortgagee under this Mortgage, and no act, course of conduct, acquiescence or failure to act (or to prevent the Owner from taking certain action) which is inconsistent with such a security interest or such a right shall preclude or estop the Mortgagee (either permanently or temporarily) from enforcing or exercising it; and
- (d) this Mortgage shall be additional to, and shall not in any way impair or be impaired by:
 - (i) any other security interest whether in relation to property of the Owner or that of a third party; or
 - (ii) any other right of recourse as against the Owner or any third party,

which the Mortgagee now or subsequently has in respect of any of the Secured Obligations.

- 2.5 **Principal and independent debtor.** The Owner shall be liable under this Mortgage as a principal and independent debtor and accordingly it shall not have, as regards this Mortgage, any of the rights or defenses of a surety.
- 2.6 **Waiver of rights and defenses.** Without limiting the generality of Clause 2.5, the Owner shall neither be discharged by, nor have any claim against any Finance Party in respect of:
- (a) any amendment or supplement being made to any Finance Document;
 - (b) any arrangement or concession (including a rescheduling or acceptance of partial payments) relating to, or affecting, any Finance Document;
 - (c) any release or loss (even though negligent) of any right or Security created by the Finance Documents;
 - (d) any failure (even though negligent) promptly or properly to exercise or enforce any such right or Security, including a failure to realize for its full market value an asset covered by such Security; or
 - (e) any other Finance Document or any Security now being or later becoming void, unenforceable, illegal or invalid or otherwise defective for any reason, including a neglect to register it.
- 2.7 **Subordination of rights of Owner.** All rights which the Owner at any time has (whether in respect of this Mortgage or any other transaction) against any of the Borrowers, any other Obligor or their respective assets shall be fully subordinated to the rights of the Secured Parties under the Finance Documents; and in particular, the Owner shall not:
- (a) claim, or in a bankruptcy of any of the Borrowers or any other Obligor prove for, any amount payable to the Owner by the respective Borrower or any other Obligor, whether in respect of this Mortgage or any other transaction;
 - (b) take or enforce any Security for any such amount;
 - (c) claim to set-off any such amount against any amount payable by the Owner to any of the Borrowers or any other Obligor; or
 - (d) claim any other Finance Document or any Security now being or later becoming void, unenforceable, illegal or invalid or otherwise defective for any reason, including a neglect to register it.
- 2.8 **No obligations imposed on Mortgagee.** The Owner shall remain liable to perform all obligations connected with the Vessel and the Mortgagee shall not, in any circumstances, have or incur any obligation of any kind in connection with the Vessel.
- 2.9 **Negative Pledge; disposal of assets.** Except as permitted under the Facility Agreement, the Owner shall not sell, create any security interest not exclusively securing the Secured Obligations over or otherwise dispose of the Vessel or any right relating to the Vessel.
- 2.10 **Release of security.** At the end of the Security Period, the Mortgagee shall, at the request and cost of the Owner, discharge this Mortgage.

3. PAYMENT COVENANTS

- 3.1 **General.** The Owner shall comply with the following provisions of this Clause 3 at all times during the Security Period provided that every payment which the Owner makes in accordance with the Facility Agreement shall *pro tanto* satisfy the Owner's liability under this Clause 3.

- 3.2 **Covenant to pay Secured Obligations.** The Owner shall duly and punctually pay to the Mortgagee when due the Secured Obligations.
- 3.3 **Covenant to pay expenses etc.** The Owner shall pay to the Mortgagee all such expenses, claims, liabilities, losses, costs, duties, fees, charges or other moneys as are stated in this Mortgage to be payable by the Owner to or recoverable from the Owner by the Mortgagee (or in respect of which the Owner agrees in this Mortgage to indemnify the Mortgagee) at the times and in the manner specified in this Mortgage.
- 3.4 **Covenant to pay default interest.** The Owner shall pay to the Mortgagee interest on any expenses, claims, liabilities, losses, costs, duties, fees, charges or other moneys referred to in Clause 3.3 from the date on which the relevant expense, claim, liability, loss, cost, duty, fee, charge or other money is paid or incurred by the Mortgagee (as well after as before judgment):
- (a) at the rate described in clause 8.3 (*Default interest*) of the Facility Agreement; and
 - (b) on demand.
- 3.5 **Covenant to pay other sums.** The Owner shall pay to the Mortgagee each and every other sum of money which may be or become owing to the Mortgagee under this Mortgage and the other Finance Documents to which the Owner is or is to be a party at the times and in the manner specified in this Mortgage or in the other Finance Documents to which the Owner is or is to be a party.

4. COVENANTS

- 4.1 **General.** The Owner shall comply with the following provisions of this Clause 4 at all times during the Security Period except as the Mortgagee may otherwise permit in writing.
- 4.2 **Insurance and Vessel covenants.** The Owner shall comply with the provisions of clauses 23 (*Vessel Undertakings*) and 24 (*Insurance Undertaking*) of the Facility Agreement which shall apply to this Mortgage as if set out in full in this Mortgage.
- 4.3 **Perfection of Mortgage.** The Owner shall:
- (a) comply with and satisfy all the requirements and formalities established by Chapter 3 of Title 21 of the Liberian Code of Laws of 1956, as amended, and any other pertinent legislation of the Republic of Liberia to perfect this Mortgage as a legal, valid and enforceable first preferred mortgage and maritime lien upon the Vessel; and
 - (b) promptly provide the Mortgagee from time to time with evidence in such form as the Mortgagee requires that the Owner is complying with Clause 4.3(a).
- 4.4 **Notice of Mortgage.** The Owner shall:
- (a) carry on board the Vessel with its papers a certified copy of this Mortgage and cause that certified copy of this Mortgage to be exhibited to any person having business with the Vessel which might give rise to a lien on the Vessel other than a lien for crew's wages and salvage and to any representative of the Mortgagee on demand; and
 - (b) place and maintain in a conspicuous place in the navigation room and the Master's cabin of the Vessel a framed printed notice in plain type in English of such size that the paragraph of reading matter shall cover a space not less than 6 inches wide and 9 inches high reading as follows:

"NOTICE OF MORTGAGE

This Vessel is covered by a First Preferred Liberian Mortgage in favor of
HAYFIN SERVICES LLP, acting in its capacity as Security Agent and

trustee for the Finance Parties, as Mortgagee, under authority of Chapter 3 of Title 21 of the Liberian Code of Laws of 1956, as amended. Under the terms of the said Mortgage neither the Owner nor any Charterer nor the Master of this Vessel nor any other person has any right, power or authority to create, incur or permit to be imposed upon this Vessel any lien whatsoever other than for crew's wages and salvage."

5. PROTECTION OF SECURITY

- 5.1 **Mortgagee's right to protect or maintain security.** The Mortgagee may take any action which it may find fit for the purpose of protecting or maintaining the security created by this Mortgage or for any similar or related purpose.
- 5.2 **Mortgagee's right to insure, repair etc.** Without limiting the generality of Clause 5.1, if the Owner does not comply with Clause 4, the Mortgagee may:
- (a) effect, replace and renew any Insurances;
 - (b) arrange for the carrying out of such surveys and/or repairs of the Vessel as it deems expedient or necessary; and
 - (c) discharge any liabilities charged on the Vessel, or otherwise relating to or affecting it, and/or take any measures which the Mortgagee may think expedient or necessary for the purpose of securing its release.

6. ENFORCEABILITY AND MORTGAGEE'S POWERS

- 6.1 **Right to enforce security.** On the occurrence of an Event of Default which is continuing but without the necessity for any court order in any jurisdiction to the effect that an Event of Default has occurred and is continuing or that the security constituted by this Mortgage has become enforceable, and irrespective of whether a notice has been served under the Facility Agreement or a demand made under the Facility Agreement:
- (a) the security constituted by this Mortgage shall immediately become enforceable;
 - (b) the Mortgagee shall be entitled at any time or times to exercise the powers set out in Clause 6.2 and in any other Finance Document;
 - (c) the Mortgagee shall be entitled at any time or times to exercise the powers possessed by it as mortgagee of the Vessel conferred by the law of any country or territory the courts of which have or claim any jurisdiction in respect of the Owner or the Vessel; and
 - (d) the Mortgagee shall be entitled to exercise all the rights and remedies in foreclosure and otherwise given to mortgagees by applicable law including the provisions of Chapter 3 of Title 21 of the Liberian Code of Laws of 1956, as amended.
- 6.2 **Right to take possession, sell etc.** On the occurrence of an Event of Default which is continuing, the Mortgagee shall be entitled then or at any later time or times:
- (a) to take possession of the Vessel whether actually or constructively and/or otherwise to take control of the Vessel wherever the Vessel may be and cause the Owner or any other person in possession of the Vessel forthwith upon demand to surrender the Vessel to the Mortgagee without legal process and without the Mortgagee being liable for any losses thereby caused or to account to the Owner in connection therewith;
 - (b) to sell the Vessel, with or without the benefit of any charterparty or other contract for its employment, by public auction or private contract at any time, at any place and upon any terms (including, without limitation, on terms that all or any part or parts of the purchase price

be satisfied by shares, loan stock or other securities and/or be left outstanding as a debt, whether secured or unsecured and whether carrying interest or not) which the Mortgagee may think fit, with power for the Mortgagee to purchase the Vessel at any such public auction and to set off the purchase price against all or any part of the Secured Obligations after first giving notice (in the case of a public sale) of the time and place of sale with a general description of the property in the following manner:

- (i) by publishing such notice in an appropriate publication with circulation in the maritime community; and
 - (ii) by sending a similar notice by telefacsimile confirmed by registered mail to the Owner at its address hereinafter set forth on or before the day of publication.
- (c) to manage, insure, maintain and repair the Vessel and to charter, employ, lay up or in any other manner whatsoever deal with the Vessel in any manner, upon any terms and for any period which the Mortgagee may think fit, in all respects as if the Mortgagee were the owner of the Vessel and without the Mortgagee being responsible for any loss thereby incurred;
 - (d) to collect, recover and give good discharge for any moneys or claims arising in relation to the Vessel and to permit any brokers through whom collection or recovery is effected to charge the usual brokerage therefor;
 - (e) to take over or commence or defend (if necessary using the name of the Owner) any claims or proceedings relating to, or affecting, the Vessel which the Mortgagee may think fit and to abandon, release or settle in any way any such claims or proceedings; and
 - (f) generally, to enter into any transaction or arrangement of any kind and to do anything in relation to the Vessel which the Mortgagee may think fit.

6.3 No liability of Mortgagee. The Mortgagee shall not be obliged to check the nature or sufficiency of any payment received by it under this Mortgage or to preserve, exercise or enforce any right relating to the Vessel.

6.4 No requirement to commence proceedings against Obligors. The Mortgagee will not need to commence any proceedings under, or enforce any security interest created by, the Facility Agreement or any other Finance Document before commencing proceedings under, or enforcing any security interest created by, this Mortgage.

6.5 Conclusive evidence of certain matters. However, as against the Owner:

- (a) any judgment or order of any court in New York State court or Federal court of the United States of America, or any court in the Republic of Liberia, or any court in England in connection with the Facility Agreement; and
- (b) any statement or admission of an Obligor in connection with the Facility Agreement, shall be binding and conclusive as to all matters of fact and law to which it relates.

6.6 Suspense account. On the occurrence of an Event of Default which is continuing the Mortgagee may, for the purpose of claiming or proving in a bankruptcy of the Owner or any other Obligor, place any sum received or recovered under or by virtue of this Mortgage or any security interest connected with it on a separate suspense or other nominal account without applying it in satisfaction of the Owner's obligations under the Facility Agreement.

7. APPLICATION OF MONEYS

7.1 General. All sums received by the Mortgagee:

- (a) in respect of sale of the Vessel;

(b) in respect of net profits arising out of the employment of the Vessel pursuant to Clause 6.2(c);
or

(c) in respect of any other transaction or arrangement under Clauses 6.1 or 6.2,

shall be held by the Mortgagee upon trust in the first place to pay or discharge any expenses or liabilities (including any interest) which have been paid or incurred by the Mortgagee in or in connection with the exercise of its powers and to apply the balance in accordance with clause 34 (*Payment mechanics*) of the Facility Agreement.

8. FURTHER ASSURANCES

8.1 The Owner's obligation to execute further documents etc. The Owner shall:

(a) execute and deliver to the Mortgagee (or as it may direct) any assignment, mortgage, power of attorney, proxy or other document; and

(b) effect any registration or notarization, give any notice or take any other step,

which the Mortgagee may, by notice to the Owner, specify for any of the purposes described in Clause 8.2 or for any similar or related purpose.

8.2 **Purposes of further assurances.** The purposes referred to in Clause 8.1 are:

(a) validly and effectively to create any security interest or right of any kind which the Mortgagee intended should be created by or pursuant to this Mortgage or any other Finance Document;

(b) to protect the priority, or increase the effectiveness, in any jurisdiction of any security interest which is created, or which the Mortgagee intended should be created, by or pursuant to this Mortgage or any other Finance Document;

(c) to enable or assist the Mortgagee to sell or otherwise deal with the Vessel, to transfer title to, or grant any interest or right relating to, the Vessel or to exercise any power which is referred to in Clauses 8.1 or 8.2 or which is conferred by any Finance Document; or

(d) to enable or assist the Mortgagee to enter into any transaction to commence, defend or conduct any proceedings and/or to take any other action relating to the Vessel in any country or under the law of any country.

8.3 **Terms of further assurances.** The Mortgagee may specify the terms of any document to be executed by the Owner under Clause 8.1, and those terms may include any covenants, undertakings, powers and provisions which the Mortgagee considers appropriate to protect its interests.

8.4 **Obligation to comply with notice.** The Owner shall comply with a notice under Clause 8.1 by the date specified in the notice.

8.5 **Additional corporate action.** At the same time as the Owner delivers to the Mortgagee any document executed under Clause 8.1(a), the Owner shall also deliver to the Mortgagee a certificate signed by an officer of the Owner which shall:

(a) set out the text of a resolution of its board of directors (or equivalent governing body) specifically authorizing the execution of the document specified by the Mortgagee; and

(b) state that either the resolution was duly adopted by its board of directors (or equivalent governing body) and is valid under its constitutional documents.

9. POWER OF ATTORNEY

- 9.1 **Appointment.** For the purpose of securing the Mortgagee's interest in the Vessel and the due and punctual performance the Owner's obligations to the Mortgagee under this Mortgage and every other Finance Document, the Owner irrevocably and by way of security appoints the Mortgagee its attorney, on behalf of the Owner and in its name or otherwise, to execute or sign any document and do any act or thing which the Owner is obliged to do under any Finance Document. This power of attorney shall only be exercisable after the occurrence of an Event of Default which is continuing.
- 9.2 **Ratification of actions of attorney.** For the avoidance of doubt and without limiting the generality of Clause 9.1, the Owner confirms that Clause 9.1 authorizes the Mortgagee to execute on its behalf a document ratifying any transaction or action which the Mortgagee has purported to enter into or to take and which the Mortgagee considers was or might have been outside its powers or otherwise invalid.
- 9.3 **Delegation.** The Mortgagee may sub-delegate to any person or persons all or any of the powers (including the discretions) conferred on the Mortgagee by Clauses 9.1 and/or 9.2, and may do so on terms authorizing successive sub-delegations. No such delegation will preclude the subsequent exercise of such powers by the Mortgagee itself or preclude the Mortgagee from making subsequent delegations and any such delegation may be revoked by the Mortgagee at any time.

10. INCORPORATION OF FACILITY AGREEMENT PROVISIONS

- 10.1 **Incorporation of specific provisions.** The following provisions of the Facility Agreement apply to this Mortgage as if they were expressly incorporated in this Mortgage with any necessary modifications: clause 6 (*Repayment*); clause 12.2 (*Tax gross-up*); clause 14.1 (*Currency indemnity*); clause 35 (*Set-off*); clause 36 (*Contractual recognition of bail-in*); and clause 40 (*Remedies and waivers*).
- 10.2 **Incorporation of general provisions.** Clause 10.1 is without prejudice to the application to this Mortgage of any provision of the Facility Agreement which, by its terms, applies or relates to the Finance Documents generally or this Mortgage specifically.

11. ASSIGNMENT

- 11.1 **Assignment by Mortgagee.** The Mortgagee may transfer or assign its rights and obligations under and in connection with this Mortgage to the same extent as it may transfer or assign its rights and obligations under the Facility Agreement.

12. NOTICES

- 12.1 **Application of provisions of Facility Agreement.** Clause 36 (*Notices*) of the Facility Agreement applies to any notice or demand under or in connection with this Mortgage.

13. TOTAL AMOUNT, ETC.

- 13.1 **Total amount.** For the purpose of recording this Mortgage as required by Chapter 3 of Title 21 of the Liberian Code of Laws of 1956, as amended, the total amount is NINETEEN MILLION UNITED STATES DOLLARS (US\$ 19,000,000), together with interest, fees, commissions and performance of mortgage covenants. The date of maturity of this Mortgage is on the fourth anniversary of the first Utilisation Date and there is no separate discharge amount.

14. SUPPLEMENTAL

- 14.1 **No restriction on other rights.** Nothing in this Mortgage shall be taken to exclude or restrict any power, right or remedy which the Mortgagee may at any time have under:

(a) any other Finance Document; or

- (b) the law of any country or territory the courts of which have or claim any jurisdiction in respect of the Owner or the Vessel.

14.2 **Exercise of other rights.** The Mortgagee may exercise any right under this Mortgage before it has exercised any right referred to in Clause 14.1(a) or (b).

14.3 **Invalidity of Facility Agreement.** In the event of:

- (a) the Facility Agreement now being or later becoming void, illegal, unenforceable or otherwise invalid for any reason whatsoever; or
- (b) a bankruptcy of the Owner, the introduction of any law or any other matter resulting in the Owner being discharged from liability under the Facility Agreement, or the Facility Agreement ceasing to operate (for example, by interest ceasing to accrue);

this Mortgage shall cover any amount which would have been or become payable under or in connection with the Facility Agreement if the Facility Agreement had been and remained entirely valid and enforceable and the Owner had remained fully liable under it; and references in this Mortgage to amounts payable by the Owner under or in connection with the Facility Agreement shall include references to any amount which would have so been or become payable as aforesaid.

14.4 **Invalidity of Finance Documents.** Clause 14.3 also applies to each of the other Finance Documents to which the Owner is a party.

14.5 **Settlement or discharge conditional.** Any settlement or discharge under this Mortgage between the Mortgagee and the Owner shall be conditional upon no security or payment to the Mortgagee by the Owner or any other person being set aside, adjusted or ordered to be repaid, whether under any insolvency law or otherwise.

15. LAW AND JURISDICTION

15.1 **Liberian law.** This Mortgage shall be governed by, and construed in accordance with, Liberian law.

15.2 **Choice of forum.** The Mortgagee reserves the rights:

- (a) to commence proceedings in relation to any matter which arises out of or in connection with this Mortgage in the courts of any country which have or claim jurisdiction to that matter; and
- (b) to commence such proceedings in the courts of any such country or countries concurrently with or in addition to proceedings in Liberia or without commencing proceedings in Liberia.

15.3 **Action against Vessel.** The rights referred to in Clause 15.2 include the right of the Mortgagee to arrest and take action against the Vessel at whatever place the Vessel shall be found lying and for the purpose of any action which the Mortgagee may bring before the courts of that jurisdiction or other judicial authority and for the purpose of any action which the Mortgagee may bring against the Vessel, any writ, notice, judgment or other legal process or documents may (without prejudice to any other method of service under applicable law) be served upon the Master of the Vessel (or upon anyone acting as the Master) and such service shall be deemed good service on the Owner for all purposes.

15.4 **Mortgagee's rights unaffected.** Nothing in this Clause 15 shall exclude or limit any right which the Mortgagee may have (whether under the law of any country, an international convention or otherwise) with regard to the bringing of proceedings, the service of process, the recognition or enforcement of a judgment or any similar or related matter in any jurisdiction.

15.5 **Meaning of "proceedings".** In this Clause 15, "proceedings" means proceedings of any kind, including an application for a provisional or protective measure.

[SIGNATURE PAGE FOLLOWS]

THIS MORTGAGE has been executed by the duly authorized Attorney-in-Fact of the Owner on the date stated at the beginning of this Mortgage.

CRETE TRADER SHIPPING LIMITED

By: _____

Name: _____

Title: _____

IOU



LIBERIAN INTERNATIONAL SHIP & CORPORATE REGISTRY

HEADQUARTERS
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Acknowledgement

Document Particulars	
Vessel Name	CRETE TRADER O.N. 20398
Document Type	FIRST PREFERRED LIBERIAN MORTGAGE
Document Date	01-Nov-2021
Signatory Particulars	
Full Name	George Nicholas Georgiou
Title	
<p>The Signatory, known to me to be the individual described in and who executed the foregoing instrument, appeared before me and duly acknowledged to me that the execution thereof was his/her act and deed.</p>	
Full Name	Asha Small
Title	
Signature	
Date	01-Nov-2021

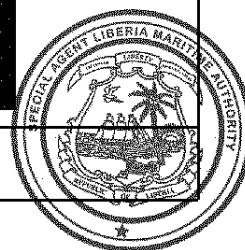


EXHIBIT A
Facility Agreement

Private and Confidential

D A T E D **28 October** 2021

- (1) **EACH OF THE ENTITIES LISTED IN SCHEDULE 1 PART I**
 (as joint and several Borrowers)
- (2) **DAHLIA SHIPHOLDINGS LIMITED**
 (as Intermediate HoldCo)
- (3) **FUCHSIA SHIPHOLDINGS LIMITED**
 (as HoldCo)
- (4) **EACH OF THE ENTITIES LISTED IN PART I OF SCHEDULE 1**
 (as Collateral Guarantors)
- (5) **THE FINANCIAL INSTITUTIONS LISTED IN SCHEDULE 1**
 PART II
 (as Lenders)
- (6) **HAYFIN SERVICES LLP**
 (as Agent)
- (7) **HAYFIN SERVICES LLP**
 (as Security Agent)

FACILITY AGREEMENT
SECURED TERM LOAN FACILITY OF UP TO
US\$19,000,000

EXECUTION VERSION

ReedSmith

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THIS AGREEMENT is dated **28 October** 2021

BETWEEN:

- (1) **EACH OF THE ENTITIES** listed in Part I of Schedule 1 (*The Original Parties*) as joint and several borrowers (together the “**Borrowers**” and each a “**Borrower**”);
- (2) **DAHLIA SHIPHOLDINGS LIMITED**, a BVI business company incorporated under the laws of the British Virgin Islands with company number 2076812 and with its registered office at Palm Grove House, P.O. Box 438, Road Town, Tortola, VG1110, British Virgin Islands (“**Intermediate HoldCo**”);
- (3) **FUCHSIA SHIPHOLDINGS LIMITED**, a BVI business company incorporated under the laws of the British Virgin Islands with company number 2079228 and with its registered office at Palm Grove House, P.O. Box 438, Road Town, Tortola, VG1110, British Virgin Islands (“**HoldCo**”);
- (4) **EACH OF THE ENTITIES** listed in Part I of Schedule 1 (*The Original Parties*) as collateral guarantors (together the “**Collateral Guarantors**” and each a “**Collateral Guarantor**”);
- (5) **THE FINANCIAL INSTITUTIONS** listed in Part II of Schedule 1 (*The Original Parties*) as lenders (“**Original Lenders**”);
- (6) **HAYFIN SERVICES LLP** as agent of the Finance Parties (“**Agent**”); and
- (7) **HAYFIN SERVICES LLP** as security agent for the Finance Parties (“**Security Agent**”).

BACKGROUND

The Lenders have agreed to make available to the Borrowers a loan facility of up to the Maximum Loan Amount for the purposes of financing part of the acquisition cost of the Facility Vessels and for other permitted general corporate purposes.

IT IS AGREED as follows:

1. Definitions and Interpretation

1.1 Definitions

In this Agreement:

“**Account**” means each of (i) the Earnings Accounts, the Minimum Liquidity Accounts and the Dry Docking Reserve Accounts and any other account opened, made or established in accordance with Clause 25 (*Accounts*) and (ii) each Collateral Facility Account.

“**Account Bank**” means, in relation to any Account, M.M. Warburg & Co, or any other bank or financial institution approved by the Agent (with the prior written consent of the Majority Lenders).

“**Account Holder**” means, in relation to any Account, each Obligor in whose name that Account is held.

“**Accounts Security**” means, in relation to an Account, a deed or other instrument granted by the Account Holder in favour of the Security Agent conferring Security over that Account in the agreed form.

“**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.

“**Approved Brokers**” means the London offices of Clarksons, Arrow and Braemar ACM and the London or Hamburg offices of Howe Robinson Partners (or any Affiliate of such persons through which valuations are commonly issued), or any independent international sale and purchase broker approved by the Agent (acting on the instructions of the Majority Lenders) from time to time (and “**Approved Broker**” means any one of them).

“**Approved Commercial Manager**” means:

- (a) in relation to a Facility Vessel, Lomar Shipping, or any other management company as the Agent may, with the authorisation of the Majority Lenders, approve in writing from time to time in respect of that Facility Vessel; and
- (b) in relation to a Collateral Vessel, Lomar Shipping, or any other management company as the Agent may, with the authorisation of the Majority Lenders, approve in writing from time to time in respect of that Collateral Vessel.

“**Approved Flag**” means, in relation to a Vessel Liberian flag or any other flag as the Agent may, with the authorisation of all Lenders, approve in writing as the flag under which a Vessel may be registered, provided that, for the avoidance of doubt, no flag under which a Vessel may be registered may be changed from one Approved Flag to another Approved Flag without the consent of the Agent (with the authorisation of all Lenders).

“**Approved Manager**” means each Approved Technical Manager and each Approved Commercial Manager.

“**Approved Sub-Manager**” means in relation to an Approved Manager, any sub-manager appointed by an Approved Manager with the approval of the Agent, with the authorisation of the Majority Lenders, pursuant to Clause 23.17 (*Management Agreement*).

“**Approved Suspense Account**” means an escrow or suspense account with a law firm, notary or a bank acceptable to the Agent into which the balance of the purchase price and any other amounts owing under the relevant MOA are to be paid in advance of delivery and in respect of which:

- (a) the person who will hold such amounts to the sole order of the Agent (to be released against a release instruction signed by the Agent); and
- (b) the terms of the agreement which provides for such amounts to be paid into, held and dispersed from such account (and, if not dispersed within a specified period, returned to the Agent),

are approved by the Agent (acting on the instructions of all Lenders), such approval not to be unreasonably withheld or delayed.

“**Approved Technical Manager**” means:

- (a) in relation to a Facility Vessel, Lomar Shipping, Lomar Deutschland GmbH, Columbia Shipmanagement Ltd, Columbia Shipmanagement (Deutschland) GmbH, Uniteam Marine Shipping GmbH, or any other management company as the Agent may, with the authorisation of the Majority Lenders, approve in writing from time to time in respect of that Facility Vessel; and

- (b) in relation to a Collateral Vessel, Lomar Shipping, Lomar Deutschland GmbH, Columbia Shipmanagement Ltd, Columbia Shipmanagement (Deutschland) GmbH, Uniteam Marine Shipping GmbH, or any other management company as the Agent may, with the authorisation of the Majority Lenders, approve in writing from time to time in respect of that Collateral Vessel.

“**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.

“**Assignment Agreement**” means an agreement substantially in the form set out in Schedule 5 (*Form of Assignment Agreement*) or any other form agreed between the relevant assignor and assignee.

“**Auditor**” means a certified public auditor or audit firm seated in an EEA Member Country or the United Kingdom and licensed by the relevant national authorities.

“**Availability Period**” means the period from and including the date of this Agreement to and including 5 November 2021 (or such later date as the Agent may agree in its sole discretion).

“**Available Commitment**” means a Lender’s Commitment minus:

- (a) the amount of its participation in the outstanding Loan; and
- (b) in relation to any proposed Utilisation, the amount of its participation in such Utilisation that is due to be made on or before the proposed Utilisation Date.

“**Available Facility**” means the aggregate for the time being of each Lender’s Available Commitment.

“**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 the United Kingdom, the UK Bail-In Legislation; and
- (c) in relation to any 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.

“**Balloon Instalment**” has the meaning given to that term in Clause 6.1(a) (*Repayment Instalments*).

“**Break Costs**” means the amount (if any) by which:

- (a) the interest (excluding the Margin) which a Lender should have received for the period from the date of receipt of all or any part of its participation in the Loan or Unpaid Sum to the last day of the current Interest Period in respect of that Loan or Unpaid Sum, had the principal amount or Unpaid Sum received been paid on the last day of that Interest Period;

exceeds:

- (b) the amount which that Lender would be able to obtain by placing an amount equal to the principal amount or Unpaid Sum received by it on deposit with a leading bank in the Relevant Interbank Market for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period.

“Business Day” means a day (other than a Saturday or Sunday) on which banks are open for general business in London and New York.

“Cash” means, at any time with respect to any person, cash in hand or at a bank and (in the latter case) credited to an account in the name of that person and to which that person alone is beneficially entitled and for so long as:

- (a) that cash is repayable within thirty (30) days after the relevant date of calculation;
- (b) repayment of that cash is not contingent on the prior discharge of any other indebtedness of that person or of any other person whatsoever or on the satisfaction of any other condition other than any such conditions under Transaction Security referred to in paragraph (c) below;
- (c) there is no Security over that cash except for Transaction Security; and
- (d) the cash is freely and (except as mentioned in paragraphs (a) and (c) above) immediately available to be applied in repayment or prepayment of the Loan.

“Change of Control” means:

- (a) in respect of Lomar Corporation, any time during which and for any reason Lomar Corporation fails to be directly or indirectly owned only by the parties disclosed to the Agent in the letter provided to the Agent on or before the date of this Agreement (and, for the avoidance of doubt, no other parties);
- (b) in respect of the HoldCo:
 - (i) a sale, lease or transfer of all or substantially all of HoldCo’s assets to any person or group whether in a single transaction or a series of related transactions; or
 - (ii) a liquidation or dissolution of HoldCo; or
 - (iii) any time during which and for any reason, Lomar Corporation fails to legally and beneficially own, directly, one hundred per cent. (100%) of the issued shares or other equity interests of HoldCo;
- (c) in respect of the Intermediate HoldCo:
 - (i) a sale, lease or transfer of all or substantially all of Intermediate HoldCo’s assets to any person or group whether in a single transaction or a series of related transactions; or
 - (ii) a liquidation or dissolution of Intermediate HoldCo; or
 - (iii) any time during which and for any reason, HoldCo fails to legally and beneficially own, directly, one hundred per cent. (100%) of the issued shares or other equity interests of Intermediate HoldCo;
- (d) in respect of a Borrower:

- (i) a sale, lease or transfer of all or substantially all of that Borrower's assets to any person or group whether in a single transaction or a series of related transactions; or
 - (ii) a liquidation or dissolution of that Borrower; or
 - (iii) any time during which and for any reason, Intermediate HoldCo fails to legally and beneficially own, directly, one hundred per cent. (100%) of the capital stock or other equity interests of that Borrower.
- (e) in respect of Gaving Holdings Limited, a company incorporated under the laws of the British Virgin Islands whose registered office is at 2nd Floor, O' Neal Marketing Associates Building, Wickham's Cay II, P.O. Box 3174, Road Town, Tortola, British Virgin Islands VG1110 any time during which and for any reason Gaving Holdings Limited fails to be directly or indirectly owned only by the parties disclosed to the Agent in the letter provided to the Agent pursuant to the Collateral Vessel Facility (and, for the avoidance of doubt, no other parties);
- (f) in respect of the Collateral Vessel Facility Holdco:
 - (i) a sale, lease or transfer of all or substantially all of Collateral Vessel Facility Holdco's assets to any person or group whether in a single transaction or a series of related transactions; or
 - (ii) a liquidation or dissolution of Collateral Vessel Facility Holdco; or
 - (iii) any time during which and for any reason, Gaving Holdings fails to legally and beneficially own, directly, one hundred per cent. (100%) of the issued shares or other equity interests of Collateral Vessel Facility Holdco.
- (g) in respect of the Collateral Vessel Facility Intermediate Holdco,
 - (i) a sale, lease or transfer of all or substantially all of Collateral Vessel Facility Intermediate Holdco's assets to any person or group whether in a single transaction or a series of related transactions; or
 - (ii) a liquidation or dissolution of Collateral Vessel Facility Intermediate Holdco; or
 - (iii) any time during which and for any reason, Collateral Vessel Facility Holdco fails to legally and beneficially own, directly, one hundred per cent. (100%) of the issued shares or other equity interests of Collateral Vessel Facility Intermediate Holdco;
- (h) in respect of a Collateral Vessel Facility Borrower:
 - (i) a sale, lease or transfer of all or substantially all of that Collateral Vessel Facility Borrower's assets to any person or group whether in a single transaction or a series of related transactions; or
 - (ii) a liquidation or dissolution of that Collateral Vessel Facility Borrower; or
 - (iii) any time during which and for any reason, Collateral Vessel Facility Intermediate Holdco fails to legally and beneficially own, directly, one hundred per cent. (100%) of the capital stock or other equity interests of that Collateral Vessel Facility Borrower.

“Charged Property” means the shares in each of the relevant Obligors and all of the assets of the relevant Obligors which from time to time are, or are expressed or intended to be, the subject of the Security Documents.

“Charter” means, in respect of a Vessel, any time charter or other contract of employment between the relevant Borrower or Collateral Borrower owning that Vessel and any charterer, which exceeds or is capable of exceeding thirteen (13) months (including by virtue of optional extensions).

“Charter Assignment” means the first priority assignment (or, as the case may be in respect of any Collateral Vessel, a second priority assignment) of any Charter in the agreed form.

“Classification” means, in respect of a Vessel, the classification with the Classification Society specified in Schedule 8 (*Details of Vessels*) or such other classification with a Classification Society as the Agent may, with the authorisation of the Majority Lenders, approve in writing.

“Classification Society” means, in relation to a Vessel, the classification society specified in Schedule 8 (*Details of Vessels*), or such other classification society being a member of the International Association of Classification Societies as the Agent may, with the authorisation of the Majority Lenders approve in writing.

“Code” means the US Internal Revenue Code of 1986 as amended.

“Collateral Guarantors” means, together, the Collateral Vessel Facility Borrowers, the Collateral Vessel Facility Holdco and the Collateral Vessel Facility Intermediate Holdco and each a **“Collateral Guarantor”**.

“Collateral Facility Accounts” shall have the meaning ascribed to the term “Accounts” in the Collateral Vessel Facility.

“Collateral Security” means the Security granted pursuant to the Second Priority Security Documents.

“Collateral Vessel Facility” means a facility agreement dated 28 June 2021 executed by and between the Collateral Vessel Facility Borrowers as joint and several borrowers, Collateral Vessel Facility Intermediate Holdco, Collateral Vessel Facility Holdco, the financial institutions listed in Schedule 1 Part II thereto as lenders, Hayfin Services LLP as agent and Hayfin Services LLP as security agent in connection with, inter alia, financing of the acquisition of the Collateral Vessels.

“Collateral Vessel Facility Amendment Agreement” means an amendment to the Collateral Vessel Facility to be executed by and between the parties to the Collateral Vessel Facility in connection with, among other things, the granting of the Second Priority Security Documents.

“Collateral Vessels” means, together, Collateral Vessel A, Collateral Vessel B, Collateral Vessel C, Collateral Vessel D and Collateral Vessel E (each a **“Collateral Vessel”**).

“Collateral Vessel A” means m.v. “Mirador Express” registered under Liberian flag in the name of Collateral Vessel Facility Borrower A, as more particularly described in Schedule 8 (*Details of Vessels*).

“Collateral Vessel B” means m.v. “Velika Express” registered under Liberian flag in the name of Collateral Vessel Facility Borrower B, as more particularly described in Schedule 8 (*Details of Vessels*).

“Collateral Vessel C” means m.v. “Sounion Trader” registered under Liberian flag in the name of Collateral Vessel Facility Borrower C, as more particularly described in Schedule 8 (*Details of Vessels*).

“Collateral Vessel D” means m.v. “Spartel Trader” registered under Liberian flag in the name of Collateral Vessel Facility Borrower D, as more particularly described in Schedule 8 (*Details of Vessels*).

“Collateral Vessel E” means m.v. “Antibes Express” registered under Liberian flag in the name of Collateral Vessel Facility Borrower E, as more particularly described in Schedule 8 (*Details of Vessels*).

“Collateral Vessel Facility Account Security” means in relation to a Collateral Vessel Facility Borrower, any second priority assignment, deed or other instrument granted by it in favour of the Security Agent conferring Security over the relevant Collateral Facility Accounts held and maintained pursuant to the Collateral Vessel Facility in the agreed form.

“Collateral Vessel Facility Borrowers” means Collateral Vessel Facility Borrower A, Collateral Vessel Facility Borrower B, Collateral Vessel Facility Borrower C, Collateral Vessel Facility Borrower D and Collateral Vessel Facility Borrower E (and a **“Collateral Vessel Facility Borrower”** means any of them).

“Collateral Vessel Facility Borrower A” means Mirador Marine S.A.

“Collateral Vessel Facility Borrower B” means Velika Marine S.A.

“Collateral Vessel Facility Borrower C” means Sounion Marine S.A.

“Collateral Vessel Facility Borrower D” means Spartel Marine S.A.

“Collateral Vessel Facility Borrower E” means Antibes Marine S.A.

“Collateral Vessel Facility General Assignment” means, in relation to a Collateral Vessel Facility Borrower, any second priority assignment of the Earnings, Insurances and Requisition Compensation in respect of the Collateral Vessel owned by that Collateral Vessel Facility Borrower, entered into by that Collateral Vessel Facility Borrower in favour of the Security Agent in the agreed form.

“Collateral Vessel Facility Holdco” means Gathering Investment Holding Ltd.

“Collateral Vessel Facility Intermediate Holdco” means Huddling Investment Holding Ltd.

“Collateral Vessel Facility Managers’ Undertaking” means, in relation to a Collateral Vessel, the second priority letter(s) of undertaking from each relevant Approved Manager in favour of the Security Agent, in the agreed form.

“Collateral Vessel Facility Mortgage” means, relation to a Collateral Vessel, the second priority or second preferred ship mortgage granted or to be granted (as the context so requires) over that Collateral Vessel by the relevant Collateral Vessel Facility Borrower in favour of the Security Agent in the agreed form.

“Collateral Vessel Facility Share Charge” means, together:

- (a) the second priority share security deed granted or to be granted (as the context so requires) by Collateral Vessel Facility Holdco in favour of the Security Agent over all of the shares in Collateral Vessel Facility Intermediate Holdco; and

- (b) each second priority share security deed granted or to be granted (as the context so requires) by Collateral Vessel Facility Intermediate Holdco in favour of the Security Agent over the entire share capital in each Collateral Vessel Facility Borrower, in the agreed form.

“Collateral Vessel Facility Subordination Agreement” means a second priority subordination and assignment agreement entered into or to be entered into by the Collateral Guarantors and the Security Agent in the agreed form.

“Commercial Management Agreement” means, in relation to a Vessel, any commercial management agreement entered into or to be entered into (as applicable) between the relevant Borrower (or the relevant Collateral Vessel Facility Borrower as the case may be) and a relevant Approved Commercial Manager in form and substance acceptable to the Agent (acting on the instructions of the Majority Lenders).

“Commitment” means:

- (a) in relation to an Original Lender, the amount set opposite its name under the heading “Commitment” in Part I of Schedule 1 (*The Original Parties*) and the amount of any other Commitment transferred or assigned to it under this Agreement; and
- (b) in relation to any other Lender, the amount of any Commitment transferred or assigned to it under this Agreement,

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

“Compliance Certificate” means a certificate in the form set out in Schedule 6 (*Form of Compliance Certificate*) or otherwise in form and substance satisfactory to the Agent.

“Confidential Information” means all information relating to any Transaction Obligor, the Finance Documents or the Loan of which a Finance Party becomes aware in its capacity as, or for the purpose of becoming, a Finance Party 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 Loan from either:

- (a) any Transaction Obligor or any of its advisers; or
- (b) another Finance Party, if the information was obtained by that Finance Party directly or indirectly from any Transaction Obligor 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:
 - (i) is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of Clause 42 (*Confidentiality*); or
 - (ii) is identified in writing at the time of delivery as non-confidential by any Transaction Obligor or any of its advisers; or
 - (iii) is known by that Finance Party before the date the information is disclosed to it in accordance with (a) or (b) 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 any Transaction Obligor 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.

“Confidentiality Undertaking” means a confidentiality undertaking substantially in a recommended form of the LMA from time to time.

“Corresponding Debt” means any amount, other than a Parallel Debt, which an Obligor owes to a Finance Party under or in connection with the Finance Documents.

“CTA” means the Corporation Tax Act 2009.

“Daily OPEX Cap” means, in relation to a Facility Vessel:

- (a) for the first Relevant Period, US\$6,000 per day; and
- (b) for each subsequent Relevant Period during the Facility Period, such amount per day as is specified in the budget in relation to that Facility Vessel delivered to, and approved by, the Agent (acting on the instructions of the Majority Lenders) in accordance with Clause 20.4(a).

“Deed of Covenants” means, in relation to a Vessel registered under an Approved Flag whose laws prescribe a statutory form of vessel mortgage, a first (or, as the case may be, second) priority deed of covenants collateral to the relevant Mortgage or Collateral Vessel Facility Mortgage, in the agreed form.

“Default” means an Event of Default or any event or circumstance specified in Clause 27 (*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 any of the foregoing) be an Event of Default.

“Delegate” means any delegate, agent, attorney, co-trustee or other person 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.

“Dividend / Loan Payment Criteria” means, at the time of a proposed dividend or Permitted Loan Repayment by a Borrower, Intermediate HoldCo or HoldCo:

- (a) the Obligors can demonstrate to the satisfaction of the Agent that the amount of the Loan then outstanding is no greater than an amount equal to 50% of the aggregate Market Value of the Facility Vessels;

- (b) no dividend, payment or repayment shall be made or declared prior to the second anniversary of the first Utilisation Date and the Borrowers have made at least the first eight (8) Repayment Instalments in respect of each relevant Tranche in accordance with Clause 6 (*Repayment*) of this Agreement;
- (c) no Event of Default has occurred and is continuing or would result from the making of such dividend, payment or repayment;
- (d) where applicable, the dividend, payment or repayment is made simultaneously with any mandatory prepayment of the Loan required in accordance with Clause 7.6 (*Mandatory Prepayments – Permitted Dividends / Permitted Loan Repayments*);
- (e) no dividend, payment or repayment shall be made unless the Borrowers can demonstrate to the Agent that, following the making of such dividend, payment or repayment:
 - (i) the aggregate amount standing to the credit of the Earnings Accounts will be at least an amount equal to US\$750,000 in respect of both Facility Vessels (subject to and taking into account any prepayments required pursuant to Clause 7.6, if any)
 - (ii) the aggregate amount standing to the credit of the Minimum Liquidity Accounts will be at least an amount equal to US\$500,000 (US\$250,000 per Facility Vessel); and
 - (iii) until, in relation to each Facility Vessel, the relevant Dry Docking Reserve Account has been fully funded (and the amount of US\$850,000 in respect of each Facility Vessel (US\$1,700,000 in aggregate) has accrued and is standing to the credit thereof) to cover the next scheduled dry docking of that Facility Vessel and, as applicable, for the purposes of funding the ballast water treatment system for the relevant Facility Vessel;
- (f) in the case of a dividend, payment or repayment by any Borrower, such dividend, payment or repayment is made from amounts standing to the credit of such Borrower's Earnings Account after payment of the amounts in paragraphs (i) to (v) of Clause 25.4(c), provided that any such dividend, payment or repayment shall only be made on a Quarter Date;
- (g) in the case of a dividend, payment or repayment by Intermediate HoldCo, such dividend, payment or repayment shall be made solely from the proceeds of a dividend, payment or repayment by a Borrower pursuant to paragraph (f) above, provided that any such dividend, payment or repayment shall only be made on a Quarter Date;
- (h) in the case of a dividend, payment or repayment by HoldCo, such dividend, payment or repayment shall be made solely from the proceeds of a dividend, payment or repayment by Intermediate HoldCo pursuant to paragraph (g) above, provided that any such dividend, payment or repayment shall only be made on a Quarter Date; and
- (i) neither HoldCo, Intermediate HoldCo nor any Borrower shall make or declare more than two such dividends, payments or repayments in any one financial year.

“**DOC**” means, in relation to the ISM Company, a valid Document of Compliance issued for the ISM Company by the Administration (as defined in the ISM Code) under paragraph 13.2 of the ISM Code.

“**Dollars**” and “**US\$**” mean the lawful currency, for the time being, of the United States of America.

“**Dry Docking Reserve Accounts**” means, in respect of each Facility Vessel, an account or accounts in the name of the relevant Borrower with the Account Bank, or any other account opened or established with that office of the Account Bank or another office of the Account Bank which is designated by the Agent as a “Dry Docking Reserve Account” for the purposes of this Agreement and “**Dry Docking Reserve Account**” means any of them.

“**Earnings**” means, in relation to a Vessel all moneys whatsoever which are now, or later become, payable (actually or contingently) to the Borrower (or the relevant Collateral Vessel Facility Borrower as the case may be) owning that Vessel or the Security Agent and which arise out of the use or operation of the Vessel owned by it including (but not limited to):

- (a) all freight, hire and passage moneys, money or compensation payable for the provision of services by or from a Vessel or under any charter commitment, compensation payable to that Borrower (or the relevant Collateral Vessel Facility Borrower as the case may be) or the Security Agent in the event of requisition of a Vessel for hire, general average consolidation, remuneration for salvage and towage services, demurrage and detention moneys and damages for breach (or payments for variation or termination) of any charterparty or other contract for the employment of a Vessel;
- (b) all moneys which are at any time payable under Insurances in respect of loss of earnings; and
- (c) if and whenever a Vessel is employed on terms whereby any moneys falling within paragraphs (a) or (b) is pooled or shared with any other person, that proportion of the net receipts of the relevant pooling or sharing arrangement which is attributable to a Vessel.

“**Earnings Accounts**” means, in respect of each Borrower, an account in the name of that Borrower with the Account Bank, or any other account opened or established with that office of the Account Bank or another office of the Account Bank which is designated by the Agent as an “Earnings Account” for the purposes of this Agreement and “**Earnings Account**” means any of them.

“**EEA Member Country**” means any member state of the European Union, Iceland, Liechtenstein and Norway.

“**Environment**” means humans, animals, plants and all other living organisms including the ecological systems of which they form part and the following media:

- (a) air (including, without limitation, air within natural or man-made structures, whether above or below ground);
- (b) water (including, without limitation, territorial, coastal and inland waters, water under or within land and water in drains and sewers); and
- (c) land (including, without limitation, land under water).

“**Environmental Approval**” means any present or future permit, ruling, variance or other authorisation required under Environmental Law.

“**Environmental Claim**” means any claim, proceeding, formal notice or investigation by any governmental, judicial or regulatory authority or any other person which arises out of an Environmental Incident or an alleged Environmental Incident or which relates to any

Environmental Law and, for this purpose, “claim” includes a claim for damages, compensation, contribution, injury, fines, losses and penalties or any other payment of any kind, including in relation to clean-up and removal, whether or not similar to the foregoing; an order or direction to take, or not to take, certain action or to desist from or suspend certain action; and any form of enforcement or regulatory action, including the arrest or attachment of any asset.

“**Environmental Incident**” means:

- (a) any release, emission, spill or discharge into a Vessel or into or upon the air, sea, land or soils (including the seabed) or surface water of Environmentally Sensitive Material within or from a Vessel; or
- (b) any incident in which Environmentally Sensitive Material is released, emitted, spilled or discharged into or upon the air, sea, land or soils (including the seabed) or surface water from a vessel other than a Vessel and which involves a collision between a Vessel (and such other vessel or some other incident of navigation or operation, in either case, in connection with which a Vessel is actually or potentially liable to be arrested, attached, detained or injuncted and/or a Vessel and/or any Transaction Obligor and/or any operator or manager of a Vessel is at fault or allegedly at fault or otherwise liable to any legal or administrative action; or
- (c) any other incident in which Environmentally Sensitive Material is released, emitted, spilled or discharged into or upon the air, sea, land or soils (including the seabed) or surface water otherwise than from a Vessel and in connection with which a Vessel is actually or potentially liable to be arrested and/or where any Obligor (or any Collateral Guarantor as the case may be) and/or any operator or manager of a Vessel is at fault or allegedly at fault or otherwise liable to any legal or administrative action, other than in accordance with an Environmental Approval.

“**Environmental Law**” means any present or future law or regulation relating to pollution or protection of human health or the Environment, to conditions in the workplace, to the carriage, generation, handling, storage, use, release or spillage of Environmentally Sensitive Material or to actual or threatened releases of Environmentally Sensitive Material.

“**Environmentally Sensitive Material**” means and includes all contaminants, oil, oil products, toxic substances and any other substance (including any chemical, gas or other hazardous or noxious substance) which is (or is capable of being or becoming) polluting, toxic or hazardous.

“**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.

“**Event of Default**” means any event or circumstance specified as such in Clause 27 (*Events of Default*) or any other event or circumstance described as such in any other provision of a Finance Document.

“**Facility**” means the term loan facility made available under this Agreement as described in Clause 2.1 (*The Facility*).

“**Facility Office**” means:

- (a) in respect of a Lender, the office or offices notified by a Lender to the Agent in writing on or before the date it becomes a Lender (or, following that date, by not less than five (5) Business Days’ written notice) as the office or offices 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 been reduced to zero and all Secured Liabilities have been fully paid and discharged.

“Facility Vessels” means each of Vessel A and Vessel B (and each a **“Facility Vessel”**).

“FATCA” means:

- (a) sections 1471 to 1474 of the Code or any associated regulations or other official guidance;
- (b) any treaty, law, regulation or other official guidance enacted in 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 any regulation referred to in paragraph (a) above; or
- (c) any agreement pursuant to the implementation of any treaty, law, regulation or other official guidance 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 or letters dated on or about the date of this Agreement between (i) the Agent or the Security Agent and (ii) the Borrowers setting out any of the fees referred to in Clause 11 (*Fees*).

“Finance Document” means:

- (a) this Agreement;
- (b) any Security Document;
- (c) any Fee Letter;
- (d) any Transfer Certificate;
- (e) any Assignment Agreement; or

- (f) any other document which is executed with the purpose of establishing priority subordination or an intercreditor arrangement or any other document designated as a Finance Document by the Agent and any Transaction Obligor party to it.

“Finance Party” means the Agent, the Security Agent or a Lender (together the **“Finance Parties”**).

“Financial Indebtedness” means any indebtedness for or in respect of:

- (a) moneys borrowed;
- (b) any amount raised by acceptance under any acceptance credit 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) any redeemable preference share issues which mature prior to the date which is 6-months after the Termination Date or are otherwise classified as borrowings under GAAP;
- (e) 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;
- (f) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (g) any amount raised under any other transaction (including any forward sale or purchase agreement) of a type not referred to in any other paragraph of this definition having the commercial effect of a borrowing;
- (h) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close out of that derivative transaction, that amount) shall be taken into account);
- (i) 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;
- (j) the amount of any liability in respect of any guarantee, indemnity or similar assurance against financial loss in respect of any of the items referred to in paragraphs (a) to (i) above; and
- (k) any other transaction (including a forward sale or purchase agreement) having the commercial effect of borrowing.

“Financial Quarter” means each period of three (3) months ending on a Quarter Date.

“GAAP” means generally accepted accounting principles, including International Financial Reporting Standards and related interpretations as amended, supplemented, issued or adopted from time to time by the International Accounting Standards Board to the extent applicable to the relevant financial statements.

“**General Assignment**” means, in relation to a Borrower, any assignment of the Earnings, Insurances and Requisition Compensation in respect of the Facility Vessel owned by that Borrower, entered into by that Borrower in favour of the Security Agent in the agreed form.

“**Group**” means the Borrowers, Intermediate HoldCo and HoldCo and their respective Subsidiaries for the time being.

“**Guarantees**” means the guarantees and indemnities in Clause 18 (*Guarantee and indemnity*) (and “**Guarantee**” means any of them);

“**Guarantors**” means together, Intermediate HoldCo, HoldCo and the Collateral Guarantors.

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

“**IAPPC**” means a valid and current International Air Pollution Prevention Certificate.

“**IFRS**” means international accounting standards within the meaning of the IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements.

“**Industrial Competitor**” means any entity whose primary function is to own and/or operate ships and such entity is a direct competitor of the Group provided that, for the avoidance of doubt, any bank, financial institution, trust, fund or other entity that makes, purchases or invests in loans, securities or other financial assets as a core part of its business, shall not be deemed to be an industrial competitor.

“**Insolvency Event**” in relation to an entity means that the entity:

- (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 (d) 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 thirty (30) days of the institution or presentation thereof;

- (f) has exercised in respect of it one or more of the stabilisation powers pursuant to Part 1 of the Banking Act 2009 and/or has instituted against it a bank insolvency proceeding pursuant to Part 2 of the Banking Act 2009 or a bank administration proceeding pursuant to Part 3 of the Banking Act 2009;
- (g) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (h) 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 (other than, for so long as it is required by law or regulation not to be publicly disclosed, any such appointment which is to be made, or is made, by a person or entity described in (d));
- (i) 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 thirty (30) days thereafter;
- (j) 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 (a) to (i); or
- (k) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

“Insurances” means, in relation to a Vessel:

- (a) any policy and contract of insurance including entries of that Vessel in any protection and indemnity or war risk association, effected in relation to that Vessel and that Vessel’s Earnings whether before or after the date of this Agreement; and
- (b) all rights and other assets relating to, or derived from, any such policies and contracts of insurance (including any rights to a return for a premium).

“Interest Period” means, in relation to a Tranche, each period determined in accordance with Clause 9 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 8.3 (*Default interest*).

“Interpolated Screen Rate” means, in relation to the Loan, the rate (rounded to the same number of decimal places as the two relevant Screen Rates) which results from interpolating on a linear basis between:

- (a) the applicable Screen Rate for the longest period (for which that Screen Rate is available) which is less than the Interest Period of the Loan; and
- (b) the applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds the Interest Period of the Loan,

each as of the Specified Time for the currency of the Loan.

“ISM Code” means the International Safety Management Code for the Safe Operation of Ships and for Pollution Prevention (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).

“**ISM Company**” means, at any given time, the company responsible for a Vessel’s compliance with the ISM Code.

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

“**ISSC**” means a valid and current International Ship Security Certificate issued under the ISPS Code.

“**ITA**” means the Income Tax Act 2007.

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

“**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 Acts, the possibility that an undertaking to assume liability for or to indemnify a person against non-payment of UK stamp duty may be void and defences of set-off or counterclaim;
- (c) the limitation of the enforcement of the terms of leases of real property by laws of general application to those leases;
- (d) similar principles, rights and remedies under the laws of any Relevant Jurisdiction; and
- (e) any other matters which are set out as qualifications or reservations as to matters of law of general application in any legal opinions supplied to the Agent by its appointed legal counsel under this Agreement.

“**Lender**” means:

- (a) any Original Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Party in accordance with Clause 28 (*Changes to the Lenders*),

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

“**LIBOR**” means, in relation to the Loan or any part of it:

- (a) the applicable Screen Rate; or
- (b) (if no Screen Rate is available for the Interest Period of the Loan or any part of it) the Interpolated Screen Rate for the Loan;
- (c) if:
 - (i) no Screen Rate is available for Dollars; or

- (ii) no Screen Rate is available for the Interest Period of the Loan or any part of it and it is not possible to calculate the Interpolated Screen Rate for the Loan or part of it,

the Reference Bank Rate,

as of in the case of paragraphs (a) and (c) above the Specified Time on the Quotation Day for Dollars and for a period equal in length to the Interest Period of the Loan, or part of it and, if any such rate is below 0.5% per annum, LIBOR shall be deemed to be 0.5% per annum.

“Limitation Acts” means the Limitation Act 1980, and the Foreign Limitation Periods Act 1984.

“Loan” means the Tranches drawn or to be drawn under the Facility or, as the context requires, the aggregate principal amount outstanding under the Facility for the time being (which, for the avoidance of doubt, shall be equal to the aggregate principal amount outstanding for the time being of all Tranches).

“Lomar Corporation” means Lomar Corporation Limited, a corporation incorporated under the laws of Bermuda whose registered office is at 3rd Floor, Par La Ville Place, 14 Par La Ville Road, Hamilton, HM08, Bermuda.

“Lomar Shipping” means Lomar Shipping Limited, a company incorporated under the laws of England and Wales whose registered office is at 13-14 Hobart Place, London SW1W 0HH, United Kingdom.

“Major Casualty” means, in relation to a Vessel any casualty to that Vessel in respect of which the claim or the aggregate of the claims against all insurers, inclusive of any franchise or deductible, exceeds or may exceed the Major Casualty Amount.

“Major Casualty Amount” means, in relation to a Vessel, US\$750,000 or the equivalent in any other currency.

“Majority Lenders” means a Lender or Lenders whose Commitments aggregate at least 66²/₃% of the Total Commitments or, if the Total Commitments have been reduced to zero, aggregated at least 66²/₃% of the Total Commitments immediately prior to the reduction.

“Make Whole Amount” means an amount equal to the greater of:

- (a) 3 per cent. of the principal amount to be prepaid, repaid or accelerated (as the case may be); and
- (b) the amount equal to the amount of all interest (including Margin and LIBOR) which would otherwise have accrued for the period from the date of such prepayment, repayment or acceleration (as the case may be) (assuming for these purposes that LIBOR is the greater of (I) the LIBOR rate for a period of six months on the date which is two (2) Business Days prior to the date of prepayment, repayment or acceleration (as the case may be) and (II) 2.0% per annum) to the date which is immediately after the date falling eighteen (18) months after the first Utilisation Date in respect of the amount prepaid, repaid or accelerated (as the case may be).

“Management Agreements” means any Technical Management Agreement and any Commercial Management Agreement.

“Manager’s Undertaking” means, in relation to a Vessel, the letter(s) of undertaking from each Approved Manager in favour of the Security Agent, in the agreed form.

“**Margin**” means six point two five per cent. (6.25%) per annum.

“**Market Value**” means, in relation to a Facility Vessel, the value of that Facility Vessel as determined in accordance with Clause 26.2 (*Valuation of Facility Vessels*).

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

- (a) the business, operations, property, condition (financial or otherwise) or prospects of a Transaction Obligor; or
- (b) the ability of a Transaction Obligor to perform its obligations under any Finance Document; or
- (c) the validity or enforceability of, or the effectiveness or ranking of any Security granted or purported to be granted pursuant to any of, the Finance Documents; or
- (d) the rights or remedies of any Finance Party under any of the Finance Documents.

“**Maximum Loan Amount**” means an amount of up to the lower of:

- (a) US\$19,000,000;
- (b) an amount sufficient to ensure that the aggregate drawn amount in respect of each Tranche at any time does not exceed 63.4% of the aggregate Market Value of the Facility Vessels but excluding, for the avoidance of doubt, any Facility Vessel which has been directly or indirectly sold or become a Total Loss).

“**Maximum Tranche Amount**” means, in relation to a Tranche, an amount up to the lower of:

- (a)
 - (i) in respect of Tranche A, US\$9,500,000;
 - (ii) in respect of Tranche B, US\$9,500,000; and
- (b) an amount, when taken together with the aggregate drawn amount in respect of the other Tranche, does not exceed the Maximum Loan Amount.

“**Minimum Liquidity Account**” means an account in the name of each Borrower with the Account Bank, or any other account opened or established with that office of the Account Bank or another office of the Account Bank which is designated by the Agent as a “Minimum Liquidity Account” for the purposes of this Agreement and “**Minimum Liquidity Account**” means any of them.

“**Minimum Liquidity Amount**” means US\$250,000 per Facility Vessel.

“**MOA**” means, in relation to a Facility Vessel, the memorandum of agreement specified in Schedule 8 (*Details of Vessels*) between the relevant Seller and the relevant Borrower relating to the sale and purchase of such Facility Vessel as amended and supplemented from time to time.

“**Mortgage**” means, in relation to a Facility Vessel, the first priority or first preferred ship mortgage (as the case may be) granted or to be granted (as the context so requires) over that Facility Vessel by the relevant Borrower in favour of the Security Agent in the agreed form.

“**New Lender**” has the meaning given to that term in Clause 28 (*Changes to the Lenders*).

“**Obligors**” means each of the Borrowers, Intermediate HoldCo and HoldCo and “**Obligor**” means any one of them.

“**OFAC**” means the Office of Foreign Assets Control of the US Department of the Treasury.

“**Operating Expenses**” means, in relation to a Facility Vessel, expenses properly and reasonably incurred by the Borrower owning that Facility Vessel in connection with the ownership, operation, commercial and technical management, employment, maintenance, repair and insurance of that Facility Vessel, excluding dry docking costs and any repositioning costs payable in respect of any contract of employment, but including insurance premiums and reimbursements.

“**Original Jurisdiction**” means, in relation to an Obligor, the jurisdiction under whose laws that Obligor is incorporated as at the date of this Agreement.

“**Parallel Debt**” has the meanings given in Clause 30.29 (*Parallel Debt*).

“**Participating Member State**” means any member state of the European Union that adopts or has adopted the euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union.

“**Party**” means a party to this Agreement (together the “**Parties**”).

“**Permitted Collateral Vessel Disposal**” means a sale of a Collateral Vessel by a Collateral Vessel Facility Borrower provided always that:

- (a) no Default has occurred and is continuing or would occur as a result of the sale;
- (b) the sale is on arm’s length terms for cash proceeds payable in full on completion and for no less than its Market Value as at the date of contracting for sale;
- (c) the sale must be to a third party who is not a Related Party;
- (d) upon completion of the sale of that Collateral Vessel the net sale proceeds are immediately applied in prepayment in accordance with Clause 7.3 (*Mandatory prepayment*) and Clause 7.7(c) (*Restrictions*); and
- (e) any such sale is completed in accordance with the relevant terms of the Collateral Vessel Facility.

“**Permitted Dividend**” means a dividend made by a Borrower to Intermediate HoldCo, by Intermediate HoldCo to HoldCo or by HoldCo to any of its direct or indirect shareholders, in conformity with the Dividend / Loan Payment Criteria at the date of the declaration of such dividend, as certified to the Agent in writing by the relevant Borrower, Intermediate HoldCo or HoldCo (as the case may be).

“**Permitted Facility Vessel Disposal**” means a sale of a Facility Vessel by a Borrower provided always that:

- (a) no Default has occurred and is continuing or would occur as a result of the sale;
- (b) the sale is on arm’s length terms for cash proceeds payable in full on completion and for no less than its Market Value as at the date of contracting for sale;

- (c) the sale must be to a third party who is not a Related Party;
- (d) (prior to the relevant Borrower entering into a legally binding commitment in relation to such sale) the Agent has received evidence in form and substance satisfactory to it demonstrating that the net sale proceeds from the sale of that Facility Vessel are sufficient to ensure that the prepayment requirements set out in Clause 7.3 (*Mandatory prepayment*) and Clause 7.7(c) (*Restrictions*) will be satisfied (including but not limited to the requirement to pay all accrued interest, fees, any prepayment fees and other amounts due and payable under the relevant Finance Documents);
- (e) upon completion of the sale of that Facility Vessel the net sale proceeds are immediately applied in prepayment in accordance with Clause 7.3 (*Mandatory prepayment*) and Clause 7.7(c) (*Restrictions*) and in payment of such other amounts due and payable under the Finance Documents; and
- (f) the VTL Coverage set out in Clause 26.1(a) (*Additional security*) shall be maintained for the remaining Facility Vessel.

“Permitted Intercompany Loan” means:

- (a) any downstream loan from:
 - (i) HoldCo to Intermediate HoldCo (solely using proceeds received from HoldCo’s direct shareholders); and
 - (ii) Intermediate HoldCo to any Borrower (solely using the proceeds received from HoldCo); and
- (b) any loan from one Borrower to another Borrower, provided that:
 - (i) no such loan shall be made unless the Borrower making the loan can demonstrate to the Agent that the amount standing to the credit of its Earnings Account will remain at least equal to the Earnings Account Floor after the loan has been made; and
 - (ii) no Default has occurred and is continuing at the time the loan is made or would result from the making of such loan,

provided that, in each case, such loan is (i) non-interest bearing, (ii) subordinated and (iii) subject to Transaction Security, in each case in form and substance acceptable to the Agent (acting on the instructions of the Majority Lenders).

“Permitted Loan Repayment” means any loan payment made by a Borrower, Intermediate HoldCo or HoldCo pursuant to any Permitted Intercompany Loan, provided that such payment is in conformity with the Dividend / Loan Payment Criteria at the date of such payment, as certified to the Agent in writing by the relevant Borrower, Intermediate HoldCo or HoldCo (as the case may be).

“Permitted Maritime Lien” means, in relation to a Vessel:

- (a) unless a Default is continuing, any ship repairer’s or outfitter’s possessory lien in respect of that Vessel for an amount not exceeding the Major Casualty Amount or the equivalent in any other currency;
- (b) any lien on that Vessel for master’s, officer’s or crew’s wages outstanding in the ordinary course of its trading and in accordance with usual maritime practice;

- (c) liens for salvage;
- (d) liens for master's disbursements incurred in the ordinary course of trading;
- (e) any other lien arising by operation of law or otherwise in the ordinary course of the operation of that Vessel, provided that such lien (or the aggregate of such liens at any time) does not secure an amount greater than the Major Casualty Amount and secures obligations not more than 30 days overdue;
- (e) any other lien arising by operation of law or otherwise in the ordinary course of operation, repair or maintenance of a Vessel and not as a result of any default or omission by the relevant Borrower or the relevant Collateral Vessel Facility Borrower (as the case may be), provided such liens do not secure amounts more than 30 days overdue (unless the overdue amount is being contested by the relevant Borrower (or the relevant Collateral Vessel Facility Borrower as the case may be), in good faith by appropriate steps) and subject, in the case of liens for repair or maintenance, to Clause 23.13 (*Restrictions on Chartering etc.*); or
- (f) Security arising by operation of law in respect of Taxes which are not overdue for payment or which are being contested in good faith by appropriate steps and in respect of which appropriate reserves have been made.

"Permitted OPEX" means, in respect of each Facility Vessel, the aggregate Operating Expenses incurred in respect of that Facility Vessel for each Relevant Period, provided that such aggregate Operating Expenses must not exceed an amount equal to (i) the then applicable Daily OPEX Cap multiplied by (ii) the number of days in that Relevant Period.

"Permitted Security" means, in relation to a Vessel, any Security over that Vessel which is:

- (a) granted by or pursuant to the relevant Finance Documents;
- (b) in the case of a Collateral Vessel, granted by or pursuant to the terms of the Collateral Vessel Facility (or the Finance Documents under, and as defined in, the Collateral Vessel Facility);
- (c) a Permitted Maritime Lien; or
- (d) approved in writing by the Agent (on behalf of all Lenders).

"Permitted Transaction" means:

- (a) any disposal required, Financial Indebtedness incurred, guarantee, indemnity or Security or Quasi-Security given, or other transaction arising, under the Finance Documents or under or pursuant to the terms of the Collateral Vessel Facility (or the Finance Documents under, and as defined in, the Collateral Vessel Facility);
- (b) transactions (other than (i) any sale, lease, license, transfer or other disposal and (ii) the granting or creation of any Security or the incurring or permitting to subsist of Financial Indebtedness) conducted in the ordinary course of trading on arm's length terms;
- (c) any charter of a Vessel expressly permitted under the terms of the Finance Documents; or
- (d) any release of Collateral Security which takes place in accordance with Clause 29.4 (*Release of Collateral Security*).

“Permitted Vessel Disposal” means either a Permitted Facility Vessel Disposal or a Permitted Collateral Vessel Disposal.

“Prepayment Fee” means, in respect of any amount of principal prepaid, repaid or accelerated (as the case may be) under Clause 7 (*Prepayment and cancellation*) or otherwise:

- (a) the Make Whole Amount if the prepayment, repayment or acceleration (as the case may be) occurs on or before the date falling 18 months after the relevant Utilisation Date of the amount prepaid, repaid or accelerated (as the case may be);
- (b) 3% of the amount paid if the prepayment, repayment or acceleration (as the case may be) occurs following the date falling immediately 18 months after the relevant Utilisation Date but on or before the date falling 30 months after the relevant Utilisation Date of the amount prepaid, repaid or accelerated (as the case may be);
- (c) 2% of the amount paid if the prepayment, repayment or acceleration (as the case may be) occurs following the date falling immediately 30 months after the relevant Utilisation Date of the amount prepaid, repaid or accelerated (as the case may be) but on or before the date falling 42 months after the relevant Utilisation Date of the amount prepaid, repaid or accelerated (as the case may be); and
- (d) nil if the prepayment, repayment or acceleration (as the case may be) occurs after the date falling 42 months after the relevant Utilisation Date of the amount prepaid, repaid or accelerated (as the case may be) but on or before the Termination Date.

“Quarter Date” means 31 January, 30 April, 31 July and 31 October of each calendar year.

“Quasi-Security” has the meaning given to that term in Clause 22.9 (*Negative pledge*).

“Quotation Day” means, in relation to any period for which an interest rate is to be determined, two (2) Business Days before the first day of that period unless market practice differs in the Relevant Interbank Market in which case the Quotation Day will be determined by the Agent in accordance with market practice in the Relevant Interbank Market (and if quotations would normally be given by leading banks in the Relevant Interbank Market on more than one day, the Quotation Day will be the last of those days).

“Receiver” means a receiver or receiver and manager or administrative receiver of the whole or any part of the Security Property.

“Reference Bank Rate” means the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Agent at its request by the Reference Banks as the rate at which the relevant Reference Bank could borrow funds in the Relevant Interbank Market in Dollars for the relevant period, were it to do so by asking for and then accepting interbank offers for deposits in reasonable market size in that currency and for that period.

“Reference Banks” means the principal London offices of Barclays Bank PLC, Lloyds Bank plc and HSBC Bank plc, or such other banks as may be appointed by the Agent in consultation with the Borrowers.

“Related Fund” in relation to a fund (the **“first fund”**), means a fund which is managed or advised by the same investment manager or investment adviser as the first fund or, if it is managed by a different investment manager or investment adviser, a fund whose investment manager or investment adviser is an Affiliate of the investment manager or investment adviser of the first fund.

“Related Party” means any member of the Group or any of their respective Affiliates (or any direct or indirect shareholder, officer, employee or director of any member of the Group or of any of their respective Affiliates or direct or indirect shareholders).

“Relevant Document” means:

- (a) any Finance Document;
- (b) any Management Agreement;
- (c) each MOA;
- (d) each Charter; and
- (e) any other document designated as such by the Agent and any Transaction Obligor.

“Relevant Interbank Market” means the London interbank market.

“Relevant Jurisdiction” means, in relation to an Obligor:

- (a) its Original Jurisdiction;
- (b) any jurisdiction where any asset subject to or intended to be subject to the Transaction Security to be created by it is situated; and
- (c) any jurisdiction whose laws govern the perfection of any of the Security Documents entered into by it.

“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.

“Relevant Period” means each of:

- (a) the period starting on the Utilisation Date for the Tranche relating to the relevant Facility Vessel and ending on 31 December 2021; and
- (b) each calendar year thereafter.

“Relevant Quarter” means each three (3) month period starting on the date falling after a Quarter Date, and ending on (and including) the following Quarter Date.

“Repayment Instalment” has the meaning given to that term in Clause 6.1 (*Repayment Instalments*).

“Repeating Representations” means each of the representations set out in Clause 19 (*Representations and warranties*), other than Clauses 19.8 (*Insolvency*), 19.9 (*No filing or stamp taxes*), 19.13 (*No proceedings pending or threatened*), 19.32 (*ISM Code and ISPS Code*), 19.33 (*Vessels*) and 19.34 (*Deduction of Tax*) and any representation in any other Finance Document which is expressed to be a “Repeating Representation” or is otherwise expressed to be repeated.

“Replacement Benchmark” means a benchmark rate which is:

- (a) formally designated, nominated or recommended as the replacement for a Screen Rate by:

(i) the administrator of that Screen Rate (provided that the market or economic reality that such benchmark rate measures is the same as that measured by that Screen Rate); 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 Benchmark” 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 that Screen Rate; or

(c) in the opinion of the Majority Lenders and the Borrowers, an appropriate successor to a Screen Rate.

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

“**Required Time Charter**” means a charter specified in Clause 23.18.

“**Requisition Compensation**” means, in relation to a Vessel:

(a) any and all compensation or other monies payable by reason of any act or event such as is referred to in paragraph (b) or (c) of the definition of “Total Loss” relating to that Vessel; and

(b) all claims, rights and remedies of the relevant Borrower (or the relevant Collateral Vessel Facility Borrower as the case may be) against the government or official authority or person or persons claiming to be or to represent a government or official authority or other entity in relation to (a) above.

“**Resolution Authority**” means any body which has authority to exercise any Write-down and Conversion Powers.

“**Restricted Person**” means a person that is:

(a) listed on, or owned or controlled by a person listed on any Sanctions List;

(b) located in, incorporated under the laws of, or owned or controlled by, or acting on behalf of, a person located in or organised under the laws of a Sanctioned Country; or

(c) otherwise a target of Sanctions (being a person with whom a US person or other national under the jurisdiction of a Sanctions Authority would be prohibited or restricted by law from engaging in trade, business or other activities or against whom Sanctions are otherwise directed).

“**Sanctioned Country**” means a country or territory that is, or whose government is, the subject of Sanctions broadly prohibiting dealings with such government, country or territory, including, without limitation, as at the date of this Agreement, the Crimea region of Ukraine, Cuba, Iran, North Korea and Syria.

“**Sanctions**” means any economic or trade sanctions, laws, embargoes, regulations, freezing provisions, prohibitions or other restrictions relating to trading, doing business, investment,

exporting, financing or making assets available (or other activities similar to or connected with any of the foregoing):

- (a) imposed by law or regulation of the United Kingdom, the Council of the European Union or any of its Members States, the United Nations or its Security Council or the government of the United States of America;
- (b) the respective governmental institutions and agencies of any of the foregoing, including without limitation, OFAC, the United States Department of State, and the Office of Financial Sanctions Implementation Her Majesty's Treasury (OFSI) (together, the "**Sanctions Authorities**"); or
- (c) otherwise imposed by any law or regulation by which any Transaction Obligor or any Affiliate of any of them is bound or, as regards a regulation, compliance with which is reasonable in the ordinary course of business of any Transaction Obligor or any Affiliate of any of them.

"**Sanctions List**" means the "Specially Designated Nationals and Blocked Persons" list issued by OFAC, the "Consolidated List of Financial Sanctions Targets in the UK. Status: Asset Freeze Targets" issued by OFSI, or any similar list of persons or entities whose assets are frozen, issued or maintained and made public by any of the Sanctions Authorities that has the effect of prohibiting transactions with such persons, as updated.

"**Screen Rate**" means the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for the relevant currency and period displayed on pages LIBOR01 or LIBOR02 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters. If such page or the service ceases to be available, the Agent may specify another page or service displaying the relevant rate after consultation with the Borrowers.

"**Screen Rate Replacement Event**" means, in relation to a Screen Rate:

- (a) the methodology, formula or other means of determining that Screen Rate has, in the opinion of the Majority Lenders and the Borrowers materially changed;
- (b)
 - (i)
 - (A) the administrator of that Screen Rate 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 that Screen Rate is insolvent,

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

- (ii) the administrator of that Screen Rate publicly announces that it has ceased or will cease, to provide that Screen Rate permanently or indefinitely and, at that time, there is no successor administrator to continue to provide that Screen Rate;

- (iii) the supervisor of the administrator of that Screen Rate publicly announces that such Screen Rate has been or will be permanently or indefinitely discontinued;
- (iv) the administrator of that Screen Rate or its supervisor announces that that Screen Rate may no longer be used;
- (v) in the case of a Screen Rate for LIBOR, the supervisor of the administrator of that Screen Rate makes a public announcement or publishes information:
 - (A) stating that that Screen Rate is no longer or, as of a specified future date will no longer be, representative of the underlying market or economic reality that it is intended to measure and that representativeness will not be restored (as determined by such supervisor); and
 - (B) with awareness that any such announcement or publication will engage certain triggers for fallback provisions in contracts which may be activated by any such pre-cessation announcement or publication;
- (c) the administrator of that Screen Rate determines that that Screen Rate 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 Borrowers) temporary; or
 - (ii) that Screen Rate is calculated in accordance with any such policy or arrangement for a period no less than the period opposite that Screen Rate in Schedule 9 (*Screen rate contingency periods*); or
- (d) in the opinion of the Majority Lenders and the Borrowers, that Screen Rate is otherwise no longer appropriate for the purposes of calculating interest under this Agreement.

“Second Priority Security Documents” means:

- (a) each Collateral Vessel Facility Mortgage;
- (b) each Collateral Vessel Facility Account Security;
- (c) each Collateral Vessel Facility General Assignment;
- (d) each Collateral Vessel Facility Share Charge;
- (e) each Managers’ Undertaking in relation to a Collateral Vessel;
- (f) the Collateral Vessel Facility Subordination Agreement; and
- (g) any other document, supplement, second priority instrument, subordination undertaking as the Agent (acting on the instructions of the Lenders) may require in connection with the cross-collateralisation arrangements contemplated hereunder.

“Secured Liabilities” means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) of each Transaction Obligor to any Finance Party under or in connection with any Finance Document.

“**Secured Party**” means each Finance Party, from time to time party to this Agreement, any Receiver or any Delegate (together the “**Secured Parties**”).

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

“**Security Documents**” means:

- (a) any Mortgage;
- (b) any Deed of Covenants;
- (c) any General Assignment;
- (d) any Accounts Security;
- (e) any Charter Assignment;
- (f) any Guarantee;
- (g) any Manager’s Undertaking;
- (h) any Share Charge;
- (i) any Subordination and Assignment Agreement;
- (j) any Collateral Vessel Facility Subordination and Assignment Agreement;
- (k) any Second Priority Security Document; and/or
- (l) any other document as may be executed to guarantee and/or secure any amounts owing to the Finance Parties under any Finance Document.

“**Security Property**” means:

- (a) the Transaction Security expressed to be granted in favour of the Security Agent as trustee for the Secured Parties and all proceeds of that Transaction Security;
- (b) all obligations expressed to be undertaken by a Transaction Obligor to pay amounts in respect of the Secured Liabilities to the Security Agent as trustee for the Finance Parties and secured by the Transaction Security together with all representations and warranties expressed to be given by a Transaction Obligor or any other person in favour of the Security Agent as trustee for the Finance Parties;
- (c) the Security Agent’s interest in any turnover trust created under the Finance Documents; and
- (d) any other amounts or property, whether rights, entitlements, choses in action or otherwise, actual or contingent, which the Security Agent is required by the terms of the Finance Documents to hold as trustee on trust for the Secured Parties.

“**Seller**” means, in relation to each Facility Vessel, the person specified as such in Schedule 8 (*Details of Vessels*).

“**Share Charges**” means together:

- (a) the share security deed granted or to be granted (as the context so requires) by HoldCo in favour of the Security Agent over all of the shares in Intermediate HoldCo; and
- (b) each share security deed granted or to be granted (as the context so requires) by Intermediate HoldCo in favour of the Security Agent over the entire share capital in each Borrower,

in each case in the agreed form (and each a “**Share Charge**”).

“**Specified Time**” means a time determined in accordance with Schedule 7 (*Timetables*).

“**Subordination and Assignment Agreement**” means a subordination and assignment agreement entered into or to be entered into by the Borrowers, Intermediate Holdco and Holdco and the Security Agent in the agreed form.

“**Subsidiary**” means a subsidiary undertaking within the meaning of section 1162 of the Companies Act 2006.

“**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).

“**Technical Management Agreement**” means, in relation to a Vessel, any technical management agreement entered into or to be entered into (as applicable) between the relevant Borrower (or the relevant Collateral Vessel Facility Borrower as the case may be) and an Approved Technical Manager in form and substance acceptable to the Agent (acting on the instructions of the Majority Lenders).

“**Termination Date**” means 31 October 2025.

“**Total Commitments**” means the aggregate of the Commitments.

“**Total Loss**” means, in relation to a Vessel:

- (a) any actual, constructive, compromised, agreed or arranged total loss of that Vessel (;
- (b) any expropriation, confiscation, requisition or acquisition of that Vessel, whether or not for consideration (full, partial or nominal), which is effected by any government or official authority or by any person or persons claiming to be or to represent a government or official authority;
- (c) any arrest, capture, seizure or detention of that Vessel (including any hijacking or theft) unless it is within thirty (30) days redelivered to the relevant Borrower’s (or the relevant Collateral Vessel Facility Borrower’s as the case may be) full control.

“**Total Loss Date**” means, in relation to a Vessel:

- (a) in the case of an actual loss of that Vessel, the date on which it occurred or, if that is unknown, the date when that Vessel was last heard of;
- (b) in the case of a constructive, compromised, agreed or arranged total loss of that Vessel, the earliest of:
 - (i) the date on which a notice of abandonment is given to the insurers; and

- (ii) the date of any compromise, arrangement or agreement made by or on behalf of the relevant Borrower (or the relevant Collateral Vessel Facility Borrower as the case may be) with that Vessel's insurers in which the insurers agree to treat that Vessel as a total loss;
- (c) in the case where that Vessel has been captured or seized by pirates, the date falling three hundred and sixty (360) days after such capture or seizure (or, if applicable, such shorter period as provided for in the insurances for that Vessel as the period after which a vessel is deemed a total loss in such circumstances); and
- (d) in the case of any other type of total loss, on the date (or the most likely date) on which it appears to the Agent that the event constituting the total loss occurred.

"Tranche" means any one of Tranche A or Tranche B (together the **"Tranches"**).

"Tranche A" means that part of the Loan made or to be made available to Borrower A to finance in part Vessel A in the principal amount not exceeding the Maximum Tranche Amount for that Tranche.

"Tranche B" means that part of the Loan made or to be made available to Borrower B to finance in part Vessel B in the principal amount not exceeding the Maximum Tranche Amount for that Tranche.

"Transaction Obligors" means each of the Obligors and the Collateral Guarantors and **"Transaction Obligor"** means any one of them.

"Transaction Security" means the Security created or evidenced or expressed to be created or evidenced under the Security Documents.

"Transfer Certificate" means a certificate substantially in the form set out in Schedule 4 (*Form of Transfer Certificate*) or any other form agreed between the Agent and the Borrowers.

"Transfer Date" means, in relation to an assignment or a transfer, the later of:

- (a) the proposed Transfer Date specified in the relevant Assignment Agreement or Transfer Certificate; and
- (b) the date on which the Agent executes the relevant Assignment Agreement or Transfer Certificate.

"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).

"Unpaid Sum" means any sum due and payable but unpaid by a Transaction Obligor under any Finance Document.

"US Tax Obligor" means:

- (a) a Transaction Obligor which is resident for tax purposes in the United States of America; or
- (b) a Transaction Obligor some or all of whose payments under the Finance Documents are from sources within the US for US federal income tax purposes.

“**Utilisation**” means an utilisation of the Facility.

“**Utilisation Date**” means the date of an Utilisation, being the date on which that Utilisation is to be made.

“**Utilisation Request**” means a notice substantially in the form set out in Schedule 3 (*Utilisation Request*).

“**Valuation**” means, in relation to a Facility Vessel, a valuation prepared:

- (a) as at a date not more than 20 Business Days previously;
- (b) by an Approved Broker;
- (c) with or without physical inspection of the Facility Vessel (as the Agent may require);
- (d) on the basis of an “as is, where is” sale for prompt delivery for cash on normal arm’s length commercial terms as between a willing seller and a willing buyer, free of any existing charter or other contract of employment.

“**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) above or (b) above, or imposed elsewhere.

“**Vessels**” means each of the Facility Vessels and the Collateral Vessels (and each a “**Vessel**”).

“**Vessel A**” means the vessel in the ownership of Borrower A as more particularly described in Schedule 8 (*Details of Vessels*) except to the extent it has been sold or has become a Total Loss.

“**Vessel B**” means the vessel in the ownership of Borrower B as more particularly described in Schedule 8 (*Details of Vessels*) except to the extent it has been sold or has become a Total Loss.

“**VTL Coverage**” has the meaning given to such term in Clause 26.1 (*Additional security*).

“**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; and
- (b) in relation to the 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; and

- (c) in relation to any other applicable 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.

1.2 Construction

- (a) Unless a contrary indication appears, a reference in this Agreement to:
 - (i) the “**Account Bank**”, the “**Agent**”, any “**Finance Party**”, any “**Lender**”, any “**Obligor**”, any “**Party**”, any “**Secured Party**”, the “**Security Agent**”, any “**Transaction Obligor**” 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) an “**agency**” of a state includes any local or other authority, self-regulating or other recognised body or agency, central or federal bank, department, government, legislature, minster, ministry, self-regulating organisation, official or public or statutory person (whether autonomous or not) or, or of the government of, that state or political sub-division in or of that state;
 - (iii) a document in “**agreed form**” is a document which is previously agreed in writing by or on behalf of any Transaction Obligor party to it and the Agent or, if not so agreed, is in the form and substance specified by the Agent (acting with the instructions of all Lenders);
 - (iv) “**approved**” means approved in writing by the Agent, acting on the instructions of the Majority Lenders;
 - (v) “**assets**” includes present and future properties, revenues and rights of every description;
 - (vi) “**authorisation**” means an authorisation, consent, approval, resolution, licence or exemption by a person by whom the same is required by law;
 - (vii) “**disposal**” includes a sale, transfer, assignment, grant, lease, licence, declaration of trust or other disposal, whether voluntary or involuntary, and “dispose” will be construed accordingly;
 - (viii) the “**equivalent**” of an amount specified in a particular currency (“specific currency amount”) shall be construed as a reference to the amount of the other

relevant currency which can be purchased with the specific currency amount in the London foreign exchange market at 11 a.m. on the date the calculation falls to be made for spot delivery, as conclusively determined by the Agent (with the relevant exchange rate of such purchase being the “Agent’s spot rate of exchange”);

- (ix) “**excess risks**” means, in relation to a Vessel, the proportion (if any) of claims for general average, salvage and salvage charges not recoverable under the hull and machinery insurances in respect of that Vessel in consequence of the value at which a Vessel is assessed for the purpose of such claims exceeding its insured value;
- (x) a “**Finance Document**” or “**Relevant Document**” or any other agreement or instrument is a reference to that Finance Document or Relevant Document or other agreement or instrument as amended, novated, supplemented, extended or restated from time to time;
- (xi) “**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;
- (xii) “**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;
- (xiii) “**month**” means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:
 - (1) 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;
 - (2) 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
 - (3) the above rules will only apply to the last month of any period;
- (xiv) “**obligatory insurances**” means all insurances effected, or which any Borrower is required to effect, under Clause 24.2 (*Maintenance of obligatory insurances*) or any other provision of any Finance Document;
- (xv) a “**person**” includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
- (xvi) a “**policy**” in relation to any insurance, includes a slip, cover note, certificate of entry or other document evidencing the contract of insurance or its terms;
- (xvii) “**protection and indemnity risks**” means the usual risks covered by a protection and indemnity association that is a member of the International Group of P&I Clubs, including pollution risks and the proportion (if any) of

any sums payable to any other person or persons in case of collision which are not recoverable under the hull and machinery policies by reason of the incorporation in them of clause 6 of the Institute Time Clauses (Hulls) (1/11/02 or 1/11/03) or clause 8 of the Institute Time Clauses (Hulls) (1/10/83) or the Institute Amended Running Down Clause (1/10/71) or similar provisions in the Nordic Marine Insurance Plan of 2013;

- (xviii) a “**regulation**” includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
 - (xix) “**war risks**” includes the risk of mines and all risks excluded by clause 29 of the Institute Hull Clauses (1/11/02 or 1/11/03) or clause 24 of the Institute Time clauses (Hulls) (1/11/1995) or clause 23 of the Institute Time Clauses (Hulls) (1/10/83) or similar provisions in the Nordic Marine Insurance Plan of 2013;
 - (xx) words importing the plural shall include the singular and vice versa and words importing a gender shall include every gender;
 - (xxi) a provision of law is a reference to that provision as amended or re-enacted; and
 - (xxii) a time of day is a reference to London time.
- (b) Section, Clause and Schedule headings are for ease of reference only.
 - (c) 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.
 - (d) 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.

1.3 Third Party Rights

- (a) Unless expressly provided to the contrary in a Finance Document a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the “**Third Parties Act**”) to enforce or to enjoy the benefit of any term of this Agreement.
- (b) Notwithstanding any term of any Finance Document the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.
- (c) Any Receiver, Delegate or any person described in Clause 1.1 (*Definitions*) may, subject to this Clause 1.3(c) and the Third Parties Act, rely on any Clause of this Agreement which expressly confers rights on it.

1.4 Conflict

In the event of conflict between the provisions of this Agreement and any other Finance Documents, unless a contrary intention appears the provision of this Agreement shall prevail.

2. The Facility

2.1 The Facility

Subject to the terms of this Agreement, the Lenders shall make available to the Borrowers a term loan facility in no more than two Tranches in an aggregate amount not exceeding the Maximum Loan Amount (as adjusted in accordance with the terms of this Agreement).

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 a Transaction Obligor shall be a separate and independent debt.
- (c) A Finance Party may, except as otherwise stated in the Finance Documents, separately enforce its rights under the Finance Documents.

3. Purpose

3.1 Purpose

Each Borrower shall apply all amounts borrowed by it under the Facility only for the purposes of financing part of the acquisition cost of the Facility Vessels and refinancing of existing indebtedness relating to the Facility Vessels and for general corporate purposes and for other permitted general corporate purposes.

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

4.1 Initial conditions precedent

The Borrowers may not deliver an Utilisation Request unless the Agent, or its duly authorised representative, has received all of the documents and other evidence listed in Schedule 2, Part I (*Conditions Precedent to Utilisation Request*) in form and substance satisfactory to the Agent. The Agent shall notify the Borrowers and the Lenders promptly upon being so satisfied.

4.2 Utilisation conditions precedent

The Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) in relation to an Utilisation if:

- (a) on or before that Utilisation Date (and prior to such Utilisation), the Agent has received all of the documentation and other evidence listed in Schedule 2, Part II (*Conditions Precedent to Utilisation*) in form and substance satisfactory to the Agent;
- (b) on the date of that Utilisation Request and on the proposed Utilisation Date:

- (i) no Default is continuing or would result from the proposed Utilisation;
 - (ii) all representations and warranties under any of the Finance Documents made or to be made by a Transaction Obligor are true and accurate as at that date with reference to the facts and circumstances then existing;
 - (iii) the provisions of Clause 10.3 (*Alternative basis of interest or funding*) do not apply; and
 - (iv) the relevant Facility Vessel has not been the subject of a sale (or binding commitment to sell) by the relevant Borrower or Total Loss;
- (c) the Utilisation requested is not for more than the Maximum Tranche Amount and once made would not result in the Loan being greater than the Maximum Loan Amount (in each case as evidenced by the relevant Valuations for the relevant Facility Vessel); and
 - (d) the Agent is satisfied that the Utilisation requested shall not exceed the Total Commitments.

4.3 **Waiver of Conditions Precedent**

If the Agent, acting upon the instructions of all Lenders (which authorisation the relevant Lenders shall have full power to withhold), permits an Utilisation of the Facility before certain of the conditions referred to in Clause 4.1 and/or Clause 4.2 are satisfied, the Borrowers shall ensure that such conditions are satisfied with five (5) Business Days after the relevant Utilisation Date (or such longer period as the Agent may, with the authorisation of all Lenders, specify) and any failure of the Borrowers to do so within that period shall constitute an immediate Event of Default.

4.4 **Conditions subsequent**

The Borrowers undertake to deliver or to cause to be delivered to the Agent:

- (a) within thirty (30) days after the relevant Utilisation Date the relevant additional documents and other evidence listed in paragraphs (1) to (5) of Part III of Schedule 2 (*Conditions Subsequent*); and
- (b) within three (3) Business Days after the relevant Utilisation Date the relevant additional documents and other evidence listed in paragraphs (6) and (7) of Part III of Schedule 2 (*Conditions Subsequent*).

5. **Utilisation**

5.1 **Delivery of Utilisation Request**

The Borrowers may utilise the Facility by delivery to the Agent of a duly completed Utilisation Request not later than the Specified Time (or such shorter period as the Agent may agree in its sole discretion, acting on the instructions of the Lenders).

5.2 **Completion of Utilisation Request**

The Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:

- (a) it specifies the relevant Tranche and Facility Vessel;

- (b) the proposed Utilisation Date is a Business Day within the Availability Period for that Tranche;
- (c) the currency and amount of the Utilisation comply with Clause 5.3 (*Currency and amount*); and
- (d) it specifies the account and bank to which the proceeds of that Tranche are to be credited.

5.3 **Currency and amount**

- (a) The currency specified in an Utilisation Request must be Dollars.
- (b) The amount of the proposed Utilisation must be an amount which is not more than, in respect of each Tranche, the Maximum Tranche Amount for that Tranche.
- (c) There shall be no more than one Utilisation for each Tranche, and no more than five Utilisations in total.

5.4 **Lenders' participation**

- (a) If the conditions set out in this Agreement have been met, each Lender shall make its participation in each Tranche available by the Utilisation Date through its Facility Office.
- (b) The amount of each Lender's participation in each Utilisation will be equal to the proportion borne by its Available Commitment to the Available Facility immediately prior to making the relevant Utilisation. No Lender is obliged to participate in the relevant Utilisation if, as a result, its share in the Loan then outstanding or in respect of which the Utilisation Request has been issued would exceed its Commitment.
- (c) The Agent shall notify each Lender of the amount of the relevant Utilisation and the amount of its participation in each Utilisation by the Specified Time.

5.5 **Disbursement**

The Agent shall, on each Utilisation Date, pay to, or for the account of, the Borrowers the amount which the Agent receives from the Lenders in respect of the Utilisation, such payment to be made in like funds as the Agent so receives from the Lenders to the account as specified in the Utilisation Request.

5.6 **Prepositioning of funds**

If, in respect of the Utilisation of a Tranche, the Agent, at the request of the Borrowers and on terms acceptable to the Agent (acting on the instructions all Lenders, which approval they shall have full power to withhold), prepositions (either from an account of the Agent or an Affiliate of the Agent) any funds on suspense with the relevant Seller's bank (the "**Seller's Bank**") or an Approved Suspense Account as directed by the Borrowers in the relevant Utilisation Request (the date of such preposition, the "**Preposition Date**"):

- (a) each Lender agrees to fund its participation in the relevant Utilisation on a day not more than one (1) Business Day after the Agent confirms receipt of:
 - (i) a validly served Utilisation Request; and

- (ii) all of the documentation and other evidence listed in Schedule 2 Part II (*Conditions Precedent to Utilisation*) in form and substance satisfactory to the Agent, other than the documentation and evidence which the Borrowers demonstrate to the satisfaction of the Agent that it will not be able to obtain until the Utilisation Date (such documentation and evidence that remains outstanding, the “**Closing CPs**”);
- (b) each Lender and each Borrower acknowledges and agrees that:
 - (i) the Agent is entitled to issue an MT199 payment instruction or other similar communication in form and substance acceptable to the Agent (acting on instructions of all Lenders) to stipulate that such funds will be held by the Seller’s Bank in accordance with the terms of such MT199 payment instruction and will not be released if a Default is continuing or would result from the release or if the Agent has not received evidence that all of the Closing CPs are satisfied; or, as the case may be,
 - (ii) such funds will not be released from the Approved Suspense Account if a Default is continuing or would result from the release or if the Agent has not received evidence that all of the Closing CPs are satisfied;
- (c) each Borrower shall, without duplication, indemnify each Finance Party against any costs, loss or liability it may incur in connection with such arrangement;
- (d) the date on which the Lenders fund the relevant Utilisation or any part of the Utilisation for the purposes of transfer to the Seller’s Bank or the Approved Suspense Account (as the case may be) constitutes the Utilisation Date and each Borrower agrees to pay interest on the amount of the funds so prepositioned at the rate described in Clause 8.1 (*Calculation of interest*) on the basis of successive interest periods of one day and so that interest shall be paid together with the first payment of interest on the relevant Tranche after the Utilisation Date in respect of it or, if release of such prepositioned funds does not occur, within three (3) Business Days of demand by the Agent; and
- (e) if all the conditions stipulated in Schedule 2 Part I and/or Schedule 2 Part II have not been satisfied by 5.00 p.m. on the second Business Day following the Utilisation Date requested in the relevant Utilisation Request and the proceeds of the Utilisation are returned to the Agent who shall return them to the Lenders:
 - (i) the Borrowers shall pay all accrued interest and fees in respect of such returned proceeds in accordance with paragraph (d) above;
 - (ii) the Borrowers may submit a further Utilisation Request for re-advance of the relevant Tranche during the Availability Period if:
 - (1) all Lenders consent in writing thereto;
 - (2) the Borrowers have not previously submitted a reissued Utilisation Request for re-advance of the Tranche pursuant to this Clause 5.6 (*Prepositioning of funds*); and
 - (3) the Borrowers procure that the Agent is provided with such confirmations of the continuing effectiveness of the terms of the Finance Documents as the Agent may require.

6. **Repayment**

6.1 **Repayment Instalments**

- (a) Subject to the provisions of this Agreement, the Borrowers shall repay each Tranche by 16 equal consecutive quarterly instalments (each instalment a “**Repayment Instalment**”), being two (2) quarterly instalments each of US\$1,750,000, followed by two (2) quarterly instalments each of US\$625,000, followed by four (4) quarterly instalments each of US\$250,00, followed by eight (8) quarterly instalments each of US\$150,000 the first of which shall be repaid on 31 January 2022 and thereafter on each subsequent Quarter Date, provided that such amounts may be adjusted in accordance with Clause 6.3 (*Adjustment of Repayment Instalments*).
- (b) The balance of each Tranche shall be repaid by the Borrowers in full as a balloon repayment on the Termination Date, together with all other amounts then due and outstanding under the Finance Documents (the “**Balloon Instalment**”).

6.2 **No Reborrowing**

Amounts of the Loan which are repaid or prepaid shall not be available for reborrowing other than in accordance with Clause 5.6(e).

6.3 **Adjustment of Repayment Instalments**

If the Maximum Tranche Amount of any Tranche is not utilised in full at the time it is drawn, the amount of each Repayment Instalment and the Balloon Instalment for such Tranche shall be reduced pro rata by the unutilised amount.

7. **Prepayment and cancellation**

7.1 **Illegality**

If, in any applicable jurisdiction, it becomes unlawful for any Lender to perform any of its obligations as contemplated by this Agreement or to fund or maintain its participation in the Loan or any part of the Loan or it becomes unlawful for any Affiliate of a Lender for that Lender to do so:

- (a) that Lender shall promptly notify the Agent upon becoming aware of that event;
- (b) upon the Agent notifying the Borrowers, the Commitment of that Lender will be immediately cancelled; and
- (c) the Borrowers shall repay that Lender’s participation in the Loan on the last day of the Interest Period for the Loan occurring after the Agent has notified the Borrowers or, if earlier, the date specified by the Lender in the notice delivered to the Agent (being no earlier than the last day of any applicable grace period permitted by law).

7.2 **Change of Control**

If a Change of Control occurs, then:

- (a) the Borrowers shall promptly notify the Agent upon becoming aware of that event;
- (b) no Lender shall be obliged to fund an Utilisation; and

- (c) the Loan, together with accrued interest, and all other amounts accrued under the Finance Documents shall become immediately due and payable, whereupon the Total Commitments will be cancelled and all such outstanding amounts will become immediately due and payable.

7.3 **Mandatory prepayment – sale/Total Loss of a Vessel**

- (a) If a Facility Vessel is sold or becomes a Total Loss, the Borrowers shall be obliged to (and without prejudice to the restrictions on sale of a Facility Vessel and/or insurance covenants and requirements as otherwise provided in the Finance Documents) to prepay or pay (as applicable), as a minimum amount, aggregate of the following:
 - (i) the outstanding balance of the Tranche relating to the subject Facility Vessel; and
 - (ii) such additional amount that would be required to be prepaid in order to ensure that the VTL Coverage immediately after the sale or Total Loss (excluding, for the purposes of such calculation, the Facility Vessel which is sold or which becomes a Total Loss, but including the aggregate value of any additional security provided pursuant to Clause 26.1 (*Additional security*)) is no less than the VTL Coverage immediately prior to such sale or Total Loss (including the Facility Vessel which is sold or which becomes a Total Loss and the aggregate value of any additional security provided pursuant to Clause 26.1 (*Additional security*)).
- (b) If a Facility Vessel is sold or becomes a Total Loss, the required amount in sub-clause (a) shall be prepaid on the date on which the sale is completed by delivery of that Facility Vessel to the buyer or, if that Facility Vessel becomes a Total Loss, on the earlier of the date falling one hundred and eighty (180) days after the Total Loss Date and the date of receipt by the Agent of the proceeds of insurance relating to such Total Loss.
- (c) Any prepayments of principal under this Clause 7.3 shall be applied firstly in repayment of the then principal outstandings under the Tranche relating to that Facility Vessel and any balance to be applied against the other Tranche pro rata and in inverse order of maturity against the Balloon Instalment and Repayment Instalments.
- (d) Any proceeds of the sale or Total Loss of a Facility Vessel after the mandatory prepayments in paragraph (a) above have been made, and that there are no other amounts due and payable that remain outstanding under the Finance Documents, shall be released to the relevant Borrower for use in a manner which is not prohibited by the Finance Documents, provided that if a Default has occurred and is continuing such remaining proceeds shall be applied in full in prepayment of the Loan in accordance with paragraph (c) above.
- (e) If there is any loss in respect of a Facility Vessel or a claim under the Insurances in respect of a Facility Vessel exceeding the Major Casualty Amount which in each case is not a Total Loss, the Borrowers irrevocably authorise, and shall procure that all such things are done to enable the Agent to apply any proceeds received from such loss or claim as a prepayment against the relevant Tranche relating to that Facility Vessel unless such proceeds are applied within ninety (90) days, or within such other period as the Classification Society may advise in writing, of being received towards repairing the relevant Facility Vessel in accordance with the relevant Security Documents (or otherwise are used to reimburse the Borrowers for amounts made for such repair) and during which time the Borrowers, Intermediate HoldCo and HoldCo shall procure that

such funds are immediately credited to and remain in the Earnings Account of the relevant Borrower on and from their receipt.

- (f) If one of the Collateral Vessels is sold or becomes a Total Loss then, provided that (i) no Event of Default has occurred and is continuing and (ii) no other Collateral Vessel has previously been sold or become a Total Loss, the Collateral Vessel Facility Borrower which owns that Collateral Vessel shall apply the proceeds of such sale or Total Loss in accordance with the provisions of the Collateral Vessel Facility.
- (g) If a Collateral Vessel is sold or becomes a Total Loss and either (i) another Collateral Vessel has already been sold or become a Total Loss and the proceeds of such sale or Total Loss applied in accordance with paragraph (f) above or (ii) at the time of such sale or Total Loss an Event of Default has occurred and is continuing then, following application of the proceeds of such sale or Total Loss in accordance with the provisions of the Collateral Vessel Facility, to the extent there is any remaining balance of such sale or Total Loss proceeds, the Agent (acting on the instructions of the Majority Lenders) shall, in the absence of an agreement otherwise with the Borrowers, have the right to require that any such balance is applied in or towards prepayment or payment of principal or any other amounts outstanding under this Agreement and the other Facility Documents.

7.4 Automatic cancellation

The unutilised Commitment (if any) of each Lender in respect of each relevant Tranche shall be automatically cancelled at the earlier of (i) close of business on the date on which the relevant Tranche is made available and (ii) at the end of the Availability Period.

7.5 Voluntary prepayment

- (a) The Borrowers may, upon giving to the Agent not less than five (5) Business Days' prior notice, prepay the whole or any part of the Loan or a Tranche (but, if in part, being an amount that reduces the amount of the Loan or that Tranche by a minimum amount of US\$500,000 and thereafter in increments of US\$100,000).
- (b) The Loan or a Tranche may only be prepaid pursuant to this Clause 7.5 after the last day of the Availability Period (or, if earlier, the day on which the Available Facility is zero).
- (c) Any partial prepayments under this Clause 7.5 shall:
 - (i) in the case of a partial prepayment of a Tranche, be applied against that Tranche in inverse order of maturity against the Balloon Instalment and the Repayment Instalments; and
 - (ii) in the case of a partial prepayment of the Loan, be applied against all of the Tranches pro rata and in inverse order of maturity against the Balloon Instalment and the Repayment Instalments.

7.6 Mandatory Prepayments – Permitted Dividends / Permitted Loan Repayments

- (a) The Borrowers shall, concurrently with any Permitted Dividend or any Permitted Loan Repayment, make an additional prepayment of the Loan in an amount equal to the aggregate amount of such Permitted Dividend or Permitted Loan Repayment. The Agent may, acting in its sole discretion and with the authorisation of the Majority Lenders), unilaterally elect to waive the requirement for all or any part of such additional prepayment

- (b) Notwithstanding paragraph (a) above, in the event that a Permitted Intercompany Loan is made solely for the purposes of bridging any short term liquidity shortfall (for example, due to the late payment of charter hire by any charterer or because urgent repairs are required in respect of a Facility Vessel) (in each case, a “**Bridging Loan**”) then, in relation to any Permitted Loan Repayment in connection with such Bridging Loan, the Borrowers shall not be required to make an additional prepayment of the Loan in an amount equal to the aggregate amount of such Permitted Loan Repayment, provided that:
 - (i) the Agent has received evidence in form and substance satisfactory to it (in its sole discretion) that such Permitted Intercompany Loan is a Bridging Loan made solely for the purposes of bridging a short term shortfall in liquidity;
 - (ii) such Bridging Loan is repaid within 30 days of sufficient Earnings being paid into the Earnings Accounts in order to remedy such liquidity shortfall; and
 - (iii) the Bridging Loan must not be for an amount greater than the amount of the relevant liquidity shortfall.

7.7 Restrictions

- (a) Any notice of cancellation or prepayment given by any Party under this Clause 7 (*Prepayment and cancellation*) shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment. The Agent must notify the Lenders promptly upon receipt of any such notice.
- (b) Any repayment or prepayment under this Agreement shall be made together with accrued interest on the amount repaid or prepaid, the Prepayment Fee and any applicable Break Costs, provided that no Prepayment Fee shall be payable only in respect of the following:
 - (i) any scheduled Repayment Instalment pursuant to Clause 6.1 (*Repayment Instalments*);
 - (ii) any prepayment pursuant to paragraph (b)(ii) of Clause 26.1 (*Additional security*) but only in respect of the minimum amount to be prepaid thereunder;
 - (iii) any prepayment pursuant to Clause 7.1 (*Illegality*);
 - (iv) any prepayment pursuant to Clause 7.3 (*Mandatory prepayment – sale / Total Loss*) as a result of a Total Loss of a Vessel (but, for the avoidance of doubt, shall be payable in respect of a prepayment upon a sale of a Vessel); or
 - (v) any prepayments required to be made pursuant to Clause 7.6 (*Mandatory Prepayments – Permitted Dividends / Permitted Loan Repayments*) (but only to the extent required to comply with such mandatory prepayment requirements thereunder and not, for the avoidance of doubt, in relation to any prepayments which the Majority Lenders elected not to receive);
 - (vi) any prepayment or repayment pursuant to Clause 27.26 (*Acceleration*); or
 - (vii) either (but not both) the first US\$1,000,000 of any prepayment made pursuant to and for the purposes of Clause 29.4(b) (*Release of Collateral Security*) or the first US\$1,000,000 of any prepayment or repayment made pursuant to Clause

7.3(g) (*Mandatory prepayment - sale/Total Loss of a Vessel*) as a result of the sale of a Collateral Vessel,

and, for the avoidance of doubt, the relevant Prepayment Fee shall also be due and payable at any time the Loan becomes due and payable prior to the Termination Date for any reason (other than pursuant to paragraphs (i) to (vii) above), whether by operation of law or otherwise (including where bankruptcy filings or the exercise of any bankruptcy right of power, whether in any plan of reorganisation or otherwise, results or would result in a payment, discharge, modification or other treatment of the Loan or the Finance Documents that would otherwise evade, avoid, or otherwise disappoint the expectations of the Finance Parties in receiving the full benefit of their bargained for Prepayment Fees as provided herein). The Obligors and the Finance Parties acknowledge and agree that any Prepayment Fees due and payable in accordance with the Finance Documents shall not constitute unmatured interest, but instead are reasonably calculated to ensure that the relevant Finance Parties receive the benefit of their bargain under the terms of this Agreement.

- (c) 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.
- (d) No amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.
- (e) If the Agent receives a notice under this Clause 7 it shall promptly forward a copy of that notice to either the Borrowers or the Lenders, as appropriate.
- (f) If all or part of the Loan is repaid or prepaid, an amount of the Commitments (equal to the amount of the Loan which is repaid or prepaid) will be deemed to be cancelled on the date of repayment or prepayment. Any cancellation under this paragraph shall reduce the Commitments of the Lenders rateably.

8. Interest

8.1 Calculation of interest

The rate of interest on each Tranche for each Interest Period is the percentage rate per annum which is the aggregate of the applicable:

- (a) Margin; and
- (b) LIBOR.

8.2 Payment of interest

The Borrowers shall pay accrued interest on each Tranche on the last day of each Interest Period for such Tranche.

8.3 Default interest

If a Transaction Obligor fails to pay any amount payable by it under a Finance Document on its due date (after the expiration of any applicable grace period under Clause 27.1 (*Non-payment*)), 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 two per cent. (2%) per annum higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted an Utilisation in the currency of the overdue amount for successive Interest

Periods, each of a duration selected by the Agent (acting reasonably). Any interest accruing under this Clause 8.3 shall be immediately payable by the Transaction Obligor on demand by the Agent. Default interest (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.

8.4 **Notification of rates of interest**

The Agent shall promptly notify the Lenders and the Borrowers of the determination of a rate of interest under this Agreement.

9. **Interest Periods**

9.1 **Length of Interest Periods**

- (a) Each Interest Period in respect of a Tranche shall start on the Utilisation Date for that Tranche or (if already made) on the last day of its preceding Interest Period and, subject to Clause 5.6(d) and paragraph (b) below, end on the next Quarter Date.
- (b) If an Interest Period would otherwise overrun the Termination Date, it will be shortened so that it ends on the Termination Date.

9.2 **Non-Business Days**

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).

10. **Changes to the calculation of interest**

10.1 **Absence of quotations**

Subject to Clause 10.2 (*Market disruption*), if LIBOR is to be determined by reference to the Reference Banks but a Reference Bank does not supply a quotation by the Specified Time on the Quotation Day, the applicable LIBOR shall be determined on the basis of the quotations of the remaining Reference Banks.

10.2 **Market disruption**

- (a) If a Market Disruption Event occurs in relation to a Tranche for any Interest Period, then the rate of interest on each Lender's share of that Tranche for the Interest Period shall be the percentage rate per annum which is the sum of:
 - (i) the Margin; and
 - (ii) the rate notified to the Agent by that Lender as soon as practicable and in any event before interest is due to be paid in respect of that Interest Period, to be that which expresses as a percentage rate per annum the cost to that Lender of funding its participation in a Tranche from whatever source it may reasonably select.
- (b) In this Agreement "**Market Disruption Event**" means:
 - (i) at or about noon on the Quotation Day for the relevant Interest Period, the Screen Rate is not available and none or only one of the Reference Banks

supplies a rate to the Agent to determine LIBOR for Dollars for the relevant Interest Period; or

- (ii) before close of business in London on the Quotation Day for the relevant Interest Period, the Agent receives notifications from a Lender or Lenders (whose participations in a Tranche exceed fifty per cent. (50%) of that Tranche) that the cost to it or them of obtaining matching deposits in the Relevant Interbank Market would be in excess of LIBOR.

10.3 **Alternative basis of interest or funding**

- (a) If a Market Disruption Event occurs and the Agent so requires or the Borrowers so require, the Agent and the Borrowers shall enter into negotiations (for a period of not more than thirty (30) days) with a view to agreeing a substitute basis for determining the rate of interest.
- (b) Any alternative basis agreed pursuant to paragraph (a) above shall, with the prior consent of all the Lenders and the Borrowers, be binding on all Parties.

10.4 **Break Costs**

- (a) The Borrowers shall, within three (3) Business Days of demand by a Finance Party (or at the time of prepayment of the relevant amount under Clause 7 (*Prepayment and cancellation*)), pay to that Finance Party its Break Costs attributable to all or any part of the Loan or Unpaid Sum being paid by any Borrower on a day other than 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 which they accrue.

11. **Fees**

11.1 **Commitment fee**

- (a) The Borrowers shall pay to the Agent (for the account of the Lenders) a commitment fee computed at the rate of thirty five per cent. (35%) of the Margin per annum on the aggregate amount of each Lender's Available Commitments in respect of each Tranche from the date of this Agreement until the final day of the Availability Period in relation to the relevant Tranche ("**Commitment Fee**").
- (b) The accrued Commitment Fee is payable in arrears on the Utilisation Date or, if any Tranche is unutilised as of the expiry of the Availability Period in relation to that Tranche, the Commitment Fee in respect of the Available Commitment relating to that Tranche shall be paid on the earlier of:
 - (i) the last day of the Availability Period in relation to that Tranche; and
 - (ii) the date on which the cancellation of the Available Commitment in respect of that Tranche is effective.
- (c) The Agent shall be entitled to deduct the Commitment Fee from the proceeds of the Utilisations.

11.2 **Agency fee**

The Borrowers shall pay to the Agent (for its own account) an agency and administration fee in the amount and at the times agreed in the Fee Letter.

11.3 **Upfront fee**

The Borrowers shall pay to the Agent (for the account of the Lenders) an upfront fee in the amount and at the times agreed in the Fee Letter.

12. **Tax gross up and indemnities**

12.1 **Definitions**

In this Agreement:

- (a) **“Protected Party”** means a Finance Party 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.
- (b) **“Qualifying Lender”** means a Lender which is beneficially entitled to interest payable to that Lender in respect of an advance under this Agreement and is:
 - (i) a Lender:
 - (1) which is a bank (as defined for the purpose of section 879 of the ITA) making an advance under a Finance Document and is within the charge to United Kingdom corporation tax as respects 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
 - (2) 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 of the 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
 - (ii) a Lender which is:
 - (1) a company resident in the United Kingdom for United Kingdom tax purposes;
 - (2) 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 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;

- (3) 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
 - (iii) a Treaty Lender.
- (c) **“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:
- (i) a company resident in the United Kingdom for United Kingdom tax purposes;
 - (ii) a partnership each member of which is:
 - (1) a company so resident in the United Kingdom; or
 - (2) 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
 - (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.
- (d) **“Tax Credit”** means a credit against, relief or remission for, or repayment of any Tax.
- (e) **“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.
- (f) **“Tax Payment”** means either the increase in a payment made by a Transaction Obligor to a Finance Party under Clause 12.2 (*Tax gross-up*) or a payment under Clause 12.3 (*Tax indemnity*).
- (g) **“Treaty Lender”** means a Lender which:
- (i) is treated as a resident of a Treaty State for the purposes of the Treaty;
 - (ii) 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; and
 - (iii) (subject to completion of procedural formalities) meets all other conditions in the Treaty for full exemption from United Kingdom taxation on interest which relate to the Lender.
- (h) **“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.

- (i) Unless a contrary indication appears, in this Clause 12 a reference to “determines” or “determined” means a determination made in the absolute discretion of the person making the determination.

12.2 Tax gross-up

Each Transaction Obligor shall (and shall, so far as possible, procure that each other Transaction Obligor shall) make all payments to be made by it under any Finance Documents without any Tax Deduction, unless a Tax Deduction is required by law, subject as follows:

- (a) a Transaction Obligor shall promptly upon becoming aware that it or any other Transaction 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 any such other Transaction Obligor;
- (b) if a Tax Deduction is required by law to be made by a Borrower or any other Transaction Obligor, the amount of the payment due from that Borrower or that other Transaction Obligor 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;
- (c) a payment shall not be increased under paragraph (b) above by reason of a Tax Deduction 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 Qualifying Lender, but on that date that Lender is not or has ceased to be a Qualifying Lender other than as a result of any change after the date it became a Lender under this Agreement in (or in the interpretation, administration, or application of) any law or Treaty or any published practice or published concession of any relevant taxing authority; or
 - (ii) the relevant Lender is a Qualifying Lender solely by virtue of paragraph (ii) of the definition of Qualifying Lender and:
 - (1) an officer of H.M. Revenue & Customs has given (and not revoked) a direction (a “**931 Direction**”) under section 931 of the ITA which relates to the payment and that Lender has received from the Transaction Obligor making the payment a certified copy of that 931 Direction; and
 - (2) the payment could have been made to the Lender without any Tax Deduction if that 931 Direction had not been made; or
 - (iii) the relevant Lender is a Qualifying Lender solely by virtue of paragraph (ii) of the definition of Qualifying Lender and:
 - (1) the relevant Lender has not given a Tax Confirmation to the Borrowers; and
 - (2) the payment could have been made to the Lender without any Tax Deduction if the Lender had given a Tax Confirmation to the Borrowers, on the basis that the Tax Confirmation would have enabled

the Company 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 Treaty Lender and the Transaction 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 paragraph (f) below;
- (d) if any Transaction Obligor is required to make a Tax Deduction, that Transaction Obligor shall (and shall, so far as possible, procure that such other Transaction 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;
- (e) within thirty (30) days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Transaction Obligor making that Tax Deduction shall (and shall, so far as possible, procure that such other Transaction Obligor 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;
- (f) a Treaty Lender and each Transaction Obligor which makes a payment to which that Treaty Lender is entitled shall co-operate in promptly completing any procedural formalities necessary for that Transaction Obligor to obtain authorisation to make that payment without a Tax Deduction.

12.3 Tax indemnity

- (a) Each Borrower shall (within three (3) 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) Clause 12.3(a) above shall not apply:
 - (i) with respect to any Tax assessed on a Finance Party:
 - (1) 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; or
 - (2) 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,
 - 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:
 - (1) is compensated for by an increased payment under Clause 12.2 (*Tax gross-up*); or
 - (2) relates to a FATCA Deduction required to be made by a Party.

- (c) A Protected Party making, or intending to make a claim under Clause 12.3(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 Borrowers.
- (d) A Protected Party shall, on receiving a payment from a Borrower under this Clause 12.3, notify the Agent.

12.4 Tax Credit

If a Borrower or any other Transaction Obligor makes a Tax Payment and the relevant Finance Party determines that:

- (a) a Tax Credit is attributable to an increased payment of which that Tax Payment forms part, to that Tax Payment or to a Tax Deduction in consequence of which that Tax Payment was required; and
- (b) that Finance Party has obtained and utilised that Tax Credit,

that Finance Party shall pay an amount to that Borrower or to that other Transaction 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 made by that Borrower or that other Transaction Obligor.

12.5 Stamp taxes

The Borrowers shall pay and, within three (3) Business Days of demand, indemnify each Finance Party against any cost, loss or liability which that Finance Party incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document.

12.6 VAT

- (a) All amounts expressed to be payable under a Finance Document by any Party or any Transaction Obligor 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 Clause 12.6(b) below, if VAT is or becomes chargeable on any supply made by any Finance Party to any Party or any Transaction Obligor under a Finance Document and such Finance Party is required to account to the relevant tax authority for the VAT, that Party or Transaction Obligor 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 the Borrowers).
- (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 “**Relevant 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 Relevant 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 Clause 12.6(b)(i) applies) promptly pay to the Relevant 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 Relevant 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 12.6 to any Party shall, at any time when such Party is treated as a member of a group for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the representative member of such group at such time (the term “representative member” to have the same meaning as in the Value Added Tax Act 1994).
- (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.

12.7 FATCA information

- (a) Subject to Clause 12.7(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:
 - (1) a FATCA Exempt Party; or
 - (2) 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 Clause 12.7(a)(i)(1) 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) Clause 12.7(a) above shall not oblige any Finance Party to do anything, and Clause 12.7(a)(iii) 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 Clause 12.7(a)(i) or 12.7(a)(ii) above (including, for the avoidance of doubt, where Clause 12.7(c) 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.
- (e) If a Transaction Obligor is a US Tax Obligor or the Agent reasonably believes that its obligations under FATCA or any other applicable law or regulation require it, each Lender shall, within ten (10) Business Days of:
 - (i) where a Transaction Obligor is a US Tax Obligor and the relevant Lender is an Original Lender, the date of this Agreement;
 - (ii) where a Transaction Obligor is a US Tax Obligor on a Transfer Date and the relevant Lender is a New Lender or an Increase Lender, the relevant Transfer Date; or
 - (iii) where a Transaction Obligor is not a US Tax Obligor, the date of a request from the Agent,
 supply to the Agent:
 - (1) a withholding certificate on Form W-8 or Form W-9 or any other relevant form; or
 - (2) any withholding statement or other document, authorisation or waiver as the Agent may require to certify or establish the status of such Lender under FATCA or that other law or regulation.
- (f) The Agent shall provide any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to Clause 12.7(e) above to the Borrowers.
- (g) If any withholding certificate, withholding statement, document, authorisation or waiver provided to the Agent by a Lender pursuant to Clause 12.7(e) is or becomes materially inaccurate or incomplete, that Lender shall promptly update it and provide such updated withholding certificate, withholding statement, document, authorisation or waiver to the Agent unless it is unlawful for the Lender to do so (in which case the Lender shall promptly notify the Agent). The Agent shall provide any such updated withholding certificate, withholding statement, document, authorisation or waiver to the Borrowers.

The Agent may rely on any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to Clause 12.7(e) or 12.7(g) without further verification. The Agent shall not be liable for any action taken by it under or in connection with Clause 12.7(e), 12.7(f) or 12.7(g).

12.8 **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.

13. **Increased costs**

13.1 **Increased costs**

- (a) Subject to Clause 13.3 (*Exceptions*) the Borrowers shall, within three (3) Business Days of a demand by the Agent, pay to the Agent for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of:
 - (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation; or
 - (ii) compliance with any law or regulation or any request from or requirement of any central bank or other fiscal, monetary or other authority made after the date of this Agreement (including Basel III, CRD IV and Dodd Frank and any other law or regulation which relates to capital adequacy or liquidity controls or which affects the manner in which that Finance Party allocates capital resources to obligations under this Agreement); or
 - (iii) any change in the risk weight allocated by that Finance Party to the Borrowers after the date of this Agreement.
- (b) In this Agreement “**Increased Costs**” means:
 - (i) a reduction in the rate of return from the Loan or on a Finance Party’s (or its Affiliate’s) overall capital;
 - (ii) an additional or increased cost; or
 - (iii) 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.
- (c) In this Agreement “**Basel III**” means:
 - (i) 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;

- (ii) 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
 - (iii) any further guidance or standards published by the Basel Committee on Banking Supervision relating to “Basel III”.
- (d) In this Agreement, “**CRD IV**” means EU CRD IV and UK CRD IV.
- (e) In this Agreement, “**EU CRD IV**” means:
 - (i) 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; and
 - (ii) 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 Directives 2006/48/EC and 2006/49/EC.
- (f) In this Agreement, “**UK CRD IV**” means:
 - (i) 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 as it forms part of domestic law of the United Kingdom by virtue of the European Union (Withdrawal) Act 2018 (the “**Withdrawal Act**”);
 - (ii) the law of the United Kingdom or any part of it, which immediately before IP completion day (as defined in the European Union (Withdrawal Agreement) Act 2020) implemented 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 Directives 2006/48/EC and 2006/49/EC and its implementing measures; and
 - (iii) direct EU legislation (as defined in the Withdrawal Act), which immediately before IP completion day (as defined in the European Union (Withdrawal Agreement) Act 2020) implemented EU CRD IV as it forms part of domestic law of the United Kingdom by virtue of the Withdrawal Act.
- (g) In this Agreement “**Dodd Frank**” means the Dodd-Frank Wall Street Reform and Consumer Protection Act of the U.S.A. and all requests, rules, guidelines or directives thereunder or issued in connection therewith.

13.2 Increased cost claims

- (a) A Finance Party intending to make a claim pursuant to Clause 13.1 (*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.

13.3 Exceptions

- (a) Clause 13.1 (*Increased costs*) does not apply to the extent any Increased Cost is:
 - (i) attributable to a Tax Deduction required by law to be made by a Transaction Obligor;
 - (ii) attributable to a FATCA Deduction required to be made by a Party;
 - (iii) compensated for by Clause 12.3 (*Tax indemnity*) (or would have been compensated for under Clause 12.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in Clause 12.3 (*Tax indemnity*) applied);
 - (iv) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation; or
 - (v) attributable to the implementation or application of or compliance with the “International Convergence of Capital Measurement and Capital Standards, a Revised Framework” published by the Basel Committee on Banking Supervision in June 2004 in the form existing on the date of this Agreement (but excluding any amendment arising out of Basel III) (“**Basel II**”) or any other law or regulation which implements Basel II (whether such implementation, application or compliance is by a government, regulator, Finance Party or any of its Affiliates).
- (b) In this Clause 13.3, a reference to a “**Tax Deduction**” has the same meaning given to the term in Clause 12.1 (*Definitions*).

14. Other indemnities

14.1 Currency indemnity

- (a) If any sum due from a Transaction 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 Transaction Obligor; or
 - (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

that Transaction Obligor shall (and the other Transaction Obligors shall) as an independent obligation, within three (3) Business Days of demand, indemnify each Finance Party to whom that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

- (b) Each Transaction Obligor waives (and shall, so far as possible, procure that each other Transaction 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.

14.2 Other indemnities

- (a) Each of the Borrowers, Intermediate HoldCo and HoldCo shall jointly and severally, within three (3) Business Days of demand, indemnify each Finance Party against any cost, loss or liability incurred by that Finance Party as a result of:
 - (i) the occurrence of any Event of Default;
 - (ii) a failure by a Transaction Obligor to pay any amount due under a Finance Document on its due date, including without limitation, any cost, loss or liability arising as a result of Clause 33 (*Sharing among the Finance Parties*);
 - (iii) funding, or making arrangements to fund, its participation in a Tranche requested by the Borrowers in an Utilisation Request 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); or
 - (iv) the Loan (or part of the Loan) not being prepaid in accordance with a notice of prepayment given by a Borrower.
- (b) Each of the Borrowers, Intermediate HoldCo and HoldCo shall jointly and severally, within three (3) Business Days of demand, indemnify each Finance Party, each Affiliate of a Finance Party and each officer or employee of a Finance Party or its Affiliate (each such person for the purposes of this Clause 14.2 (an “**Indemnified Person**”), against any cost, loss or liability incurred by that Indemnified Person pursuant to or in connection with any litigation, arbitration or administrative proceedings or regulatory enquiry, in connection with or arising out of the entry into and the transactions contemplated by the Finance Documents, having the benefit of any Security constituted by the Finance Documents or which relates to the condition or operation of, or any incident occurring in relation to, any Vessel unless such cost, loss or liability is caused by the gross negligence or wilful misconduct of that Indemnified Person.
- (c) Without limiting, but subject to any limitations set out in paragraph (b) above, the indemnity in paragraph (b) above shall cover any cost, loss or liability incurred by each Indemnified Person in any jurisdiction:
 - (i) arising or asserted under or in connection with any law relating to safety at sea, the ISM Code, any Environmental Law or any Sanctions; or
 - (ii) in connection with any Environmental Claim.
- (d) Any Affiliate or any officer or employee of a Finance Party or of any of its Affiliates may rely on this Clause subject to Clause 1.3 (*Third Party Rights*) and the provisions of the Third Parties Act.

14.3 Indemnity to the Agent

Each Borrower, Intermediate HoldCo and HoldCo jointly and severally shall, within three (3) Business Days of demand, indemnify the Agent against:

- (a) any cost, loss or liability incurred by the Agent (acting reasonably) as a result of:
 - (i) investigating any event which it reasonably believes is a Default; or
 - (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; or

- (iii) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this Agreement; and
- (b) any cost, loss or liability (including, without limitation, for negligence or any other category of liability whatsoever) incurred by the Agent in acting as Agent under the Finance Documents.

14.4 Indemnity to the Security Agent

- (a) Each Borrower, Intermediate HoldCo and HoldCo jointly and severally shall, within three (3) Business Days of demand, indemnify the Security Agent and every Receiver and Delegate against any cost, loss or liability incurred by any of them as a result of:
 - (i) any failure by a Transaction Obligor to comply with its obligations under Clause 16 (*Costs and expenses*);
 - (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 Transaction Security;
 - (iv) the exercise of any of the rights, powers, discretions, authorities and remedies vested in the Security Agent and each Receiver and Delegate by the Finance Documents or by law;
 - (v) any default by any Transaction Obligor in the performance of any of the obligations expressed to be assumed by it in the Finance Documents;
 - (vi) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this Agreement; or
 - (vii) acting as Security Agent, Receiver or Delegate under the Finance Documents or which otherwise relates to any of the Security Property (otherwise, in each case, than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct).
- (b) The Security Agent and every Receiver and Delegate may, in priority to any payment to the Finance Parties, indemnify itself out of the Security Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this Clause 14.4 and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all moneys payable to it.

14.5 Indemnity survival

The indemnities in this Agreement shall survive repayment of the Loan.

15. Mitigation by the Lenders

15.1 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 any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 7.1 (*Illegality*), Clause 12 (*Tax gross up and indemnities*) or Clause 13 (*Increased costs*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.

- (b) Paragraph (a) above does not in any way limit the obligations of any Transaction Obligor under the Finance Documents.

15.2 Limitation of liability

- (a) The Obligors shall, within three (3) Business Days of demand, indemnify each Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under Clause 15.1 (*Mitigation*).
- (b) A Finance Party is not obliged to take any steps under Clause 15.1 (*Mitigation*) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

16. Costs and expenses

16.1 Transaction expenses

Each of the Borrowers, Intermediate HoldCo and HoldCo shall jointly and severally, within five (5) Business Days of demand, pay to each Finance Party the amount of all costs and expenses (including but not limited to legal fees) incurred by any of them (and, in the case of the Security Agent, any Receiver or Delegate) in connection with the negotiation, preparation, printing, execution, syndication and perfection of:

- (a) this Agreement and any other documents referred to in this Agreement or in a Security Document;
- (b) the Transaction Security;
- (c) any other Finance Documents executed after the date of this Agreement;
- (d) any other document which may at any time be required by a Finance Party to give effect to any Finance Document or which a Finance Party is entitled to call for or obtain under any Finance Document (including, for the avoidance of doubt, any Valuation or survey and inspection costs except where a Finance Party is expressly required under the terms of the Finance Documents to pay any such amount without reimbursement from any Transaction Obligor); and
- (e) any discharge, release or reassignment of any of the Finance Documents.

16.2 Amendment costs

If (a) a Transaction Obligor requests an amendment, waiver or consent or (b) an amendment is required pursuant to Clause 34.9 (*Change of currency*), the Borrowers shall, within five (5) Business Days of demand, reimburse each Finance Party for the amount of all costs and expenses (including legal fees) reasonably incurred by that Finance Party (and, in the case of the Security Agent, any Receiver or Delegate) in responding to, evaluating, negotiating or complying with that request or requirement.

16.3 Agent and Security Agent's management time and additional remuneration

Any amount payable to the Agent under Clause 14.3 (*Indemnity to the Agent*) or to the Security Agent under Clause 14.4 (*Indemnity to the Security Agent*) or to either of them under this Clause 16 or Clause 30.11 (*Lenders' indemnity to the Agent and Security Agent*) shall include the cost of utilising the management time or other resources of the Agent or the Security Agent (as the case may be) and will be calculated on the basis of such reasonable daily or hourly rates as the

Agent or the Security Agent may notify to the Borrowers and the Lenders, and is in addition to any other fee paid or payable to the Agent or the Security Agent.

16.4 Enforcement and preservation costs

The Borrowers shall, within five (5) Business Days of demand, pay to each Finance Party the amount of all costs and expenses (including legal fees) incurred by that Finance Party in connection with the enforcement of, or the preservation of any rights under, any Finance Document or the Transaction Security and with any proceedings instituted by or against that Finance Party as a consequence of it entering into a Finance Document, taking or holding the Transaction Security, or enforcing those rights.

16.5 Other costs

The Borrowers shall, within five (5) Business Days of demand, pay to each Finance Party and each other Secured Party the amount of all sums which that Finance Party or other Secured Party may pay or become actually or contingently liable for on account of a Borrower in connection with a Vessel (whether alone or jointly or jointly and severally with any other person) including (without limitation) all sums which that Finance Party or other Secured Party may pay or guarantees which it may give in respect of the Insurances, any expenses incurred by that Finance Party or other Secured Party in connection with the maintenance or repair of a Vessel or in discharging any lien, bond or other claim relating in any way to a Vessel, and any sums which that Finance Party or other Secured Party may pay or guarantees which it may give to procure the release of a Vessel from arrest or detention.

17. JOINT AND SEVERAL LIABILITY

17.1 Joint and several liability

- (a) All liabilities and obligations of the Transaction Obligors under or in connection with any Finance Document shall, whether expressed or not expressed to be so, be joint and several. The failure by one Transaction Obligor to perform its obligations under the Finance Documents shall constitute a failure by the other Transaction Obligors in the performance of such obligations under the Finance Documents. Each Transaction Obligor shall be responsible for the performance of the obligations of the other Transaction Obligors under the Finance Documents.
- (b) Each Transaction Obligor agrees to be bound by the Finance Documents to which it is, or becomes, a party, notwithstanding that:
 - (i) any other Transaction Obligor intended to be a party or be bound by such Finance Document does not become a party or bound; and
 - (ii) any Finance Document may be invalid or unenforceable against the other Transaction Obligors, whether or not such validity or unenforceability is known to any Finance Party.
- (c) The Finance Parties may, but only through the Agent or the Security Agent, take action against any Transaction Obligor, grant any time or other indulgence to any Transaction Obligor, or release or compromise in whole or in part the liability of any Transaction Obligor under the Finance Documents, in each case without affecting the liability of any other Transaction Obligor.

17.2 Waiver of defences

- (a) The joint and several liabilities and obligations of each Transaction Obligor will not be affected by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice any of its obligations under this Agreement and/or any other Finance Document (without limitation and whether or not known to it or any Finance Party) including:
 - (i) any time, waiver or consent granted to, or composition with, any Transaction Obligor or other person;
 - (ii) the release of any other Transaction Obligor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
 - (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 other Transaction 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 any other Transaction Obligor or any other person;
 - (v) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance Document or any other document or security including without limitation any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or 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.

17.3 Appropriations

- (a) Until all amounts which may be or become payable by the Transaction Obligors under or in connection with the Finance Documents have been irrevocably paid 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 the Transaction Obligors (or any of them) shall be entitled to the benefit of the same; and
 - (ii) hold in an interest-bearing suspense account any moneys received from the Transaction Obligors or on account of the relevant Obligor's liability under this Clause 17.

17.4 Deferral of each Transaction Obligor's rights

- (a) Until all amounts which may be or become payable by the Transaction Obligors under or in connection with the Finance Documents have been irrevocably paid in full and unless the Agent otherwise directs, no Transaction Obligor will exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under this Clause 17:
 - (i) to be indemnified by a Transaction Obligor;
 - (ii) to claim any contribution from any other guarantor of any Transaction Obligor's obligations under the Finance Documents;
 - (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 other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Finance Party;
 - (iv) to bring legal or other proceedings for an order requiring any Transaction Obligor to make any payment, or perform any obligation, in respect of which any Transaction Obligor has given a guarantee, undertaking or indemnity under Clause 18.1 (*Guarantee and indemnity*);
 - (v) to exercise any right of set-off against any Transaction Obligor; and/or
 - (vi) to claim or prove as a creditor of any Transaction Obligor in competition with any Finance Party.
- (b) If any Transaction Obligor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Finance Parties by the Transaction Obligors under or in connection with the Finance Documents to be repaid in full on trust for the Finance Parties and shall promptly pay or transfer the same to the Agent or as the Agent may direct for application in accordance with Clause 34 (*Payment mechanics*).

18. Guarantee and indemnity

18.1 Guarantee and indemnity

Each of the Guarantors irrevocably and unconditionally:

- (a) guarantees to each Finance Party punctual performance by each Borrower of all that Borrower's obligations under the Finance Documents;
- (b) undertakes with each Finance Party that whenever a Borrower does not pay any amount when due under or in connection with any Finance Document, the Guarantors shall immediately on demand pay that amount as if they were the principal obligor; and
- (c) agrees with each Finance Party that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify that Finance Party immediately on demand against any cost, loss or liability it incurs as a result of a Borrower not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Finance Document on the date when it would have been due. The amount payable by the

Guarantors under this indemnity will not exceed the amount it would have had to pay under this Clause 18 if the amount claimed had been recoverable on the basis of a guarantee.

18.2 Continuing guarantee

This guarantee is a continuing guarantee and will extend to the ultimate balance of sums payable by any Borrower under the Finance Documents, regardless of any intermediate payment or discharge in whole or in part.

18.3 Reinstatement

If any discharge, release or arrangement (whether in respect of the obligations of any 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 Guarantors under this Clause 18 will continue or be reinstated as if the discharge, release or arrangement had not occurred.

18.4 Waiver of defences

The obligations of the Guarantors under this Clause 18 will not be affected by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice any of its obligations under this Clause 18 (without limitation and whether or not known to it or any Finance Party) including:

- (a) any time, waiver or consent granted to, or composition with, any Borrower or other person;
- (b) the release of any Borrower or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Borrower 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;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of a Borrower or any other person;
- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance Document or any other document or security including without limitation any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
- (g) any insolvency or similar proceedings.

18.5 Guarantors' intent

Without prejudice to the generality of Clause 18.4 (*Waiver of defences*), each of the Guarantors expressly confirms that it intends that this guarantee shall extend from time to time to any

(however fundamental) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection with any of the following: business acquisitions of any nature; increasing working capital, enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities, refinancing any other indebtedness; making facilities available to new borrowers, any other variation or extension of the purposes for which any such facility or amount might be made available from time to time, and any fees, costs and/or expenses associated with any of the foregoing.

18.6 Immediate recourse

Each of the Guarantors 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 it or commencing proceedings under this Clause 18. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

18.7 Appropriations

Until all amounts which may be or become payable by the Borrowers under or in connection with the Finance Documents have been irrevocably paid in full, each Finance Party (or any trustee or agent on its behalf) may:

- (a) 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 the Guarantors shall be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from the Guarantors or on account of the Guarantors' liability under this Clause 18.

18.8 Deferral of Guarantors' rights

All rights which the Guarantors have at any time (whether in respect of this guarantee, a mortgage or any other transaction) against any Borrower or their respective assets shall be fully subordinated to the rights of the Secured Parties under the Finance Documents and until all amounts which may be or become payable by the Borrowers under or in connection with the Finance Documents have been irrevocably paid in full and unless the Agent otherwise directs, the Guarantors will not exercise any rights which either of them may have by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under this Clause 18:

- (a) to be indemnified by a Borrower;
- (b) to claim any contribution from any other guarantor of any Borrower's obligations under the Finance Documents;
- (c) 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 other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Finance Party;
- (d) to bring legal or other proceedings for an order requiring any Borrower to make any payment, or perform any obligation, in respect of which any Borrower has given a guarantee, undertaking or indemnity under Clause 18.1 (*Guarantee and indemnity*);

- (e) to exercise any right of set-off against any Borrower; and/or
- (f) to claim or prove as a creditor of any Borrower in competition with any Finance Party.

If any Guarantor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Finance Parties by the Borrowers under or in connection with the Finance Documents to be repaid in full on trust for the Finance Parties and shall promptly pay or transfer the same to the Agent or as the Agent may direct for application in accordance with Clause 34 (*Payment mechanics*).

18.9 Additional security

This guarantee and any other Security given by the Guarantors is in addition to and is not in any way prejudiced by, and shall not prejudice, any other guarantee or Security or any other right of recourse now or subsequently held by any Finance Party, or any right of set-off or netting or right to combine accounts in connection with the Finance Documents.

19. Representations and warranties

19.1 Representations

Each Transaction Obligor makes the representations and warranties applicable to it as set out in this Clause 19 to each Finance Party.

19.2 Status

Each of the Transaction Obligors:

- (a) is a corporation, a company limited by shares or a limited liability company, duly incorporated or formed, in good standing and validly existing under the law of its jurisdiction of incorporation or formation; and
- (b) has the power to own its assets and carry on its business as it is being conducted.

19.3 Binding obligations

Subject to the Legal Reservations:

- (a) the obligations expressed to be assumed by each of the Transaction Obligors in each of the Relevant Documents to which it is a party are legal, valid, binding and enforceable obligations; and
- (b) (without limiting the generality of paragraph (a)), each Security Document to which it is a party creates or will create upon execution and delivery and, where applicable, registration, the security interests that that Security Document purports to create and those security interests are, or will be when created or intended to be created, valid and effective.

19.4 Non-conflict with other obligations

The entry into and performance by each of the Transaction Obligors of, and the transactions contemplated by, the Relevant Documents to which they are a party do not conflict with:

- (a) any law or regulation applicable to such Transaction Obligor;

- (b) the constitutional documents of such Transaction Obligor; or
- (c) any agreement or instrument binding upon such Transaction Obligor or any of such Transaction Obligor's assets or constitute a default or termination event (however described) under any such agreement or instrument.

19.5 Power and authority

- (a) Each of the Transaction Obligors has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Relevant Documents to which it is or will be a party and the transactions contemplated by those Relevant Documents.
- (b) No limit on the powers of any Transaction Obligor will be exceeded as a result of the borrowing, granting of security or giving of guarantees or indemnities contemplated by the Relevant Documents to which it is a party.

19.6 Validity and admissibility in evidence

All authorisations required or desirable:

- (a) to enable each of the Transaction Obligors lawfully to enter into, exercise its rights and comply with its obligations in the Relevant Documents to which it is a party or to enable each Finance Party to enforce and exercise all its rights under the Relevant Documents; and
- (b) to make the Relevant Documents to which any Transaction Obligor is a party admissible in evidence in its Relevant Jurisdictions,

have been obtained or effected and are in full force and effect, with the exception only of the registrations referred to in Part III of Schedule 2 (*Conditions Subsequent*).

19.7 Governing law and enforcement

- (a) Subject to the Legal Reservation, the choice of governing law of any Finance Document will be recognised and enforced in the Relevant Jurisdictions of each relevant Transaction Obligor.
- (b) Any judgment obtained in relation to any Finance Document in the jurisdiction of the governing law of that Finance Document will, subject to the Legal Reservations, be recognised and enforced in the Relevant Jurisdictions of each relevant Transaction Obligor.

19.8 Insolvency

No corporate action, legal proceeding or other procedure or step described in Clause 27.7 (*Insolvency proceedings*) or creditors' process described in Clause 27.8 (*Creditors' process*) has been taken or, to the knowledge of any Transaction Obligor, threatened in relation to an Transaction Obligor or Lomar Shipping; and none of the circumstances described in Clause 27.6 (*Insolvency*) applies to any Transaction Obligor or Lomar Shipping.

19.9 No filing or stamp taxes

Under the laws of the Relevant Jurisdictions of each relevant Transaction Obligor it is not necessary that the Finance Documents to which it is a party be filed, recorded or enrolled with any court or other authority in any of those jurisdictions or that any stamp, registration, notarial

or similar tax or fees be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents except:

- (a) any filing, recording or any tax or fee payable in relation to any Finance Document which is referred to in any legal opinion referred to in Clause 4 (*Conditions of Utilisation*);
- (b) registration of each Mortgage and Collateral Vessel Facility Mortgage at the registry of the Approved Flag where title to the relevant Vessel is registered in the ownership of the relevant Borrower or Collateral Vessel Facility Borrower (as the case may be); and
- (c) registration with Companies House of each Security Document where the Borrowers create a security interest; and
- (d) registration with the BVI Registry of Corporate Affairs (and updating the internal registers of charges maintained in accordance with applicable law) of each Security Document where either HoldCo, Intermediate HoldCo, the Collateral Vessel Facility Holdco or the Collateral Vessel Facility Intermediate Holdco create a security interest.

19.10 **No default**

Each Obligor represents and warrants that:

- (a) no Event of Default and, on the date of this Agreement and each Utilisation Date, no Default is continuing or is reasonably likely to result from the advance of an Utilisation or the entry into, the performance of, or any transaction contemplated by, any of the Relevant Documents; and
- (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 (howsoever described) under any other agreement or instrument which is binding on any of the Transaction Obligors or to which its assets are subject and which has or is reasonably likely to have a Material Adverse Effect.

19.11 **No misleading information**

Each Transaction Obligor represents and warrants that:

- (a) all information supplied by it or on its behalf to any Finance Party in connection with the Relevant Documents was true and accurate in all material respects as at the date it was provided or as at any date at which it was stated to be given;
- (b) any financial projections contained in the information referred to in paragraph (a) above have been prepared as at their date on the basis of recent historical information and on the basis of reasonable assumptions;
- (c) it has not omitted to supply any information which, if disclosed, would make the information referred to in paragraph (a) above untrue or misleading in any material respect
- (d) nothing has occurred since the date of the information referred to in paragraph (a) above which, if disclosed, would make that information untrue or misleading in any material respect.

19.12 Financial statements

- (a) HoldCo's most recent financial statements delivered pursuant to Clause 20.1 (*Financial statements*):
 - (i) have been prepared in accordance with GAAP; and
 - (ii) give a true and fair view of (if audited) or fairly present (if unaudited) the consolidated financial condition as at the end of, and consolidated results of operations for, the period to which they relate.
- (b) Since the date of the most recent financial statements delivered pursuant to Clause 20.1 (*Financial statements*) there has been no material adverse change in the business, assets or financial condition of any of the Obligor.

19.13 No proceedings pending or threatened

No litigation, arbitration or administrative or investigative proceedings of or before any court, arbitral body, authority or agency which, if adversely determined, might reasonably be expected to have a Material Adverse Effect have (to the best of its knowledge and belief, following due and careful enquiry) been started or threatened against any of the Transaction Obligor.

19.14 Taxes and VAT

With respect to each Transaction Obligor:

- (a) it is not a member of a value added tax group.
- (b) It is resident for Tax purposes only in the jurisdiction of its Original Jurisdiction.
- (c) It is not overdue in the filing of any Tax returns or overdue in the payment of any amount of Tax; and
- (d) no claims or investigations have been, or are likely to be, initiated or conducted against it with respect to the non-payment of Tax which might have a Material Adverse Effect.

19.15 No breach of laws

None of the Transaction Obligor has breached any law or regulation which breach has or is reasonably likely to have a Material Adverse Effect.

19.16 Environmental laws

- (a) Each of the Transaction Obligor is in compliance with Clause 22.3 (*Environmental compliance*) and to the best of its knowledge and belief (having made due and careful enquiry) no circumstances have occurred which would prevent such compliance in a manner or to an extent which has or is reasonably likely to have a Material Adverse Effect.
- (b) No Environmental Claim has been commenced or (to the best of its knowledge and belief (having made due and careful enquiry)) is threatened against any of the Transaction Obligor where that claim has or is reasonably likely if determined against that Transaction Obligor to have a Material Adverse Effect.

19.17 Anti-corruption law

Each of the Transaction Obligors and each Affiliate of any of them has conducted its businesses in compliance with applicable anti-corruption laws and has instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

19.18 No Security or Financial Indebtedness

- (a) No Security (other than Permitted Security) exists over all or any of the present or future assets of any Obligor in breach of this Agreement.
- (b) No Obligor has any Financial Indebtedness outstanding other than the Permitted Intercompany Loans or as otherwise permitted by this Agreement.

19.19 Pari passu ranking

The payment obligations of each of the Transaction Obligors under the Finance Documents to which it is a party rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

19.20 Ranking of Security

The security conferred by each Security Document executed or to be executed by a Transaction Obligor constitutes a first (or, as the case may be, second) priority security interest of the type described, over the assets referred to, in that Security Document and those assets are not subject to any prior or *pari passu* Security except Permitted Security.

19.21 Centre of main interests and establishments

For the purposes of Regulation (EU) No. 2015/848 of 20 May 2015 on Insolvency Proceedings (recast) (the “**Regulation**”), the centre of main interest of each of the Obligors (other than the Borrowers) (as that term is used in Article 3(1) of the Regulation) is situated in that Obligor’s Original Jurisdiction and it has no “establishment” (as that term is used in Article 2(10) of the Regulation) in any other jurisdiction.

19.22 Place of business and corporate function

Each of the Borrowers is a private limited liability company incorporated in England and Wales and its management functions are carried out in England and it has no other place of business.

19.23 No adverse consequences

- (a) It is not necessary under the laws of the Relevant Jurisdictions of any of the Transaction Obligors:
 - (i) in order to enable any Finance Party to enforce its rights under any Finance Document; or
 - (ii) by reason of the execution of any Finance Document or the performance by it 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 the Relevant Jurisdictions of any of the Transaction Obligors.

- (b) No Finance Party is or will be deemed to be resident, domiciled or carrying on business in any of the Relevant Jurisdictions of any of the Transaction Obligors by reason only of the execution, performance and/or enforcement of any Finance Document.

19.24 Disclosure of material facts

None of the Transaction Obligors is aware of any material facts or circumstances that have not been disclosed to the Agent and which might, if disclosed, have adversely affected the decision of a person considering whether or not to make loan facilities of the nature contemplated by this Agreement available to the Borrowers.

19.25 Completeness of Relevant Documents

The copies of any Relevant Documents provided or to be provided by the Borrowers to the Agent in accordance with Clause 4 (*Conditions of Utilisation*) are, or will be, true, accurate and complete copies of the originals and represent, or will represent, the full agreement between the parties to those Relevant Documents in relation to the subject matter of those Relevant Documents and there are no commissions, rebates, premiums or other payments due or to become due in connection with the subject matter of those Relevant Documents other than in the ordinary course of business or as disclosed to, and approved in writing by, the Agent.

19.26 No Immunity

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

19.27 Money laundering

Any borrowing by a Borrower under this Agreement, and the performance of its obligations under this Agreement and under the other Finance Documents, will be for its own account and will not involve any breach by it of any law or regulatory measure relating to “money laundering” as defined in Article 1 of the Directive (2005/EC/60) of the European Parliament and of the Council of the European Communities.

19.28 Sanctions

As regards Sanctions:

- (a) None of the Transaction Obligors or Lomar Shipping or any of their respective direct or indirect shareholders or any director, officer, agent, employee or person acting on behalf of any of them is a Restricted Person or is owned or controlled by, or acting directly or indirectly on behalf of or for the benefit of, a Restricted Person and none of such persons owns or controls a Restricted Person.
- (b) No proceeds of the Loan shall be made available, directly or indirectly, to or for the benefit of a Restricted Person in violation of Sanctions, or otherwise shall be, directly or indirectly, applied in a manner or for a purpose that will expose any of the Finance Parties to Sanctions.
- (c) The Transaction Obligors shall not (and shall procure that Lomar Shipping shall not) use any revenue or benefit derived from any activity or dealing with a Restricted Person in violation of Sanctions in discharging any obligation due or owing to the Finance Parties.
- (d) Each of the Transaction Obligors, Lomar Shipping and each Affiliate of any of them is in compliance with Sanctions.

- (e) Each Transaction Obligor shall (and shall procure that Lomar Shipping shall), to the extent permitted by law, promptly upon becoming aware of them supply to the Agent details of any claim, action, suit, proceedings or formal investigation against it brought by any Sanctions Authority, with respect to the activities of a Transaction Obligor or Lomar Shipping (or any of their respective shareholders).

19.29 Valuation

- (a) All information supplied by an Obligor or on its behalf to the Agent for the purposes of each Valuation was true and accurate as at its date or (if appropriate) as at the date (if any) at which it is stated to be given.
- (b) It has not omitted to supply any information to the Agent which, if disclosed, would adversely affect a Valuation.
- (c) Nothing has occurred since the date the information referred to in paragraph (a) above was supplied which, if it had occurred prior to the relevant Valuation, would have adversely affected that Valuation.

19.30 No other business

- (a) None of the HoldCo, the Intermediate HoldCo, the Borrowers, the Collateral Vessel Facility Holdco, the Collateral Vessel Facility Intermediate Holdco or the Collateral Vessel Facility Borrowers has traded or carried on any business since the date of its incorporation except for:
 - (i) in the case of the HoldCo, the ownership of Intermediate HoldCo;
 - (ii) in the case of the Collateral Vessel Facility Holdco, the ownership of the Collateral Vessel Facility Intermediate Holdco;
 - (iii) in the case of Intermediate HoldCo, the ownership of the Borrowers;
 - (iv) in the case of the Collateral Vessel Facility Intermediate Holdco, the ownership of the Collateral Vessel Facility Borrowers;
 - (v) in the case of each Borrower, the ownership and operation of the Facility Vessel owned by it; and
 - (vi) in the case of each Collateral Vessel Facility Borrower the ownership and operation of the Collateral Vessel owned by it.
- (b) As at the date of this Agreement, none of the Obligors is party to any material agreement other than the applicable Relevant Documents.
- (c) As at the date of this Agreement:
 - (i) HoldCo does not have any Subsidiaries other than Intermediate HoldCo and the Borrowers;
 - (ii) the Collateral Vessel Facility Holdco does not have any Subsidiaries other than the Collateral Vessel Facility Intermediate Holdco and the Collateral Vessel Facility Borrowers;
 - (iii) Intermediate HoldCo does not have any Subsidiaries other than the Borrowers;

- (iv) the Collateral Vessel Facility Intermediate Holdco does not have any Subsidiaries other than the Collateral Vessel Facility Borrowers, and
- (v) no Borrower or Collateral Vessel Facility Borrower has any Subsidiaries.
- (d) None of HoldCo, Intermediate HoldCo, the Borrowers, the Collateral Vessel Facility Holdco, the Collateral Vessel Facility Intermediate Holdco or the Collateral Vessel Facility Borrowers has any obligation in respect of any retirement benefit or occupational pension scheme.

19.31 **Ownership**

- (a) All of HoldCo's issued shares are directly legally and beneficially owned and controlled by Lomar Corporation.
- (b) All of Intermediate HoldCo's issued shares are directly legally and beneficially owned and controlled by HoldCo.
- (c) Each Borrower's entire issued share capital is directly legally and beneficially owned and controlled by Intermediate HoldCo.
- (d) The shares of HoldCo, Intermediate HoldCo and the Borrowers are fully paid and are not subject to any option to purchase or similar rights.
- (e) Each Borrower is (or, from the relevant Utilisation Date, will be) the sole legal and beneficial owner of the relevant Facility Vessel, its Earnings and its Insurances.
- (f) As and with effect from the date of its creation or intended creation, each Transaction Obligor will be the sole legal and beneficial owner of any other asset that is the subject of any Transaction Security created or intended to be created by it.
- (g) All of the Collateral Vessel Facility Holdco's issued shares are directly legally and beneficially owned and controlled by Gaving Holding Limited.
- (h) All of the Collateral Vessel Facility Intermediate Holdco's issued shares are directly legally and beneficially owned and controlled by Collateral Vessel Facility Holdco.
- (i) Each Collateral Vessel Facility Borrower's entire issued share capital is directly legally and beneficially owned and controlled by the Collateral Vessel Facility Intermediate Holdco.
- (j) The shares of the Collateral Vessel Facility Holdco, the Collateral Vessel Facility Intermediate Holdco and the Collateral Vessel Facility Borrowers are fully paid and are not subject to any option to purchase or similar rights.
- (k) Each Collateral Vessel Facility Borrower is the sole legal and beneficial owner of the relevant Collateral Vessel, its Earnings and its Insurances.

19.32 **ISM Code and ISPS Code**

All requirements of the ISM Code and the ISPS Code as they apply to each Borrower and any Approved Manager and each Facility Vessel will be complied with as from the date of delivery of such Facility Vessel to the relevant Borrower under the relevant MOA.

19.33 **Vessels**

- (a) From the relevant Utilisation Date in the case of each Facility Vessel and from the date of this Agreement in the case of each Collateral Vessel, each Vessel is:
 - (i) permanently registered in the name of the relevant Borrower (or the relevant Collateral Vessel Facility Borrower as the case may be) under the relevant Approved Flag;
 - (ii) free from Security (other than Permitted Security);
 - (iii) operationally seaworthy and in every way fit for service;
 - (iv) classed in accordance with the relevant Classification free of all overdue conditions and recommendations of the relevant Classification Society (except as disclosed to and approved by the Agent prior to the Utilisation Date); and
 - (v) insured in the manner required by the relevant Finance Documents.
- (b) To the best of the relevant Transaction Obligor's knowledge (following due and careful enquiry):
 - (i) no material breach of any law or regulation is outstanding which might have a Material Adverse Effect (including in relation to the value of a Vessel); and
 - (ii) no adverse claim has been made by any person in respect of the ownership of any Vessel or any interest in it.

19.34 **Deduction of Tax**

None of the Transaction Obligors is required under the law of its jurisdiction of incorporation to make any deduction for or on account of Tax from any payment it may make under any Finance Document to any Lender provided that the Lender is:

- (a) a Qualifying Lender falling within paragraph (i) of the definition of "Qualifying Lender" (as defined in Clause 12.1 (*Definitions*)) or, except where a direction has been given under section 931 of the ITA in relation to the payment concerned, falling within paragraph (ii) of the definition of "Qualifying Lender"; or
- (b) a 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).

19.35 **No interest in BVI land**

No Transaction Obligor or any of its Subsidiaries has an interest in any land located in the British Virgin Islands or in any shares, debt obligations or other securities of any body corporate which has an interest in any land located in the British Virgin Islands.

19.36 **Compliance with Collateral Vessel Facility**

The Collateral Guarantors are in compliance with their obligations under the Collateral Vessel Facility and the Finance Documents (as defined therein and executed thereunder).

19.37 Repetition

Each Repeating Representation is deemed to be repeated by each relevant Transaction Obligor by reference to the facts and circumstances then existing on the date of the Utilisation Request, on the Utilisation Date, on the first day of each Interest Period.

20. Information undertakings

The undertakings in this Clause 20 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

20.1 Financial statements

The Borrowers, Intermediate HoldCo and HoldCo shall supply to the Agent:

- (a) HoldCo's audited consolidated (so as to include the Borrowers and Intermediate HoldCo) financial statements for each of its financial years, as soon as the same become available, but in any event within 180 days after the end of each of its financial years; and
- (b) HoldCo's unaudited consolidated (so as to include the Borrowers and Intermediate HoldCo) management accounts for each Financial Quarter, as soon as the same become available, but in any event within 60 days after the end of each such Financial Quarter. Such management accounts shall include the results of the operations of each Facility Vessel during the relevant Financial Quarter and the daily Operating Costs of each Facility Vessel.

20.2 Compliance Certificates

- (a) The Borrowers, Intermediate HoldCo and HoldCo shall supply to the Agent, with each set of financial statements delivered pursuant to Clause 20.1 (*Financial statements*), a Compliance Certificate setting out (in reasonable detail) computations as to compliance with Clause 21 (*Financial covenant*) as at the date as at which those financial statements were drawn up.
- (b) The Borrowers, Intermediate HoldCo and HoldCo shall ensure that each Compliance Certificate delivered pursuant to this Clause 20.2 shall be signed by an authorised officer of HoldCo.
- (c) Each Obligor shall, if, prior to the delivery of any Compliance Certificate by the relevant Obligor, the relevant Obligor becomes aware that the financial covenant detailed in Clause 21 (*Financial covenant*) will not be complied with, promptly notify the Agent accordingly.

20.3 Requirements as to financial statements

- (a) Each set of financial statements delivered by an Obligor pursuant to Clause 20.1 (*Financial statements*):
 - (i) shall be certified by an authorised officer of that Obligor as giving a true and fair view (in case of annual financial statements), or fairly presenting (in other cases), its financial condition as at the date as at which those financial statements were drawn up; and

- (ii) shall be prepared using GAAP unless, in relation to any set of financial statements, it notifies the Agent that there has been a change in GAAP and its auditors deliver to the Agent:
 - (1) a description of any change necessary for those financial statements to reflect GAAP;
 - (2) sufficient information, in form and substance as may be reasonably required by the Agent, to enable the Agent to determine whether Clause 21.1 (*Financial covenant*) has been complied with; and
 - (3) in the case of annual audited financial statements, not be the subject of any Auditor's opinion that is qualified in any material way.

20.4 **Budgets and report on Operating Expenses**

- (a) The Obligors shall supply to the Agent, no later than thirty (30) days prior to the commencement of each calendar year, copies of an annual operating budget of each Borrower (and the Facility Vessel owned by it) for that calendar year, all such budgets to be approved by the Agent (acting on the instructions of the Majority Lenders) and in the form and with such details as the Agent (acting on the instructions of the Majority Lenders) may reasonably require.
- (b) The Obligors shall, on request, supply to the Agent a quarterly performance report for each Facility Vessel for the following Financial Quarter showing the estimated daily Operating Expenses for that Facility Vessel and, upon the request of the Agent, provide details of trade payables and other liabilities position of each Facility Vessel and any supporting information or documentation from the Approved Technical Manager as required by the Agent.

20.5 **Information: miscellaneous**

Each Transaction Obligor supply to the Agent (in sufficient copies for all the Lenders, if the Agent so requests):

- (a) at the same time as they are dispatched, copies of all documents dispatched by that Transaction Obligor to their shareholders generally (or any class of them) or dispatched by that Transaction Obligor to its creditors generally (or any class of them);
- (b) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings (including proceedings related to any alleged or actual breach of the ISM Code or the ISPS Code) which are current, threatened or pending against any Transaction Obligor, and which are likely to have a Material Adverse Effect;
- (c) promptly, such further information regarding the financial condition, business and operations of any Transaction Obligor (or any other member of the Group) as any Finance Party (through the Agent) may reasonably request, including without limitation cash flow analyses and details of the Operating Expenses of any Vessel, any dividends and/or loans made by a Borrower, Intermediate HoldCo, HoldCo or any other Transaction Obligor, and annual inspection certificates (including any annual inspection report (if required by the Agent)); and
- (d) promptly on request, such further information regarding the financial condition, assets and operations of any Transaction Obligor (including any requested amplification or explanation of any item in the financial statements, budgets or other material provided

by any Transaction Obligor under this Agreement and an up to date copy of its shareholders' register (or equivalent in its Original Jurisdiction)) as any Finance Party through the Agent may reasonably request.

20.6 **Notification of default**

- (a) Each Transaction Obligor shall notify the Agent of any Event of Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence (unless that Transaction Obligor is aware that a notification has already been provided by another Transaction Obligor).
- (b) Promptly upon a request by the Agent, each Transaction Obligor shall supply to the Agent a certificate signed by two of its directors or senior officers on its behalf certifying that no Event of Default is continuing (or if an Event of Default is continuing, specifying the Event of Default and the steps, if any, being taken to remedy it).

20.7 **“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 a Transaction Obligor after the date of this Agreement; or
 - (iii) a proposed assignment or transfer by a Lender of any of its rights and obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer,

obliges the Agent or any Lender (or, in the case of paragraph (iii) 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, each Transaction Obligor 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 (iii) 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 (iii) 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 Lender shall promptly upon the request of the Agent supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself) in order for the Agent 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.

20.8 **USA Patriot Act Notice**

Each Lender hereby notifies each Transaction Obligor that, pursuant to the requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. : 107-56 (signed into law October 26, 2001) (the “**Patriot Act**”) it is required to obtain, verify, and record information that identifies each Borrower, which information includes the name of each Borrower and other information that

will allow such Lender to identify each Borrower in accordance with the Patriot Act, and each Borrower agrees to provide such information from time to time to any Lender.

21. Financial covenant

21.1 Financial covenant

- (a) From the first Utilisation Date and thereafter at each and all times during the Facility Period, the Borrowers shall maintain cash in the Minimum Liquidity Accounts in an aggregate amount of not less than the Minimum Liquidity Amount.
- (b) The covenant in paragraph (a) above to be tested by the Agent at any time but no less frequently than on each Quarter Date and reported to the Agent in each Compliance Certificate to be delivered to the Agent pursuant to Clause 20.2 (*Compliance Certificate*).

22. General undertakings

The undertakings in this Clause 22 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

22.1 Authorisations

Each Transaction Obligor shall promptly:

- (a) obtain, comply with, renew and do all that is necessary to maintain in full force and effect each Relevant Document to which it is a party; and
- (b) supply certified copies to the Agent of any authorisation required under any law or regulation of its jurisdiction of incorporation to:
 - (i) enable it to perform its obligations under the Relevant Documents to which it is a party;
 - (ii) ensure the legality, validity, enforceability or admissibility in evidence in its jurisdiction of incorporation of any Relevant Document; or
 - (iii) enable any Transaction Obligor to carry on its business where failure to do so has or is reasonably likely to have a Material Adverse Effect.

22.2 Compliance with laws

- (a) Each Transaction Obligor shall comply (and shall procure that each Affiliate of any of them shall comply) in all respects with all laws, regulations and directives to which it may be subject if (except as regards Sanctions, to which Clause 22.2(b) applies and anti-corruption laws, to which Clause 22.5 (*Anti-corruption laws*) applies) failure to do so has or is reasonably likely to have a Material Adverse Effect.
- (b) Each Transaction Obligor shall comply (and shall procure that each Affiliate of any of them shall comply) in all respect with all Sanctions.

22.3 Environmental compliance

Each Transaction shall:

- (a) comply with all Environmental Laws;

- (b) obtain, maintain and ensure compliance with all requisite Environmental Approvals; and
- (c) implement procedures to monitor compliance with and to prevent liability under any Environmental Law,

where failure to do so has or is reasonably likely to have a Material Adverse Effect.

22.4 **Environmental Claims**

Each Transaction Obligor shall promptly upon becoming aware of the same, inform the Agent in writing of:

- (a) any Environmental Claim against any of the Transaction Obligors which is current, pending or threatened; and
- (b) any facts or circumstances which are reasonably likely to result in any Environmental Claim being commenced or threatened against any of the Transaction Obligors where the claim, if determined against that Transaction Obligor, has or is reasonably likely to have a Material Adverse Effect.

22.5 **Anti-corruption laws**

- (a) No Obligor shall directly or indirectly use the proceeds of the Loan for any purpose that would breach the Bribery Act 2010, the United States Foreign Corrupt Practices Act of 1977 or other similar legislation in other jurisdictions.
- (b) Each Transaction Obligor shall:
 - (i) conduct its businesses in material compliance with applicable anti-corruption laws; and
 - (ii) maintain policies and procedures designed to promote and achieve compliance with such laws.

22.6 **Taxation**

- (a) Each Transaction Obligor shall pay and discharge all Taxes imposed upon it or its assets within the time period allowed 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 Clause 20.1 (*Financial statements*);
 - (iii) such payment can be lawfully withheld; and
 - (iv) failure to pay those Taxes does not have or is not reasonably likely to have a Material Adverse Effect.
- (b) No Borrower and no other Transaction Obligor may change its residence for Tax purposes.

22.7 Evidence of good standing

Each Transaction Obligor shall from time to time if requested by the Agent provide the Agent with evidence in form and substance satisfactory to the Agent that the Transaction Obligors and all corporate shareholders of any of the Transaction Obligors remain in good standing.

22.8 Pari passu ranking

Each Transaction Obligor shall ensure that at all times any unsecured and unsubordinated claims of a Finance Party against it under the relevant Finance Documents rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors except those creditors whose claims are mandatorily preferred by laws of general application to companies.

22.9 Negative pledge

- (a) In this Clause 22.9, “**Quasi-Security**” means an arrangement or transaction described in Clause 22.9(b).
- (b) Except as permitted under Clause 22.9(c):
 - (i) None of the Transaction Obligors shall create nor permit to subsist any Security over any of its assets.
 - (ii) None of the Transaction Obligors shall:
 - (1) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by a Transaction Obligor or any other member of the Group or any Related Party;
 - (2) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
 - (3) 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
 - (4) 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.
- (c) Paragraph (b) above does not apply to any Security or (as the case may be) Quasi-Security, which is a Permitted Security or a Permitted Transaction.

22.10 Disposals

- (a) Except as permitted under Clause 22.10(b), no Transaction Obligor shall enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any asset.
- (b) Clause 22.10(a) does not apply to any sale, lease, transfer or other disposal which is a Permitted Transaction or a Permitted Vessel Disposal.

22.11 Arm's length basis

- (a) Except as permitted under Clause 22.11(b), no Transaction Obligor shall enter into any transaction with any person except on arm's length terms.
- (b) Other than the entry by a Borrower or a Collateral Vessel Facility Borrower into a Management Agreement with an Approved Manager, no Transaction Obligor shall enter into a transaction with a Related Party without the prior written consent of the Agent (which consent the Agent shall have full power to withhold).
- (c) The following transactions shall not be a breach of Clause 22.11(a):
 - (i) fees, costs and expenses payable by a Transaction Obligor under the Relevant Documents in the amounts set out in the Relevant Documents (but, in the case of Operating Expenses, always within the applicable Daily OPEX Cap) delivered to the Agent under Clause 4.1 (*Initial conditions precedent*) or fees, costs and expenses agreed by the Agent;
 - (ii) in relation to an Obligor, any Permitted Dividends;
 - (iii) in relation to an Obligor, any Permitted Loan Repayments; and
 - (iv) in relation to a Transaction Obligor, any Permitted Transaction.

22.12 Mergers and continuations

No Transaction Obligor shall, without the prior written consent of the Lenders, enter into any amalgamation, demerger, merger, consolidation, corporate reconstruction or continuation into another jurisdiction, other than a Permitted Transaction.

22.13 Change of business

No Transaction Obligor shall make any substantial change to the general nature of its business from that carried on at the date of this Agreement.

22.14 No other business

- (a) None of the Borrowers or Collateral Vessel Facility Borrowers shall engage in any business other than the ownership, operation, chartering and management of the relevant Vessel owned by it.
- (b) Neither Intermediate HoldCo nor the Collateral Vessel Facility Intermediate Holdco shall engage in any business other than the ownership of the shares in each Borrower or each Collateral Vessel Facility Borrower (as applicable).
- (c) Neither HoldCo nor Collateral Vessel Facility Holdco shall engage in any business other than the ownership of the shares in Intermediate HoldCo or the Collateral Vessel Facility Intermediate Holdco (as applicable).

22.15 No acquisitions

No Transaction Obligor shall acquire a company or any shares or securities or a business or undertaking (or, in each case, any interest in any of them) or incorporate a company.

22.16 No Joint Ventures

No Transaction Obligor shall:

- (a) enter into, invest in or acquire (or agree to acquire) any shares, stocks, securities or other interest in any Joint Venture; or
- (b) transfer any assets or lend to or guarantee or give an indemnity for or give security for the obligations of a Joint Venture or maintain the solvency of or provide working capital to any Joint Venture (or agree to do any of the foregoing).

22.17 No borrowings

No Transaction Obligor shall incur or allow to remain outstanding any Financial Indebtedness (except for the Loan, the Permitted Intercompany Loans and, in the case of the Collateral Guarantors, under or in connection with the Collateral Vessel Facility) unless it is a Permitted Transaction.

22.18 No substantial liabilities

Except in the ordinary course of business, none of the Transaction Obligors shall incur any liability to any third party which is in the Agent's opinion of a substantial nature.

22.19 No loans or credit

None of the Obligors shall be a creditor in respect of any Financial Indebtedness (other than pursuant to the Finance Documents and the Permitted Intercompany Loans) unless it is a loan made in the ordinary course of business on arm's length terms in connection with the chartering, operation or repair of a Facility Vessel or a Permitted Transaction.

22.20 No guarantees or indemnities

None of the Obligors shall incur or allow to remain outstanding any guarantee in respect of any obligation of any person unless it is a Permitted Transaction.

22.21 No dividends

Except for any Permitted Dividend, no Obligor shall:

- (a) declare, make or pay 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);
- (b) repay or distribute any dividend or share premium reserve; or
- (c) redeem, repurchase, defease, retire or repay any of its share capital or resolve to do so.

22.22 Permitted Intercompany Loan payments

No Obligor may make any payment in respect of any Permitted Intercompany Loan other than a Permitted Loan Repayment.

22.23 Inspection of records

Each Transaction Obligor shall permit the inspection of their respective financial, operating and insurance records and accounts as may be reasonably required from time to time by the Agent or its nominee.

22.24 No change in Relevant Documents

- (a) Save as may be required or necessary in connection with the Second Priority Security Documents, no Transaction Obligor shall:
 - (i) exercise any discretion under any of the Relevant Documents which are not Finance Documents in a manner which is material and adverse to the interests of the Lenders; or
 - (ii) amend, vary, novate, supplement, supersede, waive or terminate any term of, any of the Relevant Documents which are not Finance Documents, or any other document delivered to the Agent pursuant to Clause 4.1 (*Initial conditions precedent*) or Clause 4.2 (*Utilisation conditions precedent*) or Clause 4.4 (*Conditions Subsequent*).
- (b) Each Transaction Obligor shall take all reasonable and practical steps to preserve and enforce its rights and pursue any claims and remedies arising under any Relevant Documents which are not Finance Documents.
- (c) Each Transaction Obligor shall comply with its obligations under the Relevant Documents which are not Finance Documents.

22.25 Further assurance

- (a) Each Transaction Obligor shall promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Security Agent may reasonably specify (and in such form as the Security Agent may reasonably require in favour of the Security Agent or its nominee(s)):
 - (i) to perfect any Security created or intended to be created 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 or the Finance Parties provided by or pursuant to the Finance Documents or by law;
 - (ii) to confer on the Security Agent or confer on the Finance Parties Security over any property and assets of that Borrower (or that other Transaction Obligor) located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to the Security Documents; and/or
 - (iii) to facilitate the realisation of the assets which are, or are intended to be, the subject of the Security Documents.

- (b) Each Transaction 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 conferred or intended to be conferred on the Security Agent or the Finance Parties by or pursuant to the Finance Documents.

22.26 **Sanctions**

- (a) The Transaction Obligors shall not (and shall procure that Lomar Shipping shall not), directly or indirectly use, lend, make payments of, contribute or otherwise make available, all or any part of the proceeds of the Loan or other transaction(s) contemplated by this Agreement:
 - (i) to fund either directly or indirectly any trade, business or other activities:
 - (1) involving or for the benefit of any Restricted Person in violation of Sanctions; or
 - (2) in any country or territory that, at the time of such funding, is a Sanctioned Country in violation of Sanctions; or
 - (3) in any other manner that would reasonably be expected to result in any person or any Finance Party being in violation of any Sanctions or becoming a Restricted Person.
- (b) No Transaction Obligor shall permit or authorise (and shall procure that Lomar Shipping shall not), and each Transaction Obligor shall prevent any Vessel being used directly or indirectly:
 - (i) by or for the benefit of any Restricted Person or in any country, or territory, that is a Sanctioned Country where such use would constitute a violation of Sanctions; and/or
 - (ii) in any trade which will expose a Vessel, any person, an Approved Manager, crew or insurers to Sanctions or any enforcement proceedings or any other negative consequences whatsoever arising therefrom.
- (c) Each Transaction Obligor shall ensure that neither its assets nor the assets subject to the relevant Finance Documents shall be used directly or indirectly by or for the benefit of any Restricted Person or otherwise used in any manner which would not be in compliance with Sanctions.
- (d) Each Transaction Obligor shall comply, and procure compliance (including by Lomar Shipping), with Sanctions.

22.27 **Use of proceeds**

No Obligor shall, and will procure that each other Obligor shall not, and shall not permit or authorise any other person to, directly or indirectly, make available any proceeds of the Loan to fund or facilitate trade, business or other activities (i) involving or for the benefit of any Restricted Person or (ii) in any other manner that could result in any Transaction Obligor, Lomar Shipping or a Finance Party not being in compliance with Sanctions or becoming a Restricted Person.

23. Vessel Undertakings

23.1 General

With respect to each Vessel, the undertakings in this Clause 23 shall remain in force from the relevant Utilisation Date for so long as any amount is outstanding under any Finance Document

23.2 Vessel name and registration

Each Borrower and Collateral Vessel Facility Borrower shall, in respect of the Vessel owned by it:

- (a) keep that Vessel registered in its name with the Approved Flag;
- (b) not do or allow to be done anything as a result of which such registration might be cancelled or imperilled;
- (c) not change the port of registry of that Vessel without the prior written consent of the Agent (acting with the instruction of all Lenders); and
- (d) give the Agent prior notice of any change of name of that Vessel.

23.3 Repair and classification

Each Borrower and Collateral Vessel Facility Borrower shall keep the Vessel owned by it:

- (a) in a good and safe condition and state of repair;
- (b) consistent with first class ship ownership and management practice;
- (c) in a manner such that they maintain the Classification of that Vessel or free of overdue recommendations and conditions; and
- (d) so as to comply with all laws and regulations applicable to vessels registered under the Approved Flag or to vessels trading to any jurisdiction to which that Vessel may trade from time to time including but not limited to ISM Code and the ISPS Code.

23.4 Modification

Each Borrower and Collateral Vessel Facility Borrower shall, in respect of the Vessel owned by it, not make or permit to be made any modification or repairs to, or replacement of, the Vessel owned by it or equipment installed on that Vessel that would or might materially and adversely alter the structure, type or performance characteristics of that Vessel or materially reduce its value.

23.5 Removal of parts

No Borrower or Collateral Vessel Facility Borrower shall, in respect of the Vessel owned by it, make or permit to be made, remove, nor permit the removal, of any material part of that Vessel, or any item of equipment installed on that Vessel, unless the part or item so removed is forthwith replaced by a suitable part or item which is in the same condition as or better condition than the part or item removed, is free from any Security or any right in favour of any person other than the Security Agent and becomes on installation on that Vessel, the property of the relevant Borrower or Collateral Vessel Facility Borrower, and subject to the security constituted by the Mortgage or Collateral Vessel Facility Mortgage relating to that Vessel (as the case may be), provided that the relevant Borrower or Collateral Vessel Facility Borrower (as the case may be)

may install equipment owned by a third party if the equipment can be removed without any risk of damage to that Vessel.

23.6 Surveys

Each Borrower and Collateral Vessel Facility Borrower shall, in respect of the Vessel owned by it, submit that Vessel regularly to all periodical or other surveys which may be required for classification purposes and, if so required by the Agent, provide the Agent with copies of all survey reports.

23.7 Inspection

Each Borrower and Collateral Vessel Facility Borrower shall permit the Agent and/or the Security Agent (by surveyors or other persons appointed by it for that purpose) to board the Vessel owned by it at all reasonable times to inspect its condition or to satisfy themselves about proposed or executed repairs and shall afford all proper facilities for such inspections, provided that, so long as no Event of Default has occurred and is continuing, (i) the number of inspections of a Vessel shall not exceed one per calendar year and (ii) no such inspection shall interfere with the normal operation of the Vessel. Any costs, fees or expenses relating to such inspections shall be for the account of the Borrowers, provided that, so long as no Event of Default has occurred and is continuing, the Borrowers shall not be required to pay for more than one inspection per Vessel in any calendar year.

23.8 Prevention and release from arrest

Each Borrower and Collateral Vessel Facility Borrower shall, in respect of the Vessel owned by it, promptly discharge:

- (a) all liabilities which give or may give rise to maritime or possessory liens on or claims enforceable against that Vessel or its Earnings or Insurances;
- (b) all Taxes, dues and other amounts charged in respect of that Vessel, or its Earnings or Insurances; and
- (c) all other outgoings whatsoever in respect of that Vessel, or its Earnings or Insurances,

and, forthwith upon receiving notice of the arrest of that Vessel, or of its detention in exercise or purported exercise of any lien or claim, the relevant Borrower or relevant Collateral Vessel Facility Borrower shall procure its release by providing bail or otherwise as the circumstances may require.

23.9 Compliance with laws

Each Borrower and each Collateral Vessel Facility Borrower shall:

- (a) comply, or procure compliance with all Environmental Laws, the ISM Code, the ISPS Code, Sanctions and all other laws and regulations relating to the Vessel owned by it, their respective ownership, operation and management or to its or their respective business;
- (b) not employ the Vessel owned by it nor allow its employment in any manner contrary to any law or regulation in any relevant jurisdiction including but not limited to the ISM Code and the ISPS Code, any Environmental Laws and any Sanctions;
- (c) maintain an ISSC for the Vessel owned by it;

- (d) in the event of hostilities in any part of the world (whether war is declared or not), not cause or permit the Vessel owned by it to enter or trade to any zone which is declared a war zone by any government or by the war risks insurers of the Vessel owned by it unless prior consent has been obtained from the Vessel's insurers, written notice is given to the Agent as soon as reasonably practicable and the Borrowers or Collateral Vessel Facility Borrowers (as the case may be) have (at their expense) effected any special, additional or modified insurance cover which the Agent may require; and
- (e) in respect of any Vessel whose age exceeds 10 years and if required by law or regulation, obtain a green passport for the Vessel owned by it, promptly after completion of the first dry-dock to occur after the tenth anniversary of the date on which the relevant Vessel was delivered by the relevant builder to its first owner, and shall maintain such green passport throughout the Facility Period.

23.10 **Classification Society**

Following a written request by the Agent, the relevant Borrower or Collateral Vessel Facility Borrower (as the case may be) shall instruct the relevant Classification Society to (and shall use reasonable efforts to procure that such Classification Society shall undertake to the Security Agent to):

- (a) notify the Security Agent promptly in writing if the Classification Society:
 - (i) receives notification that a Vessel's classification society is to be changed; or
 - (ii) becomes aware of any facts or matters which may result in or have resulted in a change, discontinuance, withdrawal, suspension, or expiry of a Vessel's class under the rules or terms and conditions of such Borrower's, Collateral Vessel Facility Borrower's or a Vessel's membership of the Classification Society;
- (b) following receipt of a request in writing by the Security Agent:
 - (i) send to the Security Agent certified true copies of all original class records held by the Classification Society in relation to a Vessel and/or allow the Security Agent (or its agents) at any time to inspect the original class and related records of such Borrower or Collateral Vessel Facility Borrower and a Vessel at the offices of the Classification Society and to take copies of them; and
 - (ii) confirm whether the relevant Borrower or Collateral Vessel Facility Borrower is or is not in default of any of its obligations or liabilities to the Classification Society, including confirmation on whether it has paid in full all fees or other charges due and payable to the Classification Society and, if that Borrower or Collateral Vessel Facility Borrower is in default, to specify in reasonable detail the facts and circumstances of such default, the consequences of such default, and any remedy period agreed or allowed by the Classification Society.

23.11 **Provision of information**

Each Borrower and Collateral Vessel Facility Borrower shall, in respect of the Vessel owned by it, promptly provide the Lenders with any information which they request regarding:

- (a) that Vessel, its employment, position and engagements;
- (b) its Earnings;
- (c) payments and amounts due to the master and crew of that Vessel;

- (d) any expenses incurred, or likely to be incurred, in connection with the operation, maintenance or repair of that Vessel and any payments made in respect of that Vessel;
- (e) any towages and salvages; and
- (f) the Borrowers', the Collateral Vessel Facility Borrowers', the Approved Managers' or that Vessel's compliance with the ISM Code and the ISPS Code.

23.12 Notification of certain events

Each Borrower and Collateral Vessel Facility Borrower, in relation to the Vessel owned by it, shall immediately notify the Agent by email, confirmed forthwith by letter, of:

- (a) any casualty relating to that Vessel which is or is likely to be or to become a Major Casualty;
- (b) any occurrence as a result of which that Vessel has become or is, by the passing of time or otherwise, likely to become a Total Loss;
- (c) any requirement or recommendation made by any insurer or the Classification Society or by any competent authority which is not immediately complied with in accordance with its terms;
- (d) any arrest or detention of that Vessel, any exercise or purported exercise of any lien on that Vessel or its Earnings or any requisition of that Vessel for hire;
- (e) any intended dry docking of that Vessel;
- (f) any Environmental Claim made against any Borrower or any Collateral Vessel Facility Borrower or in connection with any Vessel, or any Environmental Incident;
- (g) any claim for breach of the ISM Code or the ISPS Code being made against any Borrower, any Collateral Vessel Facility Borrower, any Approved Manager or otherwise in connection with that Vessel;
- (h) any actual or threatened withdrawal, suspension, cancellation or modification of the ISSC; and
- (i) any other matter, event or incident, actual or threatened, the effect of which will or could lead to the ISM Code or the ISPS Code not being complied with,

and the Borrowers and each Collateral Vessel Facility Borrower will keep the Agent advised, in writing on a regular basis and in such detail as the Agent shall require of the Borrowers', the Collateral Vessel Facility Borrowers', the Approved Managers' or any other person's response to any of those events or matters.

23.13 Restrictions on chartering etc.

No Borrower or Collateral Vessel Facility Borrower, in relation to the Vessel owned by it, shall:

- (a) let that Vessel on demise charter for any period;
- (b) enter into or materially vary any time charter, consecutive voyage charter or other contract of employment in respect of that Vessel without the prior written consent of the Agent (acting on the instructions of the Majority Lenders):

- (i) for a term which exceeds thirteen (13) months; or
- (ii) for a term which, by virtue of any option of extensions, may exceed thirteen (13) months;
- (c) enter into or materially vary any charter in relation to that Vessel under which more than two (2) months' hire (or the equivalent) is payable in advance;
- (d) charter that Vessel otherwise than on bona fide arm's length terms at the time when that Vessel is fixed (and for the avoidance of doubt any charter to a member of the Group or any Related Party shall not be permitted without the Agent's prior written consent, such consent not to be unreasonably withheld or delayed);
- (e) pay or agree to pay any fees, commission, or any other compensation, contribution, remuneration, or payment of any kind whatsoever to an Approved Manager other than in accordance with the terms of a Management Agreement;
- (f) deactivate or lay-up that Vessel; or
- (g) put that Vessel into the possession of any person for the purpose of work being done upon her in an amount exceeding or likely to exceed US\$500,000 (or the equivalent in any other currency) unless that person has first given to the Agent in terms satisfactory to it a written undertaking not to exercise any lien on that Vessel or its Earnings for the cost of such work or for any other reason.

23.14 Notice of Mortgage

Each Borrower shall keep the Mortgage registered against the Facility Vessel owned by it and each Collateral Vessel Facility Borrower shall keep the Collateral Vessel Mortgage registered against the Collateral Vessel owned by it, in each case as a valid first (or, as applicable, second) priority or first (or, as applicable, second) preferred mortgage (as the case may be), carry on board that Facility Vessel or Collateral Vessel a certified copy of the relevant Mortgage or Collateral Vessel Mortgage (as the case may be) and place and maintain in a conspicuous place in the navigation room and the Master's cabin of that Facility Vessel or Collateral Vessel (as the case may be) a framed printed notice stating that the Facility Vessel or Collateral Vessel (as the case may be) is mortgaged by the relevant Borrower or Collateral Vessel Facility Borrower (as the case may be) to the Security Agent.

23.15 Sharing of Earnings

No Borrower and no Collateral Vessel Borrower shall enter into any agreement or arrangement for the sharing of any Earnings relating to any Vessel, other than with the prior written consent of the Agent (acting on the instructions of all Lenders), such consent not to be unreasonably withheld or delayed.

23.16 Manager

A manager of a Vessel shall not be appointed unless that manager is, in the case of the technical management of a Vessel, an Approved Technical Manager or, in the case of the commercial management of a Vessel, an Approved Commercial Manager, the appointment is on arms' length terms and, in advance of any appointment: (a) the terms of its appointment are approved in writing and (b) the relevant Approved Manager has delivered a duly executed Manager's Undertaking to the Security Agent (together with evidence reasonably satisfactory to the Agent of the due authority of the signatory thereto). For the avoidance of doubt, any management agreement with an Approved Manager that is already in place at the date of this Agreement has already been approved by the Agent.

23.17 Management Agreement

No Borrower and no Collateral Vessel Facility Borrower will agree to any material alteration to the terms of an Approved Manager's appointment, nor permit or authorise an Approved Manager to transfer or delegate any of its obligations under the relevant management agreement, without the prior consent of the Agent (such consent not to be unreasonably withheld or delayed) and subject to any Approved Sub-Manager providing a duly executed Manager's Undertaking to the Security Agent.

23.18 Required Time Charter

In relation to the Facility Vessels, each Borrower undertakes and agrees, subject to all other provisions of this Agreement, to employ the Facility Vessel owned by it on a time charter (in compliance with the requirements of Clause 23.13) for a minimum period of not less than five (5) months and at a minimum daily average hire rate for both Facility Vessels of US\$30,000 and with a charterer approved by the Lenders, such time charter to commence not later than the date falling 30 days after the Utilisation Date for the relevant Facility Vessel.

23.19 Intercreditor documentation

Each Transaction Obligor undertakes and agrees that it shall promptly upon the Agent's request (acting on the instructions of the Lenders) enter into such intercreditor documentation as the Agent (acting on the instructions of the Lenders) may require for the purposes of implementing any intercreditor arrangements between (i) the Agent, the Security Trustee and the Lenders and (ii) the agent, security trustee and lenders under the Collateral Vessel Facility.

24. Insurance Undertakings

24.1 General

Each Borrower and each Collateral Vessel Facility Borrower undertakes to comply with the following provisions of this Clause 24 for so long as any amount is outstanding under the Finance Documents or except as the Security Agent may otherwise permit (acting on the instructions of all Lenders):

24.2 Maintenance of obligatory insurances

Each Borrower and each Collateral Vessel Facility Borrower will keep the Vessel owned by it at all times insured at its own cost and expense, against:

- (a) fire and usual marine risks (including hull and machinery, excess risks and increased value) and war risks (including the London blocking and trapping addendum or equivalent coverage, including terrorism and piracy risks where excluded under the fire and usual marine risks insurance and including, without limitation, protection and indemnity war risks with a separate limit not less than hull value) for an amount on an agreed value basis at least the greater of:
 - (i) (I) in relation to a Facility Vessel, an amount equal to 120% of the Tranche in respect of that Facility Vessel (and, when aggregated with such insurances in respect of each Facility Vessel other than that Facility Vessel, 120% of the Loan) or (II) in respect of a Collateral Vessel, in accordance with the relevant insurance undertakings contained in the Collateral Vessel Facility; and
 - (ii) (I) the Market Value of that Facility Vessel or (II) in respect of a Collateral Vessel, in accordance with the relevant insurance undertakings contained in the Collateral Vessel Facility;

- (b) (I) in relation to a Facility Vessel, the protection and indemnity risks (including without limitation protection and indemnity war risks in excess of the amount for war risks (hull) and oil pollution liability risks and in respect of the full value and tonnage of that Facility Vessel on “full entry terms” for the highest available amount in the insurance market for vessels of a similar age and type as that Facility Vessel (but, in relation to liability for oil pollution, for an amount not less than US\$1,000,000,000) or (II) in respect of a Collateral Vessel, in accordance with the relevant insurance undertakings contained in the Collateral Vessel Facility; and
- (c) any other risks against which the Agent considers, having regard to practices and other circumstances prevailing at the relevant time, it would in the opinion of the Agent be reasonable for a Borrower (or as the case may be, a Collateral Vessel Facility Borrower) to insure and which are specified by the Agent by notice to the relevant Borrower or Collateral Vessel Facility Borrower.

24.3 **Terms of obligatory insurances**

The obligatory insurances shall:

- (a) be in Dollars;
- (b) be on terms approved by the Agent in writing;
- (c) be through approved brokers and with approved insurance companies and/or underwriters or, in the case of war risks and protection and indemnity risks, in approved war risks and protection and indemnity risks associations, which are members of the International Group of Protection and Indemnity Associations, and have Standard & Poor’s rating of at least A or a comparable rating by any other rating agency acceptable to the Agent (acting on the instructions of all Lenders);
- (d) whenever required by the Agent, name (or be amended to name) the Security Agent as additional named assured for its rights and interests, warranted no operational interest and with full waiver of rights of subrogation against the Security Agent (as the case may be), but without the Security Agent thereby being liable to pay (but having the right to pay) premiums, calls or other assessments in respect of such insurance;
- (e) name the Security Agent as loss payee with such directions for payment as the Security Agent may specify (such loss payable clauses to be in the form determined pursuant to the provisions of the General Assignments or the Collateral Vessel Facility General Assignments (as the case may be);
- (f) provide that all payments by or on behalf of the insurers under the obligatory insurances to the Security Agent shall be made without set off, counterclaim or deductions or condition whatsoever;
- (g) provide that such obligatory insurances shall be primary without right of contribution from other insurances which may be carried by the Security Agent and/or the Agent; and
- (h) provide that the Security Agent may make proof of loss if the relevant Borrower fails to do so.

24.4 **Renewal**

Each Borrower and each Collateral Vessel Facility Borrower shall:

- (a) use commercially reasonable efforts to, at least fourteen (14) days before and, in any case, not less than five (5) days before the expiry of any obligatory insurance relating to a Vessel;
 - (i) notify the Agent of the approved brokers (or other insurers) and any protection and indemnity or war risks association through or with whom such Borrower or a Collateral Vessel Facility Borrower (as the case may be) proposes to renew that obligatory insurance and of the proposed terms of renewal; and
 - (ii) obtain the Agent's approval to the matters referred to in paragraph (a)(i);
- (b) use commercially reasonable efforts to, at least seven (7) days before and, in any case, not less than three (3) days before the expiry of any obligatory insurance relating to a Vessel, renew that obligatory insurance in accordance with the Agent's approval pursuant to paragraph (a); and
- (c) not add any (other) assured to any obligatory insurance without the prior written consent of the Agent; provided that an Approved Manager that has subordinated its rights pursuant to a Manager's Undertaking may be added as an assured to any obligatory insurance.

24.5 Copies of policies

Each Borrower and each Collateral Vessel Facility Borrower shall provide to the Agent pro forma copies of all insurance policies and other documentation issued by brokers, insurance and protection and indemnity associations as soon as they are available after they have been placed or renewed.

24.6 Copies of certificates of entry

Each Borrower and each Collateral Vessel Facility Borrower shall ensure that any protection and indemnity and/or war risks association in which a Vessel is entered provides the Agent with:

- (a) a certified copy of the certificate of entry for the Vessel owned by it;
- (b) a letter or letters of undertaking in such form as may be required by the Security Agent; and
- (c) where required to be issued under the terms of insurance or indemnity provided by the relevant Borrower's or the relevant Collateral Vessel Facility Borrower's (as the case may be) protection and indemnity association, a certified copy of each certificate of financial responsibility for pollution by oil or other Environmentally Sensitive Material issued by the relevant certifying authority in relation to the Vessel owned by it.

24.7 Letters of undertaking

Each Borrower and each Collateral Vessel Facility Borrower shall ensure that all approved brokers provide the Security Agent a letter or letters of undertaking in a form required by the Security Agent and including undertakings by the approved brokers that:

- (a) they will have endorsed on each policy, immediately upon issue, a loss payable clause and a notice of assignment in the agreed form or in such other forms as the Security Agent may require;
- (b) they will hold such policies, and the benefit of such insurances, to the order of the Security Agent in accordance with the said loss payable clause;

- (c) they will advise the Security Agent immediately of any material change to the terms of the obligatory insurances;
- (d) they will notify the Security Agent, not less than seven (7) days before the expiry of the relevant obligatory insurances, in the event of their not having received notice of renewal instructions from the relevant Borrower or relevant Collateral Vessel Facility Borrower or its agents and, in the event of their receiving instructions to renew, they will promptly notify the Security Agent of the terms of the instructions; and
- (e) they will not set off against any sum recoverable in respect of a claim relating to the Vessel owned by that Borrower or Collateral Vessel Facility Borrower under such obligatory insurances any premiums or other amounts due to them or any other person whether in respect of that Vessel or otherwise, they waive any lien on the policies, or any sums received under them, which they might have in respect of such premiums or other amounts, and they will not cancel such obligatory insurances by reason of non-payment of such premiums or other amounts, and will arrange for a separate policy to be issued in respect of that Vessel forthwith upon being so requested by the Security Agent.

24.8 Deposit original policies

Each Borrower and each Collateral Vessel Facility Borrower shall ensure that the originals of all policies relating to obligatory insurances are deposited with the approved brokers through which the insurances are effected or renewed.

24.9 Payment of premiums

Each Borrower and each Collateral Vessel Facility Borrower shall punctually pay all premiums or other sums payable in respect of the obligatory insurances and produce all relevant receipts when so required by the Agent.

24.10 P&I guarantees

Each Borrower and each Collateral Vessel Facility Borrower shall ensure that any guarantees required by a protection and indemnity or war risks association are promptly issued and remain in full force and effect.

24.11 Compliance with terms of obligatory insurances

No Borrower or Collateral Vessel Facility Borrower shall do or omit to do (or permit to be done or not to be done) any act or thing which would or might render any obligatory insurance invalid, void, voidable or unenforceable or render any sum payable under an obligatory insurance repayable in whole or in part; and, in particular:

- (a) each Borrower and Collateral Vessel Facility Borrower shall take all necessary action and comply with all requirements which may from time to time be applicable to the obligatory insurances, and (without limiting the obligation contained in Clause 24.6 (*Copies of certificates of entry*)) ensure that the obligatory insurances are not made subject to any exclusions or qualifications to which the Agent has not given its prior written approval;
- (b) no Borrower or Collateral Vessel Facility Borrower shall make any changes relating to the Classification or Classification Society or manager or operator of the Vessel owned by it unless approved by the underwriters of the obligatory insurances; and

- (c) no Borrower or Collateral Vessel Facility Borrower shall employ the Vessel owned by it, or allow it to be employed, otherwise than in conformity with the terms and conditions of the obligatory insurances, without first obtaining the consent of the Agent and the insurers and complying with any requirements (as to extra premium or otherwise) which the Agent and the insurers specify.

24.12 Alteration to terms of obligatory insurances

No Borrower or Collateral Vessel Facility Borrower shall make nor agree to any alteration to the terms of any obligatory insurance or waive any right relating to any obligatory insurance without the prior written consent of the Security Agent (acting on the instructions of all the Lenders).

24.13 Settlement of claims

No Borrower or Collateral Vessel Facility Borrower shall settle, compromise or abandon any claim under any obligatory insurance for a Total Loss or for a Major Casualty without the prior written consent of the Security Agent, and shall do all things necessary and provide all documents, evidence and information to enable the Security Agent to collect or recover any moneys which at any time become payable in respect of the obligatory insurances.

24.14 Application of recoveries

Any sums paid under the obligatory insurances other than to the Security Agent shall be applied in repairing the damage and/or discharging the liability in respect of which they have been paid, save to the extent that the repairs have already been completed and paid for and/or the liability has already been fully discharged.

24.15 Provision of copies of communications

Each Borrower and Collateral Vessel Facility Borrower shall provide the Agent, at the time of each such communication, copies of all material written communications between such Borrower or such Collateral Vessel Facility Borrower (as the case may be) and each of the following:

- (a) the approved brokers; and
- (b) the approved protection and indemnity and/or war risks associations; and
- (c) the approved insurance companies and/or underwriters,

which relate directly or indirectly to:

- (i) that Borrower's or Collateral Vessel Facility Borrower's obligations relating to the obligatory insurances including, without limitation, all requisite declarations and payments of additional premiums or calls; and
- (ii) any credit arrangements made between that Borrower or Collateral Vessel Facility Borrower and any of the persons referred to in paragraphs (a) or (b) relating wholly or partly to the effecting or maintenance of the obligatory insurances.

24.16 **Provision of information**

In addition, each Borrower and Collateral Vessel Facility Borrower shall promptly provide the Agent (or any persons which the Agent may designate) with any information which the Agent (or any such designated person) requests for the purpose of:

- (a) obtaining or preparing any report from an independent marine insurance broker as to the adequacy of the obligatory insurances effected or proposed to be effected; and/or
- (b) effecting, maintaining or renewing any such insurances as are referred to in Clause 24.17 (*Mortgagee's interest and additional perils*) or dealing with or considering any matters relating to any such insurances,

and each Borrower and Collateral Vessel Facility Borrower shall forthwith upon demand, indemnify the Agent in respect of all fees and other expenses incurred by or for the account of the Agent in connection with any such report as is referred to in paragraph (a); provided that the Agent shall only be entitled to obtain one insurance report per calendar year at the Borrowers' or the relevant Collateral Vessel Facility Borrower's (as applicable) cost unless an Event of Default has occurred and is continuing, in which case any insurance reports obtained by the Agent will be at the Borrowers' or the relevant Collateral Vessel Facility Borrower's cost.

24.17 **Mortgagee's interest and additional perils insurances**

The Security Agent shall be entitled, at the cost and expense of the Borrowers or the Collateral Vessel Facility Borrowers (as applicable), from time to time to effect, maintain and renew:

- (a) a Mortgagee's Interest Additional Perils (Pollution) Insurance and a Mortgagee's Interest Marine Insurance in each case in an amount equal to 120% of the Loan and otherwise on such terms, through such insurers and generally in such manner, as the Security Agent may from time to time consider appropriate; and
- (b) any other insurance cover which the Security Agent reasonably requires in respect of a Finance Party's interests and potential liabilities (whether as mortgagee of a Vessel or beneficiary of the Security Documents) and the Borrowers (or the relevant Collateral Vessel Facility Borrower, as applicable) shall upon demand fully indemnify the Security Agent in respect of all premiums and other expenses which are incurred in connection with or with a view to effecting, maintaining or renewing any insurance referred to in this Clause 24.17 or dealing with, or considering, any matter arising out of such insurance,

and the Borrowers (or the relevant Collateral Vessel Facility Borrower as the case may be) shall supply, or procure that there is supplied, to the Security Agent such information as the Security Agent may require in connection with the matters referred to in this Clause 24.17.

24.18 **Change in insurance requirements**

The Agent shall have the right, by giving notice to the Borrowers (or the relevant Collateral Vessel Facility Borrower as the case may be), to change the terms and requirements of this Clause 24 (*Insurance Undertakings*) in such manner as it considers appropriate as a result of a change of circumstances or practice after the date of this Agreement, in which case, from the date being fourteen (14) days after such notice is provided, this Clause 24.18 shall be automatically be deemed modified in accordance with the terms of that notice.

25. Accounts

25.1 Maintenance

- (a) Other than with the consent of the Agent (acting on the instructions of all Lenders), no Transaction Obligor shall open or maintain any bank accounts other than:
 - (i) the Accounts required in connection with this Agreement, the other Finance Documents and the Collateral Vessel Facility; or
 - (ii) in relation to a Facility Vessel, a joint account with the relevant Seller or an escrow account with a law firm, notary or bank into which the deposit is to be paid under the terms of the relevant MOA; or
 - (iii) in relation to a Facility Vessel, an Approved Suspense Account.
- (b) Each Account Holder shall maintain the relevant Accounts with the Account Bank, free of Security and rights of set-off (other than as created under the Accounts Security, or, in the case of the Collateral Facility Accounts, as security for its obligations under the Collateral Vessel Facility), until no amount remains outstanding from them under this Agreement or any other Finance Document.

25.2 Location of Accounts

Each Account Holder shall promptly:

- (a) comply with any requirement of the Agent as to the location or relocation of the Accounts (subject to, in the case of the Collateral Vessel Facility Accounts, the direction of the facility agent and security trustee under the Collateral Vessel Facility); and
- (b) execute any documents which the Agent specifies to create or maintain in favour of the Security Agent Security over (and/or rights of set-off, consolidation or other rights in relation to) each Account.

25.3 Application of Account

- (a) Each Account Holder shall procure that transfers are made from each Account (other than the Collateral Facility Accounts) in order to facilitate the payment of amounts required and/or contemplated by this Agreement and the other Finance Documents.
- (b) Each Account Holder shall only be permitted to withdraw sums from the Accounts (other than the Collateral Facility Accounts) in accordance with the provisions of the Finance Documents or as otherwise permitted by the Agent (acting on the instructions of the Majority Lenders), or in the case of the Collateral Facility Accounts in accordance with the provisions of the Collateral Vessel Facility.
- (c) Without prejudice to its other rights under the Transaction Security and without obligation to do so, each Account Holder irrevocably authorises the Agent after the occurrence of an Event of Default (and whilst it is continuing) (and subject to the rights of the first lien holder, in the case of any Collateral Facility Account) to instruct an Account Bank to make any transfer from any Account in order to facilitate the payment of amounts required and/or contemplated by this Agreement and the other Finance Documents.

25.4 Earnings and Requisition Compensation

- (a) In relation to a Facility Vessel, each relevant Obligor shall procure that all Earnings and Requisition Compensation in relation to that Facility Vessel are credited to the relevant Earnings Account, unless and until the Agent shall otherwise direct.
- (b) In relation to a Facility Vessel, provided that there is no continuing Event of Default, each relevant Account Holder may withdraw from the Earnings Account held in its name:
 - (i) at any time:
 - (1) all amounts payable under the Finance Documents including fees and expenses of the Finance Parties, any receiver and any delegate;
 - (2) payments in respect of Operating Expenses then due and payable relating to the Facility Vessel owned by it, provided that the aggregate amount withdrawn from the relevant Earnings Account shall not exceed:
 - a. during any Relevant Quarter, the amount of 35% of the total amount of Permitted OPEX relating to the Facility Vessel owned by it for the Relevant Period; and
 - b. during any Relevant Period, the total amount of Permitted OPEX relating to the Facility Vessel owned by it for that calendar year.
 - (3) any repositioning costs due and payable in respect of any contract of employment in respect of a Facility Vessel, provided that these are incurred in the ordinary course of business on arm's length terms and with third parties who are not a Related Party; and
 - (4) any commissions due and payable under any charters or other contracts of employment and any payments for the purchase of bunkers at the expiry of any time charter, provided that they are incurred in the ordinary course of business on arm's length terms and with third parties who are not a Related Party;
 - (ii) not later than 10 Business Days following the Utilisation Date for the Facility Vessel owned by that Account Holder, an amount of up to US\$200,000 for the purposes of paying pre-delivery costs incurred in respect of that Facility Vessel, including initial supplies, crew costs and costs for change of that Facility Vessel's name, flag and manager.
- (c) In relation to the Facility Vessels, so long as no Event of Default has occurred and is continuing, on each Quarter Date the Obligors shall procure that (and the Agent shall be authorised to apply) amounts standing to the credit of the Earnings Accounts are applied in the following order of priority:
 - (i) FIRST, in payment pro rata of any unpaid fees, costs and expenses of, and any other amounts owing to, the Agent, the Security Agent, any Receiver and any Delegate under the Finance Documents;

- (ii) SECOND, in payment of any interest due under the relevant Finance Documents on that date;
- (iii) THIRD, in repayment of any Repayment Instalments due under the relevant Finance Documents on that date;
- (iv) FOURTH, in payment of any Permitted Operating Expenses then due and payable; and
- (v) FIFTH, in each of the first four Relevant Periods and in respect of the next dry docking and/or special survey of each Facility Vessel, in payment to the Dry Docking Reserve Accounts in the amount of US\$425,000 (US\$212,500 for each Facility Vessel) until the aggregate amount standing to the credit of the Dry Docking Reserve Accounts is US\$1,700,000 in respect of both Facility Vessels.

Any surplus amounts standing to the credit of a Borrower's Earnings Account immediately following application in accordance with (i) to (v) above shall be available to that Borrower for the payment of Permitted Dividends or Permitted Loan Repayments only.

If, at each or any of the first four Relevant Periods, the credit balance in the Earnings Accounts is insufficient for the required amount(s) to be transferred to the Dry Docking Reserve Accounts and/or the Borrowers are otherwise unable to meet the dry-docking reserve requirements as required for the first four Relevant Periods, the requirement to pay to the Dry Docking Reserve Accounts during such first four Relevant Periods shall extend, roll over to and be payable by the Borrowers at the next applicable Relevant Period(s) together with the amounts due and payable on account of dry docking reserves to the Dry Docking Reserve Accounts in relation to any such next Relevant Period until all dry docking payment obligations in connection with the first four Relevant Periods are reserved and transferred in full.

- (d) The Agent shall be entitled to debit the Earnings Accounts from time to time (without notice to the Account Holders) in order to discharge any amount due and owing from the Transaction Obligors (or any of them) under a Finance Document (including but not limited to any fees payable under Clause 11 (*Fees*)).

25.5 Dry Docking Reserve Account

- (a) Each of the Dry Docking Reserve Account shall be a blocked account (such that any withdrawals shall only be permitted with the authorisation of the Agent acting on the instructions of the Majority Lenders) holding funds available for the payment of regularly scheduled drydocking and special survey expenses of the relevant Facility Vessel.
- (b) Subject to paragraph (c) below:
 - (i) upon a Facility Vessel entering drydock, the Borrower which owns that Facility Vessel shall provide evidence to the Agent of the commencement of such drydocking and, once the Agent (acting on the instructions of the Majority Lenders) has confirmed that such evidence is satisfactory, the Borrower shall be permitted to withdraw from the Dry Docking Reserve Account held in its name an amount equal to 50% of the amount standing to the credit of that Dry Docking Reserve Account;

- (ii) following completion of a Facility Vessel's drydocking, as confirmed by the relevant Classification Society, the Borrower owning that Facility Vessel shall be permitted to withdraw any remaining amounts standing to the credit of the Dry Docking Reserve Account held in its name; provided that such Borrower must provide detailed invoices to the Agent which fully support the withdrawal of such amount;
 - (iii) in connection with the drydocking of Vessel A, the Borrowers undertake to procure that, following the execution of this Agreement, the installation or other work in connection with the ballast water treatment system shall be completed during the next scheduled drydocking of Vessel A.
- (c) No Account Holder shall be permitted to withdraw sums from the Dry Docking Reserve Account held in its name in the event that a Default shall have occurred and be continuing or would result from any such withdrawal.

25.6 **Minimum Liquidity Accounts**

The Borrowers and, if applicable, the relevant Account Holders shall procure at all times that the aggregate amount standing to the credit of the Minimum Liquidity Accounts shall be equal to the Minimum Liquidity Amount. The Minimum Liquidity Accounts shall be blocked accounts and the Account Holder shall not be permitted to withdraw any sums from the Minimum Liquidity Accounts without the prior written consent of the Agent (acting on the instructions of the Majority Lenders).

26. **Security shortfall**

26.1 **Additional security**

- (a) The Borrowers shall ensure that the ratio (expressed as a percentage) of: (x) the aggregate of the Market Value of the Facility Vessels plus the aggregate value of any additional security provided pursuant to this Clause 26 (and, for this purpose, attributing no value to any Second Priority Security Documents); to (y) the aggregate principal amount of the Loan then outstanding (the "**VTL Coverage**"), is at all times equal to or more than 135%.
 - (b) If at any time the VTL Coverage is less than 135%, the Borrowers shall, within sixty (60) days of the Agent's request, at the Borrowers' option:
 - (i) give to the Security Agent other additional security in form and substance satisfactory to the Security Agent in favour of the Finance Parties for the payment of the Secured Liabilities which is either Cash held in a blocked account subject to a pledge or charge in form and substance required by the Security Agent or, if such additional security is not Cash, then (in the opinion of the Security Agent acting in its sole discretion):
 - (1) has a net realisable value (on an aggregate basis) equal to or greater than the applicable shortfall; and
 - (2) is of a type which is in form and substance satisfactory to it; or
 - (ii) prepay the Loan but only to the extent required to eliminate the shortfall,
- and provided always that any breach of this Clause 26.1 may not be remedied by the Borrowers other than in accordance with sub-clauses (b)(i) and (ii).

- (c) Clause 7 (*Prepayment and cancellation*) shall apply to prepayments under paragraph (b) above, but provided that no Prepayment Fee is payable in respect of such prepayment.
- (d) The value of any additional security provided shall in the case of Cash be the face amount of the deposit, in the case of a vessel (other than in the case of a Collateral Vessel, which shall be ascribed a zero valuation) be determined in the same manner as the Market Value of the Facility Vessels and in the case of other security shall be determined by the Agent in its absolute discretion.

26.2 Valuation of Facility Vessels

The Market Value of a Facility Vessel at any time is that shown by the average of two Valuations in respect of that Facility Vessel.

26.3 Delivery of Valuations

- (a) The Borrowers will at their own cost, on or around 31 March and 30 September each year (and, in any case, not later than 5 Business Days after 31 March and 30 September each year), commencing 31 March 2022, procure and promptly deliver to the Agent for distribution to each Lender at least two Valuations relating to each Facility Vessel, such Valuations to be provided by Approved Brokers nominated by the Agent.
- (b) The Agent is at liberty (at the cost of the Lenders) to assess the Market Value of the Facility Vessels at any time and at such frequency as the Agent considers necessary or desirable in its absolute discretion.
- (c) If an Event of Default is continuing or the Agent suspects that an Event of Default has occurred and is continuing, the Agent is at liberty to assess the Market Value of the Facility Vessels at any time, and any such Valuations will be at the Borrowers' cost if and to the extent that an Event of Default was continuing at the time the Agent elected to obtain such Valuations.

26.4 Valuations binding

Any Valuation under Clause 26.2 (*Valuation of Facility Vessels*) shall be binding and conclusive as regards the Borrowers, as shall any valuation which the Agent makes of any additional security pursuant to Clause 26.1(d) (*Additional security*).

26.5 Provision of information

Each Borrower shall promptly provide (or procure the provision to, as the case may be) the Agent and any shipbroker or expert acting under Clause 26.2 (*Valuation of Facility Vessels*) or in relation to a Valuation with any information which the Agent or the shipbroker or expert may reasonably require for the purposes of such Valuation; and, if that Borrower fails to provide (or procure the provision of) the information by the dates specified in the request, such Valuation will be made on any basis and assumptions which the Agent (or the shipbroker or expert appointed by it) considers prudent.

26.6 Payment of Valuation expenses

Except as otherwise provided in Clause 26.3, the Obligors shall, on demand, as a joint and several obligation, pay the Agent the amount of the fees and expenses of any shipbroker or expert instructed by the Agent under this Clause 26 (*Security shortfall*) and all legal and other expenses incurred by the Agent in connection with any matter arising out of this Clause 26 (*Security shortfall*).

27. Events of Default

Each of the events or circumstances set out in this Clause 27 is an Event of Default (save for Clause 27.26 (*Acceleration*) and Clause 27.27 (*Approved Managers*)).

27.1 Non-payment

An Obligor does not pay on the due date any amount payable pursuant to a Finance Document at the place and in the currency in which it is expressed to be payable unless its failure to pay is caused by either (i) an administrative or technical error or (ii) a Disruption Event, and, in either event, is paid within three (3) Business Days of its due date.

27.2 Other specific obligations

- (a) Any requirement of Clauses 20.1 (*Financial statements*), 20.2 (*Compliance Certificate*) or 20.3 (*Requirements as to financial statements*) is not satisfied, unless failure to satisfy is caused by an administrative or technical error and such requirement is satisfied within three (3) Business Days of its due date.
- (b) Any requirement of Clause 21 (*Financial covenant*) or Clause 23.18 (*Required Time Charter*) is not satisfied.
- (c) An Obligor does not comply with Clause 26.1 (*Additional security*).
- (d) The obligatory insurances of a Vessel are not placed and kept in full force and effect in accordance with Clause 24 (*Insurance Undertakings*).
- (e) Any budget is not approved by the Agent in accordance with the provisions of Clause 20.4(a) (*Budgets and report on Operating Expenses*).

27.3 Other obligations

- (a) An Obligor does not comply with any provision of the Finance Documents to which it is a party (other than those referred to in Clause 27.1 (*Non-payment*), Clause 27.2 (*Other specific obligations*) and Clause 27.24 (*Sanctions*)).
- (b) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within fourteen (14) days of the earlier of (i) the Agent giving notice to the Borrowers and (ii) any Obligor becoming aware of the failure to comply.

27.4 Misrepresentation

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

27.5 Cross default

- (a) Any Financial Indebtedness in respect of any Transaction Obligor or Lomar Shipping:
 - (i) is not paid when due nor within any originally applicable grace period; or
 - (ii) 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);

- (iii) is capable of being declared by a creditor to be due and payable prior to its specified maturity as a result of such an event.
- (b) A Transaction Obligor or Lomar Shipping is in breach of any of its obligations under any Relevant Document to which it is a party or any other contract entered into by a Transaction Obligor or Lomar Shipping the effect of which would reasonably be expected to result in a Material Adverse Effect.
- (c) An Event of Default (as defined therein) occurs under the Collateral Vessel Facility.

27.6 Insolvency

- (a) Any Transaction Obligor or Lomar Shipping 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, ceases or suspends or threatens to cease or suspend 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 with a view to rescheduling any of its indebtedness.
- (b) The value of the assets of Intermediate HoldCo, HoldCo, the Collateral Vessel Facility Holdco or the Collateral Vessel Facility Intermediate Holdco is less than its liabilities (taking into account contingent and prospective liabilities).
- (c) A moratorium is declared in respect of any indebtedness of any Transaction Obligor or Lomar Shipping. If a moratorium occurs, the ending of the moratorium will not remedy any Event of Default covered by that moratorium.

27.7 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, liquidation, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any Transaction Obligor or Lomar Shipping;
 - (ii) a composition, compromise, assignment or arrangement with any creditor of any Transaction Obligor or Lomar Shipping;
 - (iii) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager, provisional supervisor or other similar officer in respect of any Transaction Obligor or Lomar Shipping or any of their respective assets; or
 - (iv) enforcement of any Security over any assets of any Transaction Obligor or Lomar Shipping,
 or any analogous procedure or step is taken in any jurisdiction.
- (b) Paragraph (a) above shall not apply to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within fourteen (14) days of commencement.

27.8 Creditors' process

Any expropriation, attachment, sequestration, distress or execution affects any asset or assets of any Transaction Obligor or Lomar Shipping and is not discharged within fourteen (14) days.

27.9 Unlawfulness and invalidity

- (a) It is or becomes unlawful for any Transaction Obligor to perform any of its obligations under the Finance Documents to which it is a party or any Transaction Security created or expressed to be created or evidenced by the Security Documents ceases to be effective or any subordination created under a Finance Document is or becomes unlawful.
- (b) Any obligation or obligations of any Transaction Obligor under any Finance Documents to which it is a party are not (subject to the Legal Reservations) or cease to be legal, valid, binding, or enforceable and the cessation individually or cumulatively materially and adversely affects the interests of the Finance Parties under the Finance Documents.
- (c) Any Finance Document ceases to be in full force and effect or any Transaction Security created or expressed to be created by the Security Documents or any subordination created expressed to be created under the Finance Documents ceases to be legal, valid, binding, enforceable, or effective or is alleged by a party to it (other than a Finance Party) to be ineffective.
- (d) Any Transaction Security proves to have ranked after or lost its priority to any other Security (other than Permitted Security).

27.10 Cessation of business

Any Transaction Obligor or Lomar Shipping ceases, or threatens to cease, to carry on business except as a result of any disposal allowed under this Agreement.

27.11 Expropriation

The authority or ability of any Obligor to conduct its business is limited or is wholly or substantially curtailed by seizure, expropriation, nationalisation, intervention, restriction or other action by or on behalf of any government or agency in relation to such Obligor or any of their respective assets.

27.12 Repudiation and rescission of agreements

Any Transaction Obligor (or any other relevant party) rescinds or purports to rescind or repudiates or purports to repudiate a Finance Document to which it is a party, a Relevant Document, or any of the Transaction Security or evidences an intention to rescind or repudiate a Finance Document to which it is a party, a Relevant Document, or any Transaction Security.

27.13 Conditions subsequent

Any of the conditions referred to in Clause 4.4 (*Conditions Subsequent*) is not satisfied within the time reasonably required by the Agent.

27.14 Revocation or modification of authorisation

Any authorisation of any governmental, judicial or other public body or authority which is now, or which at any time during the Facility Period becomes, necessary to enable any of the Obligors to comply with any of their obligations under any Relevant Document is not obtained, is

revoked, suspended, withdrawn, or withheld, or is modified in a manner which the Agent considers is, or may be, prejudicial to the interests of any Finance Party, or ceases to remain in full force and effect.

27.15 Reduction of capital

An Obligor reduces its authorised or issued or subscribed capital or authorised number of shares.

27.16 Loss of Vessel

A Vessel suffers a Total Loss or is otherwise destroyed or abandoned, or a similar event occurs in relation to any other vessel which may from time to time be mortgaged to the Security Agent as security for the payment of all or any part of the Indebtedness, except that a Total Loss (which term shall, for the purposes of the remainder of this Clause 27.16, include an event similar to a Total Loss in relation to any other vessel) shall not be an Event of Default if:

- (a) that Vessel or other vessel is insured in accordance with the Security Documents and a claim for Total Loss is available under the terms of the relevant insurances; and
- (b) no insurer has refused to meet or has disputed the claim for Total Loss and it is not apparent to the Agent in its discretion that any such refusal or dispute is likely to occur; and
- (c) payment of all insurance proceeds in respect of the Total Loss is made in full to the Security Agent within one hundred and eighty (180) days of the occurrence of the casualty giving rise to the Total Loss in question or such longer period as the Agent may in its discretion agree.

27.17 Challenge to registration

The registration of a Vessel, a Mortgage or a Collateral Vessel Facility Mortgage is contested or becomes void or voidable or liable to cancellation or termination, or the validity or priority of a Mortgage or a Collateral Vessel Facility Mortgage is contested.

27.18 Classification and regulatory approvals

The classification certificate of a Vessel is withdrawn by a Classification Society or a Vessel ceases to be classified with a Classification Society for any reason.

27.19 War

The country of registration of a Vessel becomes involved in war (whether or not declared) or civil war or is occupied by any other power and the Agent in its discretion considers that, as a result, the security conferred by any of the Security Documents is materially prejudiced.

27.20 Notice of determination

A Guarantor gives notice to the Security Agent to determine any obligations under a Guarantee.

27.21 Vessel Defaults

- (a) A Vessel is arrested, detained, seized, impounded in exercise or purported exercise of any possessory lien or other claim or interest and such Vessel is not released within fourteen (14) days of the occurrence of the same.

- (b) There is a default by any charterer under any Charter, where such default shall, in the reasonable opinion of the Agent, have a Material Adverse Effect; or there is any material amendment to a Charter without the Agent's (acting on the instructions of the Lenders) prior written consent.
- (c) Any term of a Management Agreement is breached or any Management Agreement is terminated (whether or not in accordance with its terms) which breach or termination shall, in the reasonable opinion of the Agent, have a Material Adverse Effect.
- (d) In relation to a Facility Vessel, a Required Time Charter is terminated, cancelled or any material change (including any change to the agreed daily hire rate) is made to the terms thereof in the period falling within five (5) months of the relevant Utilisation Date in respect of that Facility Vessel, unless, within twenty (20) days of such termination or cancellation, the relevant Borrower procures alternative employment for that Facility Vessel acceptable to the Lenders for the remainder of the five (5) month period or otherwise provides evidence acceptable to the Lenders that the Borrowers will be able to continue to meet their repayment obligations under this Agreement until 30 April 2022.

27.22 Litigation

Any litigation, arbitration or administrative or investigative proceedings of or before any court, arbitral body, agency or authority have been commenced against any Obligor which are (in the opinion of the Majority Lenders):

- (a) reasonably likely to be adversely determined; and
- (b) reasonably likely to have a Material Adverse Effect.

27.23 Material adverse change

Any event or circumstance occurs which, in the reasonable opinion of the Majority Lenders, has or is reasonably likely to have a Material Adverse Effect.

27.24 Sanctions

- (a) Any of the Transaction Obligors, any member of the Group or Lomar Shipping or any of their Affiliates becomes a Restricted Party or becomes owned or controlled by, or acts directly or indirectly on behalf of, a Restricted Party or any of such persons becomes the owner or controller of a Restricted Party.
- (b) Any proceeds of the Loan are made available, directly or indirectly, to fund any trade, business or other activities involving or for the benefit of a Restricted Person or in any country, or territory, that, at the time of such funding, is a Sanctioned Country, where such funding would constitute a violation of Sanctions.
- (c) Any proceeds of the Loan are, directly or indirectly, applied in a manner that would result in a violation of Sanctions by any Finance Party, any Transaction Obligor, Lomar Shipping or for any purpose prohibited by Sanctions.
- (d) Any of the Transaction Obligors, Lomar Shipping or any of their Subsidiaries takes any action resulting in a violation by such persons of Sanctions or which constitutes or would constitute any such violation by a Finance Party, any Transaction Obligor, Lomar Shipping.

27.25 Subordination and Assignment Agreements

- (a) Any party to a Subordination and Assignment Agreement or Collateral Vessel Facility Subordination and Assignment Agreement (other than a Finance Party) fails to comply with the provisions of, or does not perform its obligations under, such Subordination and Assignment Agreement or Collateral Vessel Facility Subordination and Assignment Agreement (as the case may be).
- (b) A representation or warranty given by any party to a Subordination and Assignment Agreement or Collateral Vessel Facility Subordination and Assignment Agreement (other than a Finance Party) is or proves to have been incorrect or misleading when made or deemed to be made.

27.26 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:

- (a) by notice to the Borrowers, cancel the Total Commitments, at which time they shall immediately be cancelled, provided that in the case of an Event of Default under either of Clauses 27.6 (*Insolvency*) and 27.7 (*Insolvency proceedings*) the Total Commitments shall be deemed immediately cancelled without notice or demand therefor; and/or
- (b) by notice to the Borrowers, declare that all or part of the Loan, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents are immediately due and payable, provided that in the case of an Event of Default under either of Clauses 27.6 (*Insolvency*) and 27.7 (*Insolvency proceedings*) the Loan, together with all accrued interest and all other amounts accrued or outstanding under the Finance Documents shall be deemed immediately due and payable without notice or demand therefor; and/or
- (c) by notice to the Borrowers, declare that all or part of the Loan is payable on demand, at which time all or part of the Loan (as the case may be) shall immediately become payable on demand by the Agent on the instructions of the Majority Lenders; and/or
- (d) declare that no withdrawal may be made from any Account; and/or
- (e) exercise or direct the Security Agent to exercise any or all of its rights, remedies, powers, or discretions under the Finance Documents.

27.27 Approved Managers

Without prejudice to Clause 27.26 (*Acceleration*), the Borrowers or the relevant Collateral Vessel Facility Borrower will, at the request of the Agent, at any time when an Insolvency Event has occurred in respect of an Approved Manager, promptly (and in any event within ten (10) Business Days) replace (or procure the replacement of) such Approved Manager appointed by the Borrowers or the relevant Collateral Vessel Facility Borrower (as applicable) in relation to any Vessel with another Approved Manager on terms approved by the Agent (acting on the instructions of the Majority Lenders) as appropriate.

28. Changes to the Lenders

28.1 Assignments and transfers by the Lenders

Subject to this Clause 28, a Lender (the “**Existing Lender**”) may:

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

under the Finance Documents, 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**”); provided that, unless an Event of Default has occurred and is continuing, a Lender may not, without the prior consent of the Borrowers, assign or transfer to an Industrial Competitor.

28.2 **Conditions of assignment or transfer**

- (a) No consent from any Transaction Obligor shall be required for any assignment or transfer by an Existing Lender.
- (b) An assignment will only be effective on:
 - (i) receipt by the Agent (whether in the Assignment Agreement or otherwise) 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 other Finance Parties as it would have been under if it was an Original Lender; and
 - (ii) performance by the Agent of all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to such assignment to a New Lender, the completion of which the Agent shall promptly notify to the Existing Lender and the New Lender.
- (c) A transfer will only be effective if the procedure set out in Clause 28.5 (*Procedure for transfer*) is complied with.
- (d) 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, a Transaction Obligor would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause 12 (*Tax gross up and indemnities*) or Clause 13 (*Increased costs*),

then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under those Clauses 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.

- (e) Each New Lender, by executing the relevant Transfer Certificate or Assignment Agreement, 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 this Agreement on or prior to the date on which the transfer or assignment becomes effective in accordance with this Agreement and that it is bound by that decision to the same extent as the Existing Lender would have been had it remained a Lender.

28.3 **Assignment or transfer fee**

The New Lender shall, on the date upon which an assignment or transfer takes effect, pay to the Agent (for its own account) a fee of US\$5,000.

28.4 **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 Transaction Obligor;
 - (iii) the performance and observance by any Transaction Obligor of its obligations under the Finance Documents or any other documents; or
 - (iv) 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:
 - (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Transaction Obligor and its Affiliates in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender in connection with any Finance Document; and
 - (ii) will continue to make its own independent appraisal of the creditworthiness of each Transaction Obligor and its Affiliates whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.
- (c) Nothing in any Finance Document obliges an Existing Lender to:
 - (i) accept a re-transfer or re-assignment from a New Lender of any of the rights and obligations assigned or transferred under this Clause 28; or
 - (ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Transaction Obligor of its obligations under the Finance Documents or otherwise.

28.5 **Procedure for transfer**

- (a) Subject to the conditions set out in Clause 28.2 (*Conditions of assignment or transfer*) a transfer is effected in accordance with paragraph (c) below when the Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate 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.
- (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 transfer to such New Lender.

- (c) Subject to Clause 28.9 (*Pro rata interest settlement*), on the Transfer Date:
 - (i) to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights and obligations under the Finance Documents, each of the Transaction Obligors and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and their respective rights against one another under the Finance Documents shall be cancelled (being the “**Discharged Rights and Obligations**”);
 - (ii) each of the Transaction Obligors and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as that Transaction Obligor and the New Lender have assumed and/or acquired the same in place of that Transaction Obligor and the Existing Lender;
 - (iii) the Agent, the New Lender and other Lenders shall acquire the same rights and assume the same obligations between themselves as they would have acquired and assumed had the New Lender been an Original Lender with the rights and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Agent and the Existing Lender shall each be released from further obligations to each other under the Finance Documents; and
 - (iv) the New Lender shall become a Party as a “Lender”.

28.6 Procedure for assignment

- (a) Subject to the conditions set out in Clause 28.2 (*Conditions of assignment or transfer*) an assignment may be effected in accordance with paragraph (c) below when the Agent executes an otherwise duly completed Assignment Agreement delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Assignment Agreement appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Assignment Agreement.
- (b) The Agent shall only be obliged to execute an Assignment Agreement 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) Subject to Clause 28.9 (*Pro rata interest settlement*), 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 Assignment Agreement;
 - (ii) the Existing Lender will be released by each Transaction 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 Assignment Agreement; and
 - (iii) the New Lender shall become a Party as a “Lender” and will be bound by obligations equivalent to the Relevant Obligations.

- (d) The Lenders may utilise procedures other than those set out in this Clause (d) to assign their rights under the Finance Documents (but not, without the consent of the relevant Transaction Obligor or unless in accordance with Clause 28.5 (*Procedure for transfer*), to obtain a release by that Transaction Obligor from the obligations owed to that Transaction 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 28.2 (*Conditions of assignment or transfer*).

28.7 **Copy of Transfer Certificate or Assignment Agreement to Borrowers**

The Agent shall, as soon as reasonably practicable after it has executed a Transfer Certificate or an Assignment Agreement, send to the Borrowers a copy of that Transfer Certificate or Assignment Agreement.

28.8 **Security over Lenders' rights**

In addition to the other rights provided to Lenders under this Clause 28, each Lender may without consulting with or obtaining consent from any Transaction Obligor, at any time charge, assign or otherwise create Security 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 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 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 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 for the Lender as a party to any of the Finance Documents; or
 - (ii) require any payments to be made by a Transaction 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.

28.9 **Pro rata interest settlement**

If the Agent has notified the Lenders that it is able to distribute interest payments on a "pro rata basis" to Existing Lenders and New Lenders then (in respect of any transfer pursuant to Clause 28.5 (*Procedure for transfer*) or any assignment pursuant to Clause 28.6 (*Procedure for assignment*) the Transfer Date of which, in each case, is after the date of such notification and is not on the last day of an Interest Period):

- (a) any interest or fees in respect of the relevant participation which are expressed to accrue by reference to the lapse of time shall continue to accrue in favour of the Existing Lender up to but excluding the Transfer Date ("**Accrued Amounts**") and shall become due and payable to the Existing Lender (without further interest accruing on them) on the last day of the current Interest Period (or, if the Interest Period is longer than 6 months, on the next of the dates which falls at 6 monthly intervals after the first day of that Interest Period); and
- (b) the rights assigned or transferred by the Existing Lender will not include the right to the Accrued Amounts, so that, for the avoidance of doubt:

- (i) when the Accrued Amounts become payable, those Accrued Amounts will be payable to the Existing Lender; and
- (ii) the amount payable to the New Lender on that date will be the amount which would, but for the application of this Clause 28.9, have been payable to it on that date, but after deduction of the Accrued Amounts.

29. **Changes to the Transaction Obligors**

29.1 **Assignment and transfer by Obligors**

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

29.2 **Release of Security upon sale**

If a Vessel is the subject of a Permitted Vessel Disposal, then:

- (a) upon receipt of all amounts required to prepaid under Clause 7.3 (*Mandatory prepayment – sale/Total Loss*), the Agent shall effect the discharge of the relevant Mortgage or Collateral Vessel Facility Mortgage (as applicable);
- (b) in the case of a Facility Vessel, the Agent shall release the Account Charge in respect of the relevant Earnings Account;
- (c) in the case of a Collateral Vessel, the Agent shall release the relevant Collateral Vessel Facility Account Security granted by the Collateral Vessel Facility Borrower owning that Collateral Vessel,

in each case at the cost and expense of the relevant Borrower or Collateral Vessel Facility Borrower (as applicable).

29.3 **Distressed Disposal / Appropriation**

- (a) If a Distressed Disposal or Appropriation is being effected by the Security Agent (acting on the instructions of the Majority Lenders), the Security Agent is irrevocably authorised (at the cost of the Borrowers) by each Finance Party and Transaction Obligor (each such Finance Party or Transaction Obligor, a “**Creditor**”) and without any consent, sanction authority or further confirmation from any Creditor:
 - (i) to release the Transaction Security or any other claim over the asset subject to the Distressed Disposal or Appropriation and execute and deliver or enter into any release of that Transaction Security or claim and issue any letters of non-crystallisation of any floating charge or any consent to dealing that may, in the discretion of the Security Agent, be considered necessary or desirable;
 - (ii) if the asset subject to the Distressed Disposal or Appropriation consists of shares in the capital of a Transaction Obligor (a “**Debtor**”) or any Holding Company of that Debtor, to release:
 - (1) that Debtor and any Subsidiary of that Debtor from all or any part of:
 - a. its Borrower Liabilities;
 - b. its Guarantee Liabilities; and

c. its Other Liabilities.

- (2) any Transaction Security granted by that Debtor or any Subsidiary of that Debtor over any of its assets;

on behalf of the Creditors and the Debtors.

(b) Each Creditor and Debtor will:

- (i) do all things that the Security Agent requests in order to give effect to this Clause 29.3 (which shall include, without limitation, the execution of any documents that the Security Agent may consider to be necessary to give effect to the releases or disposals contemplated herein); and
- (ii) if the Security Agent is not entitled to take any of the actions contemplated by this Clause 29.3 or if the Security Agent requests that any Creditor or Debtor take any such action, take that action itself in accordance with the instructions of the Security Agent,

provided that the proceeds of those disposals are applied in accordance with the Finance Documents.

(c) For the purpose of this Clause 29.3:

“Appropriation” means the appropriation (or similar process) of the shares in the capital of a member of the Group by the Security Agent (or any attorney, agent or delegate of the Security Agent or any receiver, manager or administrative receiver of the whole or any part of any Charged Property) which is effected (to the extent permitted under the relevant Security Document and applicable law) by enforcement of the Transaction Security.

“Borrower Liabilities” means, in relation to a member of the Group, the liabilities and obligations (not being Guarantee Liabilities) it may have as a principal debtor to a Creditor in respect of Financial Indebtedness arising under the Finance Documents or any Permitted Intercompany Loan (whether incurred solely or jointly and including, without limitation, liabilities and obligations as a borrower under the Finance Documents).

“Distressed Disposal” means a disposal of an asset of a member of the Group which is:

- (i) being effected at the request of the Majority Lenders in circumstances where the Transaction Security has become enforceable; or
- (ii) being effected by enforcement of the Transaction Security; or
- (iii) being effected, after the Agent exercises any of its rights under Clause 27.26 (*Acceleration*) or the enforcement of any Transaction Security, by a Debtor to a person or persons which is, or are, not a member, or members, of the Group.

“Guarantee Liabilities” means, in relation to a member of the Group, the liabilities and obligations under the Finance Documents or any Permitted Intercompany Loan (present or future, actual or contingent and whether incurred solely or jointly) it may have to a Creditor or Debtor as or as a result of its being a guarantor or surety (including, without limitation, liabilities and obligations arising by way of guarantee, indemnity,

contribution or subrogation and in particular any guarantee or indemnity arising under or in respect of the Finance Documents).

“**Other Liabilities**” means, in relation to a member of the Group, any trading and other liabilities and obligations (not being Borrower Liabilities or Guarantee Liabilities) it may have to a Transaction Obligor or an Affiliate thereof.

29.4 **Release of Collateral Security**

- (a) Following the date falling twelve (12) months after the date of this Agreement and once the aggregate principal amount outstanding under the Facility is US\$8,500,000 or less, provided that both Facility Vessels are subject to a Mortgage at the time or the principal amount outstanding is US\$4,250,000 or less if only one Facility Vessel is subject to a Mortgage at the time, and provided that:
 - (i) no Event of Default has occurred and is continuing or would occur as a result of such release;
 - (ii) the VTL Coverage is not less than 135%;
 - (iii) the aggregate amount standing to the credit of the Earnings Accounts (excluding any amounts which constitute the Minimum Liquidity Amount) is at least US\$1,000,000 (or at least US\$500,000 if only one Facility Vessel is subject to a Mortgage at the time); and
 - (iv) each Dry Docking Reserve Account has been fully funded to cover the costs of the next special survey of the relevant Facility Vessel,

the Collateral Security granted by the Collateral Guarantors under this Agreement shall be released and discharged and the Finance Parties’ rights thereunder reassigned to the relevant Collateral Obligors and the Collateral Guarantors shall be released from all their obligations under this Agreement (in each case at the cost and expense of the Obligors).
- (b) Subject always to the proviso in Clause 7.7(b)(vii), if the Borrowers make a prepayment of the Loan specifically for the purposes of satisfying paragraph (a) above, no Prepayment Fee shall be payable on such prepayment amount up to the amount of US\$1,000,000. For the avoidance of doubt, any amount in excess of US\$1,000,000 shall be subject to the applicable Prepayment Fee.
- (c) Any prepayment made in order to satisfy paragraph (a) above shall be applied in inverse order of maturity against the Balloon Instalment such that the payment of the Repayment Instalments shall remain unaffected and continue in accordance with Clause 6.1 (*Repayment Instalments*) of this Agreement.

30. **Role of the Agent and the Security Agent**

30.1 **The Agent and the Security Agent**

- (a) Each of the Finance Parties appoints the Agent to act as its agent under and in connection with the Finance Documents.
- (b) The Security Agent declares that it holds the Security Property on trust for the Secured Parties on the terms contained in this Agreement.
- (c) Each of the Finance Parties authorises the Agent and the Security Agent:

- (i) to exercise the rights, powers, authorities and discretions specifically given to the Agent and the Security Agent (as applicable) 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 approved by the Majority Lenders or all Lenders (as the case may be) for execution by it.
- (d) Each of the Lenders irrevocably appoints the Security Agent as trustee on its behalf with regard to (i) the security, powers, rights, titles, benefits and interests (both present and future) constituted by and conferred on the Finance Parties or any of them or for the benefit thereof under or pursuant to this Agreement, or any of the Finance Documents (including, without limitation, the benefit of all covenants, undertakings, representations, warranties and obligations given, made or undertaken to any Finance Party in this Agreement, or any Finance Document), (ii) all moneys, property and other assets paid or transferred to or vested in any Finance Party or any agent of any Finance Party or received or recovered by any Finance Party or any agent of any Finance Party pursuant to, or in connection with, this Agreement or the Finance Documents whether from any Transaction Obligor or any other person and (iii) all money, investments, property and other assets at any time representing or deriving from any of the foregoing, including all interest, income and other sums at any time received or receivable by any Finance Party or any agent of any Finance Party in respect of the same (or any part thereof).

30.2 **Enforcement through Security Agent only**

The Secured Parties shall not have any independent power to enforce, or have recourse to, any of the Transaction Security or to exercise any right, power, authority or discretion arising under the Security Documents except through the Security Agent.

30.3 **Instructions**

- (a) Each of the Agent and 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 Agent or Security Agent (as applicable) in accordance with any instructions given to it by:
 - (1) all Lenders if the relevant Finance Document stipulates the matter is an all Lender decision; and
 - (2) in all other cases, the Majority Lenders; and
 - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph (1) above (or, if this Agreement stipulates the matter is a decision for any other Finance Party or group of Finance Parties, from that Finance Party or group of Finance Parties).
- (b) Each of the Agent and the Security 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 Finance Party or group of Finance Parties, from that Finance Party or group of Finance Parties) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Agent or Security Agent (as applicable) 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 Finance Party or group of Finance Parties under the relevant Finance Document and unless a contrary indication appears in a Finance Document, any instructions given to the Agent or Security Agent (as applicable) by the Majority Lenders shall override any conflicting instructions given by any other Parties and will be binding on all Finance Parties.
- (d) Paragraph (c) above shall not apply:
 - (i) where a contrary indication appears in a Finance Document;
 - (ii) where a Finance Document requires the Agent or the Security Agent to act in a specified manner or to take a specified action;
 - (iii) in respect of any provision which protects the Agent's or Security Agent's own position in its personal capacity as opposed to its role of Agent or Security Agent for the relevant Finance Parties or Secured Parties (as applicable) including, without limitation, Clause 30.5 (*No fiduciary duties*) to Clause 30.10 (*Exclusion of liability*), Clause 30.13 (*Confidentiality*) to Clause 30.21 (*Custodians and nominees*) and Clause 30.24 (*Acceptance of title*) to Clause 30.28 (*Disapplication of Trustee Acts*);
 - (iv) in respect of the exercise of the Security Agent's discretion to exercise a right, power or authority under any of:
 - (1) Clause 31.1 (*Application of receipts – Security Agent*);
 - (2) Clause 31.3 (*Prospective liabilities*); and
 - (3) Clause 31.2 (*Deductions from receipts*).
- (e) If giving effect to instructions given by the Majority Lenders would (in the Agent's or (as applicable) the Security Agent's opinion) have an effect equivalent to an amendment or waiver referred to in Clause 40 (*Remedies and waivers*), the Agent or (as applicable) Security Agent shall not act in accordance with those instructions unless consent to it so acting is obtained from each Party (other than the Agent or Security Agent) whose consent would have been required in respect of that amendment or waiver.
- (f) In exercising any discretion to exercise a right, power or authority under the Finance Documents where either:
 - (i) it has not received any instructions as to the exercise of that discretion; or
 - (ii) the exercise of that discretion is subject to paragraph (d)(iv) above,the Agent or Security Agent shall do so having regard to the interests of (in the case of the Agent) all the Finance Parties and (in the case of the Security Agent) all the Secured Parties.
- (g) The Agent or the Security Agent (as applicable) may refrain from acting in accordance with any instructions of any Finance Party or group of Finance Parties 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 (together with any applicable VAT) which it may incur in complying with those instructions.

- (h) Without prejudice to the remainder of this Clause 30.3 (*Instructions*), in the absence of instructions, each of the Agent and the Security Agent may act (or refrain from acting) as it considers to be in the best interest of (in the case of the Agent) the Finance Parties and (in the case of the Security Agent) the Secured Parties.
- (i) Neither the Agent nor the Security Agent is authorised to act on behalf of a Finance Party (without first obtaining that Finance Party's consent) in any legal or arbitration proceedings relating to any Finance Document. This paragraph (i) 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 or Security Documents.

30.4 Duties of the Agent and Security Agent

- (a) The duties of the Agent and the Security Agent under the Finance Documents are solely mechanical and administrative in nature.
- (b) Subject to paragraph (c) below, each of the Agent and the Security Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Agent or Security Agent (as applicable) for that Party by any other Party.
- (c) Without prejudice to Clause 28.7 (*Copy of Transfer Certificate or Assignment Agreement to Borrowers*), paragraph (b) above shall not apply to any Transfer Certificate or any Assignment Agreement.
- (d) Except where a Finance Document specifically provides otherwise, neither the Agent nor the Security Agent is obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (e) If the Agent or the Security Agent receives notice from a Party referring to any Finance Document, 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 Security Agent) under this Agreement, it shall promptly notify the other Finance Parties.
- (g) Each of the Agent and the Security 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).

30.5 No fiduciary duties

- (a) Nothing in any Finance Document constitutes:
 - (i) the Agent as a trustee or fiduciary of any other person; or
 - (ii) the Security Agent as an agent, trustee or fiduciary of any Transaction Obligor.
 - (iii) Neither the Agent nor the Security Agent shall be bound to account to any other Finance Party or (in the case of the Security Agent) any Secured Party or the profit element of any sum received by it for its own account.
 - (iv) The provisions of this Clause 30.5 shall apply even if, notwithstanding and contrary to this Clause 30.5, any provision of any Finance Document by operation of law has the effect of constituting the Agent as a true or fiduciary

of any person, or the Security Agent as an agent, trustee or fiduciary of any Transaction Obligor or otherwise requiring the Agent, the Security Agent or the Arrange to account to any other Finance Party or Secured Party (as the case may be).

30.6 **Business with the Group**

The Agent and the Security Agent may accept deposits from, lend money to and generally engage in any kind of banking or other business with any Transaction Obligor or any Affiliate of a Transaction Obligor.

30.7 **Rights and discretions**

- (a) Each of the Agent and the Security Agent may:
 - (i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
 - (ii) assume that:
 - (1) any instructions received by it from the Majority Lenders, any Finance Parties or any group of Finance Parties are duly given in accordance with the terms of the Finance Documents; and
 - (2) unless it has received notice of revocation, that those instructions have not been revoked; and
 - (3) 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 a above, may assume the truth and accuracy of that certificate.
- (b) Each of the Agent and the Security Agent may assume (unless it has received notice to the contrary in its capacity as agent or Security Agent for the Finance Parties or Secured Parties) that:
 - (i) no Default has occurred (unless, in the case of the Agent, it has actual knowledge of a Default arising under Clause 27.1 (*Non-payment*));
 - (ii) any right, power, authority or discretion vested in any Party or any group of Finance Parties has not been exercised; and
 - (iii) any notice or request made by a Transaction Obligor (other than the Utilisation Request) is made on behalf of and with the consent and knowledge of all the Transaction Obligors.
- (c) Each of the Agent and the Security Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.

- (d) Without prejudice to the generality of paragraph (c) above or paragraph (e) below, each of the Agent and the Security Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Agent or Security Agent (as applicable), (and so separate from any lawyers instructed by the Lenders) if the Agent or Security Agent (as applicable), in its reasonable opinion deems this to be desirable.
- (e) Each of the Agent and the Security 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 the Security 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) Each of the Agent and the Security Agent may act in relation to the Finance Documents and the Security Property through its officers, employees and agents and 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 or the Security Agent's (as applicable) gross negligence or wilful misconduct.
- (g) Unless a Finance Document expressly provides otherwise each of the Agent and the Security Agent may disclose to any other Party any information it reasonably believes it has received as agent or Security Agent under the Finance Documents.
- (h) Notwithstanding any other provision of any Finance Document to the contrary, neither the Agent nor the Security Agent 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.
- (i) The Agent is not obliged to disclose to any Finance Party any details of the rate notified to the Agent by any Lender or the identity of any such Lender for the purpose of paragraph (a)(ii) of Clause 10.2 (*Market disruption*).
- (j) Notwithstanding any provision of any Finance Document to the contrary, neither the Agent nor the Security Agent is 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.

30.8 **Responsibility for documentation**

Neither the Agent nor the Security Agent, is responsible or liable for:

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Agent, the Security Agent, a Transaction Obligor or any other person 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;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or the Security 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 Security Property; or

- (c) any determination as to whether any information provided or to be provided to any Finance Party or Secured Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

30.9 **No duty to monitor**

Neither, the Agent nor the Security Agent shall 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.

30.10 **Exclusion of liability**

- (a) Without limiting paragraph (b) below (and without prejudice to any other provision of any Finance Document excluding or limiting the liability of the Agent, the Security Agent or any Receiver or Delegate), none of the Agent, the Security Agent nor any Receiver or Delegate will 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 Security 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 Security 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 Security Property;
 - (iii) any shortfall which arises on the enforcement or realisation of the Security Property; or
 - (iv) without prejudice to the generality of paragraphs (i) to (iii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of:
 - (1) any act, event or circumstance not reasonably within its control; or
 - (2) 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, the Security Agent, that Receiver or that Delegate (as applicable)) may take any proceedings against any officer, employee or agent of the Agent, the Security Agent, a Receiver or a Delegate, in respect of any claim it might have against the Agent, the Security Agent, a Receiver or a Delegate or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document or any Security Property and any officer, employee or agent of the Agent, the Security Agent, a Receiver or a Delegate may rely on this Clause.
- (c) Neither the Agent nor the Security Agent will 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 or the Security Agent (as applicable) if the Agent or Security Agent (as applicable) 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 or the Security Agent (as applicable) for that purpose.
- (d) Nothing in this Agreement shall oblige the Agent or the Security Agent 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 Finance Party,

on behalf of any Finance Party and each Finance Party confirms to the Agent and the Security Agent 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 Security Agent.

- (e) Without prejudice to any provision of any Finance Document excluding or limiting the liability of the Agent, the Security Agent, any Receiver or Delegate, any liability of the Agent, the Security Agent, any Receiver or Delegate arising under or in connection with any Finance Document or the Security 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, the Security Agent, Receiver or Delegate 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, the Security Agent, any Receiver or Delegate at any time which increase the amount of that loss. In no event shall the Agent, the Security Agent, any Receiver or Delegate 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, the Security Agent, the Receiver or Delegate has been advised of the possibility of such loss or damages.

30.11 Lenders’ indemnity to the Agent and Security Agent

- (a) Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Agent, the Security Agent and every Receiver and every Delegate, within three (3) Business Days of demand, against any cost, loss or liability (including, without limitation, for negligence or any other category of liability whatsoever) incurred by any of them (otherwise than by reason of the Agent’s, Security Agent’s Receiver’s or Delegate’s gross negligence or wilful misconduct) (or,

in the case of any cost, loss or liability pursuant to Clause 34.10 (*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) in acting as Agent, Security Agent, Receiver or Delegate under the Finance Documents (unless the relevant Agent, Security Agent, Receiver or Delegate has been reimbursed by a Transaction Obligor pursuant to a Finance Document).

- (b) Subject to paragraph (c) below, the Borrowers shall immediately on demand reimburse any Lender for any payment that Lender makes to the Agent or the Security 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 or the Security Agent to a Transaction Obligor.

30.12 **Resignation of the Agent and the Security Agent**

- (a) Each of the Agent and/or the Security Agent may resign and appoint one of its Affiliates as successor by giving notice to the other Finance Parties and the Borrowers.
- (b) Alternatively the Agent or the Security Agent may resign by giving thirty (30) days' notice to the other Finance Parties and the Borrowers, in which case the Majority Lenders (after consultation with the other Finance Parties and the Borrowers) may appoint a successor Agent or Security Agent (as applicable).
- (c) If the Majority Lenders have not appointed a successor Agent or Security Agent in accordance with paragraph (b) above within twenty (20) days after notice of resignation was given, the retiring Agent or Security Agent (as applicable) (after consultation with the other Finance Parties and the Borrowers) may appoint a successor Agent or Security Agent (as applicable).
- (d) The retiring Agent or Security Agent (as applicable) shall make available to the successor Agent or Security Agent (as applicable) such documents and records and provide such assistance as the successor Agent or Security Agent may reasonably request for the purposes of performing its functions as Agent or Security Agent (as applicable) under the Finance Documents. The Borrowers shall, within three (3) Business Days of demand, reimburse the retiring Agent or Security Agent (as applicable) for the amount of all costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.
- (e) The resignation notice of the Agent or Security Agent (as applicable) shall only take effect upon:
 - (i) the appointment of a successor; and
 - (ii) (in the case of the Security Agent) the transfer of the Security Property to that successor.
- (f) Upon the appointment of a successor, the retiring Agent or Security Agent (as applicable) shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (ii) of Clause 30.25 (*Winding up of trust*) and (e) above) but shall remain entitled to the benefit of Clause 14.3 (*Indemnity to the Agent*), Clause 14.4 (*Indemnity to the Security Agent*) and this Clause 30.12 (and any fees for the account of the retiring Agent or Security Agent (as applicable) 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.

- (g) After consultation with the Borrowers, the Majority Lenders may, by giving thirty (30) days' notice to the Agent or Security Agent (as applicable), require it to resign in accordance with paragraph (b) above. In this event, the Agent or Security Agent (as applicable) shall resign in accordance with paragraph (b) above but the cost referred to in paragraph (e) above shall be for the account of the Borrowers.
- (h) The Agent shall resign in accordance with paragraph (b) 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 (3) months before the earliest FATCA Application Date relating to any payment to the Agent under the Finance Documents, either:
 - (i) the Agent fails to respond to a request under Clause 12.7 (*FATCA information*) 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 Clause 12.7 (*FATCA information*) 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.

30.13 Confidentiality

- (a) In acting as agent or trustee for the Finance Parties, the Agent or the Security Agent (as applicable) shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments.
- (b) If information is received by another division or department of the Agent or Security Agent, it may be treated as confidential to that division or department and the Agent or Security Agent (as applicable) 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 Security Agent is obliged to disclose to any other person (i) any confidential information or (ii) 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.

30.14 Relationship with the other Finance Parties

- (a) Subject to Clause 28.9 (*Pro rata interest settlement*), the Agent may treat the person shown in its records as Lender at the opening of business (in the place of the Agent's principal office as notified to the Finance Parties from time to time) as the Lender acting through its Facility Office:

- (i) entitled to or liable for any payment due under any Finance Document on that day; and
- (ii) entitled to receive and act upon any notice, request, document or communication or make any decision or determination under any Finance Document made or delivered on that day,

unless it has received not less than five (5) Business Days' prior notice from that Lender to the contrary in accordance with the terms of this Agreement.

- (b) Any Lender may by notice to the Agent appoint a person to receive on its behalf all notices, communications, information and documents to be made or despatched to that Lender under the Finance Documents. Such notice shall contain the address and electronic mail address and/or any other information required to enable the sending and receipt of information by that means (and, in each case, the department or officer, if any, for whose attention communication is to be made) and be treated as a notification of a substitute address, electronic mail address, department and officer by that Lender for the purposes of Clause 37.2 (*Addresses*) and the Agent shall be entitled to treat such person as the person entitled to receive all such notices, communications, information and documents as though that person were that Lender.
- (c) Each Finance Party shall supply the Security Agent with any information that the Security Agent may reasonably specify as being necessary or desirable to enable the Security Agent to perform its functions as Security Agent.

30.15 **Credit appraisal by the Lenders**

Without affecting the responsibility of any Transaction Obligor for information supplied by it or on its behalf in connection with any Finance Document, each Lender confirms to the Agent and the Security Agent 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 member of the Group;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document, the Security Property and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Security Property;
- (c) whether that 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 Security Property, 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 Security Property;
- (d) the adequacy, accuracy or completeness of any information provided by the Agent, the Security Agent, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and
- (e) the right or title of any person in or to, or the value or sufficiency of any part of, the Security Property, the priority of any of the Transaction Security or the existence of any Security affecting the Security Property.

30.16 **Reference Banks**

The Agent shall (if so instructed by the Majority Lenders and in consultation with the Borrowers) replace a Reference Bank with another bank or financial institution.

30.17 **Agent's and Security Agent's management time**

(a) Any amount payable to the Agent or Security Agent under Clause 14.3 (*Indemnity to the Agent*), Clause 14.4 (*Indemnity to the Security Agent*), Clause 16 (*Costs and expenses*) and Clause 30.11 (*Lenders' indemnity to the Agent and Security Agent*) shall include the cost of utilising the management time or other resources of the Agent or Security Agent (as applicable) and will be calculated on the basis of such reasonable daily or hourly rates as the Agent or Security Agent may notify to the Borrowers and the other Finance Parties, and is in addition to any fee paid or payable to the Agent or Security Agent under Clause 11 (*Fees*).

(b) Without prejudice to paragraph (a) above, in the event of:

- (i) a Default;
- (ii) the Security Agent being requested by a Transaction Obligor or the Majority Lenders to undertake duties which the Security Agent and the Borrowers agree to be of an exceptional nature or outside the scope of the normal duties of the Security Agent under the Finance Documents; or
- (iii) the Security Agent and the Borrowers agreeing that it is otherwise appropriate in the circumstances,

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

(c) If 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 Security Agent and approved by the Borrowers or, failing approval, nominated (on the application of 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.

30.18 **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.

30.19 **No responsibility to perfect Transaction Security**

The Security Agent shall not be liable for any failure to:

- (a) require the deposit with it of any deed or document certifying, representing or constituting the title of any Transaction Obligor to any of the Security Property;

- (b) obtain any licence, consent or other authority for the execution, delivery, legality, validity, enforceability or admissibility in evidence of any Finance Document or the Transaction Security;
- (c) register, file or record or otherwise protect any of the Transaction Security (or the priority of any of the Transaction Security) under any law or regulation or to give notice to any person of the execution of any Finance Document or of the Transaction Security;
- (d) take, or to require any Transaction Obligor to take, any step to perfect its title to any of the Security Property or to render the Transaction Security effective or to secure the creation of any ancillary Security under any law or regulation; or
- (e) require any further assurance in relation to any Security Document.

30.20 Insurance by Security Agent

- (a) The Security Agent shall not be obliged:
 - (i) to insure any of the Security Property;
 - (ii) to require any other person to maintain any insurance; or
 - (iii) to verify any obligation to arrange or maintain insurance contained in any Finance Document,

and the Security Agent shall not be liable for any damages, costs or losses to any person as a result of the lack of, or inadequacy of, any such insurance.
- (b) Where the Security Agent is named on any insurance policy as an insured party, it shall not be liable for any damages, costs or losses to any person as a result of its failure to notify the insurers of any material fact relating to the risk assumed by such insurers or any other information of any kind, unless the Majority Lenders request it to do so in writing and the Security Agent fails to do so within fourteen (14) days after receipt of that request.

30.21 Custodians and nominees

The Security Agent may appoint and pay any person to act as a custodian or nominee on any terms in relation to any asset of the trust as the Security Agent may determine, including for the purpose of depositing with a custodian this Agreement or any document relating to the trust created under this Agreement and the Security Agent shall not be responsible for any loss, liability, expense, demand, cost, claim or proceedings incurred by reason of the misconduct, omission or default on the part of any person appointed by it under this Agreement or be bound to supervise the proceedings or acts of any person.

30.22 Delegation by the Security Agent

- (a) Each of the Security Agent, any Receiver and any Delegate may, at any time, delegate by power of attorney or otherwise to any person for any period, all or any right, power, authority or discretion vested in it in its capacity as such.
- (b) That delegation may be made upon any terms and conditions (including the power to sub-delegate) and subject to any restrictions that the Security Agent that Receiver or that Delegate (as the case may be) may, in its discretion, think fit in the interests of the Secured Parties.

- (c) No Security Agent, Receiver or Delegate shall be bound to supervise, or be in any way responsible for any damages, costs or losses incurred by reason of any misconduct, omission or default on the part of, any such delegate or sub-delegate.

30.23 **Additional Security Agents**

- (a) The Security Agent may, at any time, appoint (and subsequently remove) any person to act as a separate trustee or as a co-trustee jointly with it:
 - (i) if it considers that appointment to be in the interests of the Secured Parties;
 - (ii) for the purposes of conforming to any legal requirement, restriction or condition which the Security Agent deems to be relevant; or
 - (iii) for obtaining or enforcing any judgment in any jurisdiction,and the Security Agent shall give prior notice to the Borrowers and the Finance Parties of that appointment.
- (b) Any person so appointed shall have the rights, powers, authorities and discretions (not exceeding those given to the Security Agent under or in connection with the Finance Documents) and the duties, obligations and responsibilities that are given or imposed by the instrument of appointment.
- (c) The remuneration that the Security Agent may pay to that person, and any costs and expenses (together with any applicable VAT) incurred by that person in performing its functions pursuant to that appointment shall, for the purposes of this Agreement, be treated as costs and expenses incurred by the Security Agent.

30.24 **Acceptance of title**

The Security Agent shall be entitled to accept without enquiry, and shall not be obliged to investigate, any right and title that any Transaction Obligor may have to any of the Security Property and shall not be liable for, or bound to require any Transaction Obligor to remedy, any defect in its right or title.

30.25 **Winding up of trust**

If the Security Agent, with the approval of the Agent, determines that:

- (a) all of the Secured Liabilities and all other obligations secured by the Security Documents have been fully and finally discharged; and
- (b) no Secured Party is under any commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation to any Transaction Obligor pursuant to the Finance Documents,

then:

- (i) the trusts set out in this Agreement shall be wound up and the Security Agent shall release, without recourse or warranty, all of the Transaction Security and the rights of the Security Agent under each of the Security Documents; and
- (ii) any Security Agent which has resigned pursuant to Clause 30.12 (*Resignation of the Agent and the Security Agent*) shall release, without recourse or warranty, all of its rights under each Security Document.

30.26 **Perpetuity period**

The trusts constituted by this Agreement are governed by English law and the perpetuity period under the rule against perpetuities, if applicable to this Agreement, shall be the period of 125 years from the date of this Agreement.

30.27 **Powers supplemental to Trustee Acts**

The rights, powers, authorities and discretions given to the Security Agent under or in connection with the Finance Documents shall be supplemental to the Trustee Act 1925 and the Trustee Act 2000 and in addition to any which may be vested in the Security Agent by law or regulation or otherwise.

30.28 **Disapplication of Trustee Acts**

Section 1 of the Trustee Act 2000 shall not apply to the duties of the Security Agent in relation to the trusts constituted by this Agreement. Where there are any inconsistencies between the Trustee Act 1925 or the Trustee Act 2000 and the provisions of this Agreement, the provisions of this Agreement shall, to the extent permitted by law and regulation, prevail and, in the case of any inconsistency with the Trustee Act 2000, the provisions of this Agreement shall constitute a restriction or exclusion for the purposes of that Act.

30.29 **Parallel Debt**

- (a) Each Transaction Obligor irrevocably and unconditionally undertakes to pay (and shall, so far as possible, procure that each other Transaction Obligor shall pay) to the Security Agent all amounts equal to, and in the currency or currencies of, its Corresponding Debt (such amounts of each relevant Transaction Obligor being its “**Parallel Debt**”).
- (b) The Parallel Debt of a Transaction Obligor:
 - (i) shall become due and payable at the same time as its Corresponding Debt;
 - (ii) is independent and separate from, and without prejudice to, its Corresponding Debt.
- (c) For purposes of this Clause 30.29, the Security Agent:
 - (i) is the independent and separate creditor of each Parallel Debt;
 - (ii) acts in its own name and not as agent, representative or trustee of the Finance Parties and its claims in respect of each Parallel Debt shall not be held on trust; and
 - (iii) shall have the independent and separate right to demand payment of each Parallel Debt in its own name (including, without limitation, through any suit, execution, enforcement of security, recovery of guarantees and applications for and voting in any kind of insolvency proceeding).
- (d) The Parallel Debt of a Transaction Obligor shall be:
 - (i) decreased to the extent that its Corresponding Debt has been irrevocably and unconditionally paid or discharged; and
 - (ii) increased to the extent that its Corresponding Debt has increased,

and the Corresponding Debt of a Transaction Obligor shall be:

- (iii) decreased to the extent that its Parallel Debt has been irrevocably and unconditionally paid or discharged; and
- (iv) increased to the extent that its Parallel Debt has increased,

in each case provided that the Parallel Debt of a Transaction Obligor shall never exceed its Corresponding Debt.

- (e) All amounts received or recovered by the Security Agent in connection with this Clause 30.29 to the extent permitted by applicable law, shall be applied in accordance with Clause 31.1 (*Application of receipts – Security Agent*).
- (f) This Clause 30.29 shall apply, with any necessary modifications, to each Finance Document.

31. **Application of Proceeds**

31.1 **Application of receipts – Security Agent**

- (a) Except as expressly stated to the contrary in any Finance Document, any moneys which the Security Agent receives or recovers and which are, or are attributable to, Security Property (for the purposes of this Clause 31 (*Application of Proceeds*), the “**Recoveries**”) shall be transferred to the Agent for application in accordance with Clause 34.5 (*Application of Receipts – Partial Payments*).
- (b) Paragraph (a) above is without prejudice to the rights of the Security Agent, each Receiver and each Delegate:
 - (i) to be indemnified out of the Charged Property in accordance with any provision of any Finance Document; and
 - (ii) under any Finance Document to credit any moneys received or recovered by it to any suspense account.
- (c) Any transfer by the Security Agent to the Agent in accordance with paragraph (a) above shall be a good discharge, to the extent of that payment, by the Security Agent.
- (d) The Security Agent is under no obligation to make the payments to the Agent under paragraph (a) of this Clause 31.1 (*Application of receipts – Security Agent*) in the same currency as that in which the obligations and liabilities owing to the relevant Finance Party are denominated.

31.2 **Deductions from receipts**

- (a) Before transferring any moneys to the Agent under Clause 31.1 (*Application of receipts – Security Agent*), the Security Agent may, in its discretion:
 - (i) deduct any sum then due and payable under this Agreement or any other Finance Documents to the Security Agent or any Receiver or Delegate and retain that sum for itself or, as the case may require, pay it to another person to whom it is then due and payable;
 - (ii) set aside by way of reserve amounts required to meet, and to make and pay, any deductions and withholdings (on account of Taxes or otherwise) which it is or

may be required by any applicable law to make from any distribution or payment made by it under this Agreement; and

- (iii) pay all Taxes which may be assessed against it in respect of any of the Security Property, or as a consequence of performing its duties, or by virtue of its capacity as Security Agent under any of the Finance Documents or otherwise (other than in connection with its remuneration for performing its duties under this Agreement).
- (b) For the purposes of paragraph (a)(i) above, if the Security Agent has become entitled to require a sum to be paid to it on demand, that sum shall be treated as due and payable, even if no demand has yet been served.

31.3 Prospective liabilities

Following acceleration of any of the Transaction Security, the Security Agent may, in its discretion, or at the request of the Agent, hold any Recoveries in an interest bearing suspense or impersonal account(s) in the name of the Security Agent with such financial institution (including itself) and for so long as the Security Agent shall think fit acting reasonably (the interest being credited to the relevant account) for later payment to the Agent for application in accordance with Clause 34.5 (*Application of Receipts – Partial Payments*) in respect of:

- (a) any sum to the Security Agent, any Receiver or any Delegate; and
- (b) any part of the Secured Liabilities, that the Security Agent or, in the case of paragraph (b) only, the Agent, reasonably considers, in each case, might become due or owing at any time in the future.

31.4 Investment of proceeds

Prior to the application of the proceeds of the Recoveries in accordance with Clause 31.1 (*Application of receipts – Security Agent*) the Security Agent may, in its discretion, hold all or part of those proceeds in an interest bearing suspense or impersonal account(s) in the name of the Security Agent with such financial institution (including itself) and for so long as the Security Agent shall think fit (the interest being credited to the relevant account) pending the application from time to time of those moneys in the Security Agent's discretion in accordance with the provisions of this Clause 31.

31.5 Currency Conversion

- (a) For the purpose of, or pending the discharge of, any of the Secured Liabilities the Security Agent may convert any moneys received or recovered by the Security Agent from one currency to another, at a market rate of exchange.
- (b) The obligations of any Transaction Obligor to pay in the due currency shall only be satisfied to the extent of the amount of the due currency purchased after deducting the costs of conversion.

31.6 Good Discharge

- (a) Any payment to be made in respect of the Secured Liabilities by the Security Agent may be made to the Agent on behalf of the Finance Parties and any payment made in that way shall be a good discharge, to the extent of that payment, by the Security Agent.

- (b) The Security Agent is under no obligation to make the payments to the Agent under paragraph (a) of this Clause 31.6 in the same currency as that in which the obligations and liabilities owing to the relevant Finance Party are denominated.

32. **Conduct of business by the Finance Parties**

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.

33. **Sharing among the Finance Parties**

33.1 **Payments to Finance Parties**

If a Finance Party (a “**Recovering Finance Party**”) receives or recovers any amount from a Transaction Obligor other than in accordance with Clause 34 (*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 (3) 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 34 (*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 (3) 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 34.5 (*Application of Receipts – Partial Payments*).

33.2 **Redistribution of payments**

The Agent shall treat the Sharing Payment as if it had been paid by the relevant Transaction Obligor and distribute it between the Finance Parties (other than the Recovering Finance Party) (the “**Sharing Finance Parties**”) in accordance with Clause 34.5 (*Application of Receipts – Partial Payments*) towards the obligations of that Transaction Obligor to the Sharing Finance Parties.

33.3 **Recovering Finance Party’s rights**

On a distribution by the Agent under Clause 33.2 (*Redistribution of payments*) of a payment received by a Recovering Finance Party from a Transaction Obligor, as between the relevant Transaction 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 Transaction Obligor.

33.4 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 Transaction 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 Transaction Obligor.

33.5 Exceptions

- (a) This Clause 33 (*Sharing among the Finance Parties*) 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 Transaction Obligor.
- (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; and
 - (ii) 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.

34. Payment mechanics

34.1 Payments to the Agent

- (a) On each date on which a Transaction Obligor or a Lender is required to make a payment under a Finance Document, that Transaction Obligor or 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 (or, in relation to euro, in a principal financial centre in such Participating Member State or London, as specified by the Agent) and with such bank as the Agent, in each case, specifies.

34.2 Distributions by the Agent

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause 34.3 (*Distributions to a Transaction Obligor*) and Clause 34.4 (*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 (5) Business Days' notice with a bank specified by that Party in the principal financial centre of the country of that currency (or, in relation to euro, in the principal financial centre of a Participating Member State or London, as specified by that Party).

34.3 Distributions to a Transaction Obligor

The Agent may (with the consent of the Transaction Obligor or in accordance with Clause 35 (*Set-off*)) apply any amount received by it for that Transaction Obligor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Transaction Obligor under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

34.4 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 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 Borrower to whom that sum was made available 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 Borrower to whom that sum was made available, 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.

34.5 Application of Receipts – Partial Payments

If the Agent receives a payment that is insufficient to discharge all the amounts then due and payable by a Transaction under the Finance Documents, the Agent shall apply that payment towards the obligations of that Transaction Obligor under the Finance Documents in the following order:

- (a) FIRST, in or towards payment pro rata of any unpaid fees, costs and expenses of, and any other amounts owing to, the Agent, the Security Agent, any Receiver and any Delegate under the Finance Documents;
- (b) SECOND, in or towards payment pro rata of any accrued interest and fees due but unpaid to the Lenders under this Agreement;

- (c) THIRD, in or towards payment pro rata of any principal due but unpaid to the Lenders under this Agreement; and
- (d) FOURTH, in or towards payment pro rata of any other sum due to any Finance Party but unpaid under the Finance Documents;

34.6 No set-off by Transaction Obligors

All payments to be made by a Transaction Obligor under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

34.7 Business Days

- (a) Any payment (including, for the avoidance of doubt, any payment under Clause 25.4(c)) 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.

34.8 Currency of account

- (a) Subject to paragraphs (b) and (c) below, US\$ is the currency of account and payment for any sum due from a Transaction Obligor under any Finance Document.
- (b) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
- (c) Any amount expressed to be payable in a currency other than US\$ shall be paid in that other currency.

34.9 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 Relevant Interbank Market and otherwise to reflect the change in currency.

34.10 **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 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) 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) 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 41 (*Amendments and waivers*);
- (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 34.10; and
- (f) the Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (d) above.

35. **Set-off**

A Finance Party may set off any matured obligation due from a Transaction Obligor under the Finance Documents (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to that Transaction 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.

36. **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 acknowledges and accepts that any liability of any Party to any other Party 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.

37. Notices

37.1 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 email or letter.

37.2 Addresses

The address and email address (and the department or officer, if any, for whose attention the communication is to be made) of each 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 the Borrowers, HoldCo and Intermediate HoldCo, that specified in Schedule 1 (*The Original Parties*);
- (b) in the case of each Lender, that specified in Schedule 1 (*The Original Parties*) or, if it becomes a Party after the date of this Agreement, that notified in writing to the Agent on or before the date it becomes a Party;
- (c) in the case of the Agent and the Security Agent, that specified in Schedule 1 (*The Original Parties*),

or, in each case, any substitute address or email address or department or officer as the 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 (5) Business Days' notice.

37.3 Delivery

- (a) Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:
 - (i) if by way of letter, when it has been left at the relevant address or five (5) Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address;
 - (ii) if by way of email, when received in readable form.

and, if a particular department or officer is specified as part of its address details provided under Clause 37.2 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Agent or the Security Agent will be effective only when actually received by the Agent or the Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Agent's or the Security Agent's signature below (or any substitute department or officer as the Agent or Security Agent shall specify for this purpose).
- (c) All notices from or to a Transaction Obligor shall be sent through the Agent.

- (d) Any communication or document made or delivered to the Borrowers in accordance with this Clause will be deemed to have been made or delivered to each of the Transaction Obligors.
- (e) Any communication or document which becomes effective, in accordance with paragraphs (a) to (d) above, after 5 p.m. in the place of receipt shall be deemed only to become effective on the following day.

37.4 Notification of address and email address

Promptly upon receipt of notification of an address or email address or change of address or email address pursuant to Clause 37.2 (*Addresses*) or changing its own address or email address, the Agent shall notify the other Parties.

37.5 Electronic communication

- (a) Any communication to be made between any two parties under or in connection with the Finance Documents may be made by electronic mail or other electronic means (including, without limitation, by way of posting to a secure website) if those two parties:
 - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
 - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five (5) Business Days' notice.
- (b) Any such electronic communication as specified in paragraph (a) above to be made between a Transaction Obligor and a Finance Party may only be made in that way to the extent that those two parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication.
- (c) Any electronic communication as specified in paragraph (a) above made between any two parties will be effective only when actually received (or made available) in readable form and in the case of any electronic communication made by a party to the Agent or Security Agent only if it is addressed in such a manner as the Agent or Security Agent shall specify for this purpose.
- (d) Any electronic communication which becomes effective, in accordance with paragraph (c) above, after 5.00 p.m. in the place in which the party to whom the relevant communication is sent or made available has its address for the purpose of this Agreement shall be deemed only to become effective on the following day.
- (e) Any reference in a Finance Document to a communication being sent or received shall be construed to include that communication being made available in accordance with this Clause 37.5.

37.6 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.

38. Calculations and certificates

38.1 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.

38.2 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.

38.3 Day count convention

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of three hundred and sixty (360) days or, in any case where the practice in the Relevant Interbank Market differs, in accordance with that market practice.

39. Partial invalidity

If, at any time, any provision of the Finance Documents 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.

40. Remedies and waivers

No failure to exercise, nor any delay in exercising, on the part of any Finance Party, any right or remedy under the Finance Documents shall operate as a waiver of any such right or remedy or constitute an election to affirm any of the Finance Documents. No election to affirm any of the Finance Documents 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 this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

41. Amendments and waivers

41.1 Required consents

- (a) (Subject to Clause 41.3 (*All Lender matters*) and Clause 41.4 (*Other exceptions*), any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and the Transaction Obligor and any such amendment or waiver will be binding on all Parties.
- (b) The Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 41.

- (c) Without prejudice to the generality of paragraphs (c), (d) and (e) of Clause 30.7 (*Rights and discretions*), 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 Transaction Obligor agrees to any such amendment or waiver permitted by this Clause 41.1 which is agreed to by the Borrowers. This includes any amendment or waiver which would, but for this paragraph (d), require the consent of all of the Transaction Obligors.

41.2 **Excluded Commitments**

If any Lender fails to respond to a request for a consent, waiver, amendment of or in relation to any of the terms of the Finance Document or other vote of Lenders under the terms of this Agreement within fifteen (15) Business Days or (in the case of a matter that requires the consent or approval of all Lenders) twenty (20) Business Days of that request being made:

- (a) its Commitment and/or participation in the Loan then outstanding shall not be included for the purpose of calculating the Total Commitments or participations under the Facility when ascertaining whether any relevant percentage (including, for the avoidance of doubt, unanimity) of Total Commitments has been obtained to approve that request; and
- (b) its status as a Lender shall be disregarded for the purpose of ascertaining whether the agreement of any specified group of Lenders has been obtained to approve that request.

41.3 **All Lender matters**

An amendment, waiver or (in the case of a Transaction Security Document) 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) a postponement or extension to the date of payment of any amount under the Finance Documents;
- (c) a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable;
- (d) a change in currency of payment of any amount under the Finance Documents;
- (e) an increase in any Commitment or the Total Commitments, an extension of any Availability Period or any requirement that a cancellation of Commitments reduces the Commitments rateably under the Facility;
- (f) a change to any Transaction Obligor;
- (g) any provision which expressly requires the consent of all the Lenders;
- (h) any change to the preamble (*Background*), Clause 2.1 (*The Facility*), Clause 3 (*Purpose*), Clause 5 (*Utilisation*), Clause 8 (*Interest*), Clause 28 (*Changes to the Lenders*), this Clause 41, Clause 44 (*Governing law*) or Clause 45.1 (*Jurisdiction*).
- (i) (other than as expressly permitted by the provisions of any Finance Document) the nature or scope of:

- (i) the guarantee and indemnity granted under Clause 18 (*Guarantee and indemnity*);
- (ii) the Security Property; or
- (iii) the manner in which the proceeds of enforcement of the Transaction Security are distributed

(except in the case of paragraphs (ii) and (iii) above, insofar as it relates to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is expressly permitted under this Agreement or any other Finance Document); or

- (j) the release of, or material variation to, any guarantee and indemnity granted under Clause 18 (*Guarantee and indemnity*) or of any Transaction Security unless permitted under this Agreement or any other Finance Document or relating to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is expressly permitted under this Agreement or any other Finance Document,

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

41.4 **Other exceptions**

An amendment or waiver which relates to the rights or obligations of the Agent or the Security Agent (each in their capacity as such) may not be effected without the consent of the Agent or, as the case may be, the Security Agent.

41.5 **Replacement of Screen Rate**

- (a) Subject to Clause 41.4 (*Other exceptions*), if a Screen Rate Replacement Event has occurred in relation to any Screen Rate, any amendment or waiver which relates to:
 - (i) providing for the use of a Replacement Benchmark in place of that Screen Rate; and
 - (ii) any or all of the following:
 - (1) aligning any provision of any Finance Document to the use of that Replacement Benchmark;
 - (2) enabling that Replacement Benchmark to be used for the calculation of interest under this Agreement (including, without limitation, any consequential changes required to enable that Replacement Benchmark to be used for the purposes of this Agreement);
 - (3) implementing market conventions applicable to that Replacement Benchmark;
 - (4) providing for appropriate fallback (and market disruption) provisions for that Replacement Benchmark; or
 - (5) 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 Benchmark (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) If, as at 31 July 2022, this Agreement provides that the rate of interest for the Loan is to be determined by reference to the Screen Rate:
 - (i) a Screen Rate Replacement Event shall be deemed to have occurred on that date; and
 - (ii) the Agent (acting on the instructions of the Majority Lenders) and the Obligors shall enter into negotiations in good faith with a view to agreeing the use of a Replacement Benchmark from and including a date no later than 31 December 2022 with the terms relating to the use of that Replacement Benchmark including a floor which, to the extent reasonably practicable, replicates the economic effect of the floor relating to the use of that Screen Rate.

42. Confidentiality

42.1 Confidential Information

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 42.2 (*Disclosure of Confidential Information*) and Clause 42.3 (*Disclosure to numbering service providers*), 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.

42.2 Disclosure of Confidential Information

Any Finance Party may disclose:

- (a) to any of its Affiliates and Related Funds and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as that Finance Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information 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 the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
- (b) to any person:
 - (i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents or which succeeds (or which may potentially succeed) it as Agent or Security Agent and, in each case, to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
 - (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or one or more Transaction Obligors

and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;

- (iii) appointed by any Finance Party or by a person to whom paragraph (b)(i) or (b)(ii) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf (including, without limitation, any person appointed under paragraph (c) of Clause 30.14 (*Relationship with the other Finance Parties*));
- (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraph (b)(i) or (b)(ii) above;
- (v) 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;
- (vi) 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;
- (vii) to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 28.8 (*Security over Lenders' rights*);
- (viii) who is a Party, a member of the Group or any Affiliate of a Transaction Obligor; or
- (ix) with the consent of the Borrowers;

in each case, such Confidential Information as that Finance Party shall consider appropriate if:

- (1) in relation to paragraphs (b)(i), (b)(ii) and (b)(iii) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;
- (2) in relation to paragraph (b)(iv) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;
- (3) in relation to paragraphs (b)(v), and (b)(vi) and (b)(vii) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances;

- (c) to any person appointed by that Finance Party or by a person to whom paragraph (b)(i) or (b)(ii) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) if the service provider to whom the Confidential Information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Borrowers and the relevant Finance Party;
- (d) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or the Transaction Obligors if the rating agency to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information.

42.3 **Disclosure to numbering service providers**

- (a) Any Finance Party may disclose to any national or international numbering service provider appointed by that Finance Party to provide identification numbering services in respect of this Agreement, the Facility and/or one or more Transaction Obligors the following information:
 - (i) names of Transaction Obligors;
 - (ii) country of domicile of Transaction Obligors;
 - (iii) place of incorporation of Transaction Obligors;
 - (iv) date of this Agreement;
 - (v) the name of the Agent;
 - (vi) date of each amendment of this Agreement;
 - (vii) amount of Total Commitments;
 - (viii) currency of the Facility;
 - (ix) type of Facility;
 - (x) ranking of Facility;
 - (xi) Termination Date for Facility;
 - (xii) changes to any of the information previously supplied pursuant to paragraphs (i) to (xi) above; and
 - (xiii) such other information agreed between such Finance Party and the Transaction Obligors,

to enable such numbering service provider to provide its usual syndicated loan numbering identification services.

- (b) The Parties acknowledge and agree that each identification number assigned to this Agreement, the Facility and/or one or more Transaction Obligors by a numbering service provider and the information associated with each such number may be disclosed to users of its services in accordance with the standard terms and conditions of that numbering service provider.
- (c) Each Transaction Obligor represents that none of the information set out in paragraphs (i) to (xiii) of paragraph (a) above is, nor will at any time be, unpublished price-sensitive information.
- (d) The Agent shall notify the Borrowers and the other Finance Parties of:
 - (i) the name of any numbering service provider appointed by the Agent in respect of this Agreement, the Facility and/or one or more Transaction Obligors; and
 - (ii) the number or, as the case may be, numbers assigned to this Agreement, the Facility and/or one or more Transaction Obligors by such numbering service provider.

42.4 Entire agreement

This Clause 42 (*Confidentiality*) 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.

42.5 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.

42.6 Notification of disclosure

Each of the Finance Parties agrees (to the extent permitted by law and regulation) to inform the Borrowers:

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to paragraph 42.2(b)(iv) of Clause 42.2 (*Disclosure of Confidential Information*) 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
- (b) upon becoming aware that Confidential Information has been disclosed in breach of this Clause 42 (*Confidentiality*).

42.7 Continuing obligations

The obligations in this Clause 42 (*Confidentiality*) are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of twelve (12) months from the earlier of:

- (a) the date on which all amounts payable by the Transaction 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.

43. **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.

44. **Governing law**

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

45. **Enforcement**

45.1 **Jurisdiction**

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a “**Dispute**”).
- (b) 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) This Clause 45.1 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.

45.2 **Service of process**

- (a) Without prejudice to any other mode of service allowed under any relevant law, the Intermediate HoldCo, HoldCo and each Collateral Obligor irrevocably appoints Lomar Shipping Limited of 13-14 Hobart Place, London SW1W 0HH, United Kingdom as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and agrees that failure by a process agent to notify Intermediate HoldCo, HoldCo or any Collateral Obligor (as applicable) of the process will not invalidate the proceedings concerned.
- (b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Borrowers (on behalf of all the Transaction Obligors) must immediately (and in any event within five (5) 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**

**PART I
THE TRANSACTION OBLIGORS**

BORROWERS

Name of Borrower	Jurisdiction of Incorporation	Registered Address and Registration No.	Address for Communication
Syros Trader Shipping Limited (" Borrower A ")	England & Wales	13-14 Hobart Place, London SW1W 0HH, United Kingdom Company Number: 13656345	c/o Lomar Shipping Limited, 13-14 Hobart Place, London SW1W 0HH, United Kingdom Fax: +44 (0)20 7245 0020 Email: legal@lomarshipping.com
Crete Trader Shipping Limited (" Borrower B ")	England & Wales	13-14 Hobart Place, London SW1W 0HH, United Kingdom Company Number: 13656443	c/o Lomar Shipping Limited, 13-14 Hobart Place, London SW1W 0HH, United Kingdom Fax: +44 (0)20 7245 0020 Email: legal@lomarshipping.com

INTERMEDIATE HOLDCO

Name of Intermediate HoldCo	Jurisdiction of Incorporation	Registered Address and Company No.	Address for Communication
Dahlia Shipholdings Limited	British Virgin Islands	Palm Grove House, PO Box 438, Road Town, Tortola, British Virgin Islands Company Number: 2076812	c/o Lomar Shipping Limited, 13-14 Hobart Place, London SW1W 0HH, United Kingdom Fax: +44 (0)20 7245 0020 Email: legal@lomarshipping.com

HOLDCO

Name of HoldCo	Jurisdiction of Incorporation	Registered Address and Company No.	Address for Communication
Fuchsia Shipholdings Limited	British Virgin Islands	Palm Grove House, PO Box 438, Road Town,	c/o Lomar Shipping Limited, 13-14 Hobart

		Tortola, British Virgin Islands Company Number: 2079228	Place, London SW1W 0HH, United Kingdom Fax: +44 (0)20 7245 0020 Email: legal@lomarshipping.com
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COLLATERAL VESSEL FACILITY BORROWERS

Mirador Marine SA ("Collateral Vessel Facility Borrower A")	Republic of Liberia	80 Broad Street, Monrovia, Liberia Registration Number: C-122812	c/o Lomar Shipping Limited, 13-14 Hobart Place, London SW1W 0HH, United Kingdom Fax: +44 (0)20 7245 0020 Email: legal@lomarshipping.com
Velika Marine SA ("Collateral Vessel Facility Borrower B")	Republic of Liberia	80 Broad Street, Monrovia, Liberia Registration Number: C-122813	c/o Lomar Shipping Limited, 13-14 Hobart Place, London SW1W 0HH, United Kingdom Fax: +44 (0)20 7245 0020 Email: legal@lomarshipping.com
Sounion Marine SA ("Collateral Vessel Facility Borrower C")	Republic of Liberia	80 Broad Street, Monrovia, Liberia Registration Number: C-122816	c/o Lomar Shipping Limited, 13-14 Hobart Place, London SW1W 0HH, United Kingdom Fax: +44 (0)20 7245 0020 Email: legal@lomarshipping.com
Spartel Marine SA ("Collateral Vessel Facility Borrower D")	Republic of Liberia	80 Broad Street, Monrovia, Liberia Registration Number: C-122814	c/o Lomar Shipping Limited, 13-14 Hobart Place, London SW1W 0HH, United Kingdom Fax: +44 (0)20 7245 0020

			Email: legal@lomarshipping.com
Antibes Marine SA ("Collateral Vessel Facility Borrower E")	Republic of Liberia	80 Broad Street, Monrovia, Liberia Registration Number: C-122815	c/o Lomar Shipping Limited, 13-14 Hobart Place, London SW1W 0HH, United Kingdom Fax: +44 (0)20 7245 0020 Email: legal@lomarshipping.com

COLLATERAL VESSEL FACILITY INTERMEDIATE HOLDCO

Name of Intermediate HoldCo	Jurisdiction of Incorporation	Registered Address and Company No.	Address for Communication
Huddling Investment Holding Ltd.	British Virgin Islands	Patton, Moreno & Asvat (BVI) Limited, 2nd Floor, O'Neal Marketing Associates Building, P. O. Box 3174, Wickham's Cay II, Road Town, Tortola, British Virgin Islands, VG1110 Company Number: 2065658	c/o Lomar Shipping Limited, 13-14 Hobart Place, London SW1W 0HH, United Kingdom Fax: +44 (0)20 7245 0020 Email: legal@lomarshipping.com

COLLATERAL VESSEL FACILITY HOLDCO

Name of HoldCo	Jurisdiction of Incorporation	Registered Address and Company No.	Address for Communication
Gathering Investment Holding Ltd.	British Virgin Islands	Patton, Moreno & Asvat (BVI) Limited, 2nd Floor, O'Neal Marketing Associates Building, P. O. Box 3174, Wickham's Cay II, Road Town, Tortola, British Virgin Islands, VG1110 Company Number: 2065621	c/o Lomar Shipping Limited, 13-14 Hobart Place, London SW1W 0HH, United Kingdom Fax: +44 (0)20 7245 0020 Email: legal@lomarshipping.com

PART II
THE ORIGINAL LENDERS

ORIGINAL LENDERS					
Name of Original Lender	Tranche A (USD)	Tranche B (USD)	Total Commitment (USD)	Address for Communication	
Hayfin DLF III LuxCo 1 Sarl	6,102,517.39	6,102,517.39	12,205,034.77	One Eagle Place, London, SW1Y 6AF Fax: +44 207 692 4641 E-mail: loanops@hayfin.com; gc@hayfin.com;	
Hayfin Big Cypress LuxCo Sarl	519,682.66	519,682.66	1,039,365.33	One Eagle Place, London, SW1Y 6AF Fax: +44 207 692 4641 E-mail: loanops@hayfin.com; gc@hayfin.com;	
Hayfin Opal 2020 (A) LP	205,251.79	205,251.79	410,503.57	One Eagle Place, London, SW1Y 6AF Fax: +44 207 692 4641 E-mail: loanops@hayfin.com; gc@hayfin.com;	
Hayfin Opal 2020 (B) LP	136,834.52	136,834.52	273,669.05	One Eagle Place, London, SW1Y 6AF Fax: +44 207 692 4641 E-mail: loanops@hayfin.com; gc@hayfin.com;	
Hayfin PT Luxco 2 Sarl	631,433.18	631,433.18	1,262,866.35	One Eagle Place, London, SW1Y 6AF Fax: +44 207 692 4641 E-mail: loanops@hayfin.com; gc@hayfin.com;	
Hayfin Hamilton Luxco Sarl	444,712.20	444,712.20	889,424.41	One Eagle Place, London, SW1Y 6AF Fax: +44 207 692 4641 E-mail: loanops@hayfin.com; gc@hayfin.com;	

Infinity Holdco Private Debt II Sarl	319,280.56	319,280.56	638,561.11	One Eagle Place, London, SW1Y 6AF Fax: +44 207 692 4641 E-mail: loanops@hayfin.com; gc@hayfin.com; [REDACTED]
VG HCM EU PD S.à r.l.	1,140,287.70	1,140,287.70	2,280,575.41	One Eagle Place, London, SW1Y 6AF Fax: +44 207 692 4641 E-mail: loanops@hayfin.com; gc@hayfin.com; [REDACTED]
Total	9,500,000	9,500,000	19,000,000	

PART III
AGENT AND SECURITY AGENT

AGENT

Name of Agent	Address for Communication
Hayfin Services LLP	One Eagle Place, London, SW1 Y 6AF, England Fax: +44 207 785 6829 E-mail: loanops@hayfin.com / [REDACTED] Attention: Loan Operations / Moritz Fuhrmann / Robin Perkin

SECURITY AGENT

Name of Security Agent	Address for Communication
Hayfin Services LLP	One Eagle Place, London, SW1 Y 6AF, England Fax: +44 207 785 6829 E-mail: loanops@hayfin.com / [REDACTED] Attention: Loan Operations / Moritz Fuhrmann / Robin Perkin

SCHEDULE 2
CONDITIONS PRECEDENT

PART I
CONDITIONS PRECEDENT TO UTILISATION REQUEST

- (1) **Constitutional documents.** Copies of the constitutional documents of each Transaction Obligor, together with such other evidence as the Agent may reasonably require that each Transaction Obligor is duly incorporated in its country of incorporation and remains in existence with power to enter into, and perform its obligations under, the Relevant Documents to which it is or is to become a party.
- (2) **Board resolutions.** A copy of the resolutions of the board of directors of each Transaction Obligor:
 - i. approving the terms of, and the transactions contemplated by, the Relevant Documents to which it is a party and resolving that it execute those Relevant Documents; and
 - ii. authorising a specified person or persons to execute those Relevant Documents (and all documents and notices to be signed and/or dispatched under those documents) on its behalf;
 - iii. if applicable, authorising the terms of, and the transactions contemplated by the Collateral Vessel Facility Amendment Agreement, the Collateral Vessels Subordination and Assignment Agreement and the Second Priority Security Documents and authorising a specified person or persons to execute these documents (and all documents and notices to be signed and/or dispatched under those documents) on its behalf.
- (3) **Shareholder resolutions.** If required as a matter of law of any Transaction Obligor's (other than an Approved Manager) jurisdiction of incorporation, a copy of a resolution signed by all the holders of the issued shares in that Transaction Obligor, approving the terms of, and the transactions contemplated by, the Relevant Documents to which it is a party.
- (4) **Officer's certificates.** An original certificate of a duly authorised officer of each Transaction Obligor:
 - i. certifying that each copy document relating to it specified in this Part I of Schedule 2 is correct, complete and in full force and effect;
 - ii. setting out the names of the directors, officers and shareholders of that Transaction Obligor and the proportion of shares held by each shareholder; and
 - iii. confirming that borrowing or guaranteeing or securing, as appropriate, the Loan would not cause any borrowing, guarantee, security or similar limit binding on that Transaction Obligor to be exceeded.
- (5) **Evidence of registration.** Where such registration is required or permitted under the laws of the relevant jurisdiction, evidence that the names of the directors, officers and shareholders of each Transaction Obligor are duly registered in the companies registry or other registry in the country of incorporation of that Transaction Obligor.
- (6) **Powers of attorney.** The original and, if required, notarially attested power of attorney of each of the Transaction Obligors under which the Relevant Documents to which it is or is to become a party are to be executed or transactions undertaken by that Transaction Obligor.
- (7) **Facility Agreement.** A duly executed original of this Agreement.

- (8) **Share Charges.** A duly executed original of each Share Charge and the ancillary documents thereunder.
- (9) **Accounts Security.** A duly executed original of the Accounts Security in relation to each Account (and each document to be delivered thereunder).
- (10) **Account Bank's confirmation.** The written confirmation of the relevant Account Bank that the Accounts have been opened with the Account Bank and to its actual knowledge are free from Security other than Transaction Security as created by the Security Documents.
- (11) **Subordination and Assignment Agreements.** The duly executed original of the Subordination and Assignment Agreement and the Collateral Vessels Subordination and Assignment Agreement.
- (12) **Permitted Intercompany Loans.** Copies of any executed documents in respect of any existing Permitted Intercompany Loans.
- (13) **MOAs.**
 - (a) Copies of the MOAs and of all documents signed or issued by the Borrowers or the Sellers (or any of them) under or in connection with them.
 - (b) Such documentary evidence as the Agent and its legal advisers may require in relation to the due authorisation and execution of the MOAs by each of the parties thereto.

Other documents and evidence

- (14) **Other Authorisations.** 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 Relevant Document or for the validity and enforceability of any Relevant Document.
- (15) **Fees.** The Fee Letter and evidence that the fees, costs and expenses then due from the Borrowers under Clause 11 (*Fees*) and Clause 16 (*Costs and expenses*) have been paid or will be paid by the Utilisation Date.
- (16) **"Know your customer" documents.** Such documentation and other evidence as is reasonably requested by the Agent in order for the Lenders to comply with all necessary "know your customer" or similar identification procedures, anti-money laundering regulations, and Sanctions, in relation to the transactions contemplated in the Finance Documents.
- (17) **Structure Chart.** A chart showing the structure of the Group and its ultimate shareholders.
- (18) **Registered Agent Certificates.** Registered agent certificates attaching certified copies of the registers of members and directors of each of HoldCo and Intermediate HoldCo.
- (19) **Cross-collateralisation.** Duly executed copies of the Collateral Vessel Facility Amendment Agreement, the Second Priority Security Documents and any other documents and amendments to the Collateral Vessel Facility and the documents relating thereto in form and substance as the Agent may require.

PART II
CONDITIONS PRECEDENT TO UTILISATION

- (1) **Officer's certificate.** An original certificate of a duly authorised officer of each Borrower certifying that:
 - i. each copy document relating to it specified in Part I of Schedule 2 remains correct, complete and in full force and effect on the Utilisation Date;
 - ii. each copy document relating to it specified in this Part II of Schedule 2 remains correct, complete and in full force and effect on the Utilisation Date.
- (2) **Delivery under MOAs.** Documentary evidence that each relevant Facility Vessel has been unconditionally delivered by the relevant Seller to, and accepted by, the relevant Borrower under each MOA and that the full purchase price payable and all other sums due to each Seller under the MOAs, other than the sums to be financed pursuant to the Loan, have been paid to each Seller.
- (3) **Evidence of Borrower's title.** Certificate of ownership and encumbrance (or equivalent) issued by the Registrar of Ships (or equivalent official) of each relevant Facility Vessel's Approved Flag confirming that such Facility Vessel is owned by the relevant Borrower and is free of registered Security other than Permitted Security.
- (4) **Registration of Mortgages.** Evidence that (i) a relevant Mortgage has been registered against each relevant Facility Vessel with first priority and (ii) each Collateral Vessel Facility Mortgage has been registered against each Collateral Vessel with second priority.
- (5) **Registration of Security Documents.** Evidence that each Security Document where a security interest is created by either HoldCo or Intermediate HoldCo has been registered with the Companies House in England and Wales or BVI Registry of Corporate Affairs and on the internal register of charges of each of Intermediate HoldCo and HoldCo (as applicable) in accordance with sections 162 and 163 of the BVI Business Companies Act, 2004.
- (6) **Evidence of insurance.** Evidence that each relevant Facility Vessel is insured in the manner required by the Finance Documents and that letters of undertaking will be issued in the manner required by the Finance Documents, together with (if required by the Agent) the written approval of the Insurances in respect of each relevant Facility Vessel by an insurance adviser appointed by the Agent.
- (7) **Confirmation of class.** A Certificate of Confirmation of Class confirming that each relevant Facility Vessel is classed with the Classification and with the Classification Society described in Schedule 8 (*Details of Vessels*) free of outstanding conditions or recommendations, dated no more than three (3) days prior to the Utilisation Date, save that no such certificate will be required for Vessel A.
- (8) **Physical inspection or inspection report.** If required by the Agent, a physical inspection of each relevant Facility Vessel (at the cost of the Borrowers) by the Agent or its representative, and/or an inspection report satisfactory to the Agent, in each case at the cost of the Borrowers and confirming that the condition of each such Facility Vessel is in all respects acceptable to the Agent.
- (9) **Insurance report.** An opinion from independent insurance consultants appointed by the Agent on the Insurances in respect of each relevant Facility Vessel.
- (10) **Valuations.** Two Valuations of each relevant Facility Vessel from Approved Brokers nominated by the Agent, addressed to the Agent on behalf of the Finance Parties and dated not

- earlier than twenty (20) Business Days before the Utilisation Date, which show the minimum value of the Facility Vessels (in aggregate) in the amount of US\$30,000,000.
- (11) **Operating Expenses budget.** Operating Expenses budget for each relevant Facility Vessel.
- (12) **Vessel documents.** In respect of each relevant Facility Vessel, copies of:
- i. any Management Agreements in respect of that Facility Vessel; and
 - ii. the ISM Company's current DOC,
- in each case together with all addenda, amendments or supplements.
- (13) **Lightweight tonnage.** Evidence, in form satisfactory to the Agent, of the lightweight tonnage of each relevant Facility Vessel showing that the lightweight tonnage of each relevant Facility Vessel is not less than 10,280 tons.
- (14) **Purchase price.** Evidence that the purchase price for each relevant Facility Vessel is US\$12,500,000 (for Vessel A) and US\$13,500,000 (for Vessel B), with all commission and brokerage payable for each relevant Facility Vessel to be acceptable to the Lenders.
- (15) **Dry Docking Reserve Account.** Evidence that, in respect of Vessel A, the Dry Docking Reserve Account has been pre-funded with US\$500,000 or will be funded simultaneously with /at the time of Utilisation on the relevant Utilisation Date.
- (16) **Security Documents.** In respect of each relevant Facility Vessel, duly executed originals of:
- i. the Mortgage in respect of that Facility Vessel;
 - ii. if applicable, the Deed of Covenants in respect of that Facility Vessel;
 - iii. the General Assignment in respect of that Facility Vessel;
 - iv. if applicable, the Charter Assignment in respect of that Facility Vessel; and
 - v. the Manager's Undertakings in respect of that Facility Vessel,
- together with all other documents required by any of them, including, without limitation, all notices of assignment and/or charge and evidence that those notices will be duly acknowledged by the recipients.
- (17) **Utilisation Request.** The duly completed Utilisation Request.
- (18) **Minimum liquidity amount.** Evidence that an amount equal to the required Minimum Liquidity Amount has been deposited into the Minimum Liquidity Accounts.
- (19) **Charter.** If applicable (in the event that the Facility Vessel(s) have already been acquired by the Borrower(s) at the time of the relevant Utilisation Date), evidence that each such Facility Vessel has been fixed on a charter (or any other contract of employment) at a minimum daily hire rate of US\$30,000 for a minimum period of five (5) months and with a charterer approved by the Lenders.
- (20) **Process Agent.** Evidence that any process agent appointed under any Finance Document entered into under this Part II has accepted its appointment.

(21) **Legal opinions.** The following legal opinions, each addressed to the Agent, the Security Agent and the Lenders and capable of being relied upon by any persons who become Lenders pursuant to the primary syndication of the Loan or confirmation satisfactory to the Agent that such opinions will be given:

- i. legal opinion of Reed Smith LLP, legal advisers to the Finance Parties in respect of English law, substantially in the form distributed to the Original Lenders prior to Utilisation;
- ii. legal opinion of Reed Smith LLP, New York legal advisers to the Finance Parties in respect of Liberian law, substantially in the form distributed to the Original Lenders prior to Utilisation;
- iii. legal opinion of Reed Smith LLP, Munich legal advisers to the Finance Parties in respect of German law, substantially in the form distributed to the Original Lenders prior to Utilisation; and
- iv. legal opinion of Ogier, legal advisers to the Finance Parties in respect of British Virgin Islands law, substantially in the form distributed to the Original Lenders prior to Utilisation.

PART III
CONDITIONS SUBSEQUENT

- (1) **Letters of undertaking.** Letters of undertaking in respect of the Insurances as required by the Security Documents together with copies of the relevant policies or cover notes or entry certificates duly endorsed with the interest of the Finance Parties.
- (2) **Acknowledgements of notices.** Acknowledgements of all notices of assignment and/or charge given pursuant to any Security Documents received by the Agent pursuant to Part I or Part II of this Schedule 2.
- (3) **Legal opinions.** Such of the legal opinions specified in Part II of this Schedule 2 as have not already been provided to the Agent.
- (4) **Companies Act/House registrations.** Evidence that the prescribed particulars of any Security Documents received by the Agent pursuant to Part I of this Schedule 2 have been delivered to, and registered with, any relevant Registry of Companies/Corporations within the statutory time limit.
- (5) **Master's receipt.** The master's receipt for each Mortgage (if applicable)
- (6) **Amended constitutional documents.** If required, in respect of the first Utilisation only, stamped copies of the amendment to the memorandum and articles of association of Intermediate HoldCo filed with the BVI Registrar of Corporate Affairs in form and substance acceptable to the Agent.
- (7) **Vessel documents.** In respect of each relevant Facility Vessel, copies of:
 - i. that Facility Vessel's current Safety Construction, Safety Equipment, Safety Radio and Load Line Certificates;
 - ii. (if applicable) evidence of that Facility Vessel's current Certificate of Financial Responsibility issued pursuant to the United States Oil Pollution Act 1990;
 - iii. that Facility Vessel's current SMC;
 - iv. that Facility Vessel's current ISSC;
 - v. that Facility Vessel's current IAPPC; and
 - vi. that Facility Vessel's current Tonnage Certificate,in each case together with all addenda, amendments or supplements.
- (8) **Process Agent.** Signed and dated copies of the Process Agent letters as described in paragraph 20 of Part II of Schedule 2.

**SCHEDULE 3
UTILISATION REQUEST**

From: [Borrower[s]]

To: [Agent]

Dated:

Dear Sirs

Facility Agreement dated [●] for up to the amount of US\$19,000,000, as amended and restated from time to time (the “Agreement”)

- (1) We refer to the Agreement. This is an Utilisation Request. Terms defined in the Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
- (2) We wish to borrow [the Loan] [Tranche [●]] on the following terms:

Proposed Utilisation Date:	[●] (or, if that is not a Business Day, the next Business Day)
Amount:	[●] or, if less, the Available Facility
- (3) We confirm that each condition specified in Clause 4.1 (*Initial conditions precedent*) is satisfied on the date of this Utilisation Request.
- (4) The proceeds of the Utilisation should be credited as follows:
 - (a) [an amount of US\$250,000 to the Minimum Liquidity Account held in the name of Borrower A as follows: *[to insert details of the Borrower A Minimum Liquidity Account]*];
 - (b) [an amount of US\$250,000 to the Minimum Liquidity Account held in the name of Borrower B as follows: *[to insert details of the Borrower B Minimum Liquidity Account]*];
 - (c) [an amount of US\$500,000 to the Dry Docking Reserve Account as follows: *[to insert details of the Dry Docking Reserve Account]*];
 - (d) [the balance of US\$[***] to the following account: *[to insert details of the Reed Smith escrow account]*].
- (5) We confirm that you may disburse the [Loan] [Tranche [●]] and deduct from the [Loan] [Tranche [●]] (although the amount of the [Loan] [Tranche [●]] will remain the amount requested above):
 - (a) [the outstanding Upfront Fee being US\$282,500;]
 - (b) [the Agency Fee being US\$30,000;]
 - (c) [the Commitment Fee payable up to the Utilisation Date, being US\$[●]; and]

- (c) [other costs/fees/legal fees].
- (6) This Utilisation Request is irrevocable.

Yours faithfully

.....
authorised signatory for
[Borrowers]

SCHEDULE 4
FORM OF TRANSFER CERTIFICATE

To: [●] as Agent

From: [*The Existing Lender*] (the “**Existing Lender**”) and [*The New Lender*] (the “**New Lender**”)

Dated:

Facility Agreement dated [●] for up to the amount of US\$19,000,000, as amended and restated from time to time (the “Agreement”)

- (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 28.5 (*Procedure for transfer*) of the Agreement:
 - (a) The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation and in accordance with Clause 28.5 (*Procedure for transfer*) of the Agreement all of the Existing Lender’s rights and obligations under the Agreement and the other Finance Documents which relate to that portion of the Existing Lender’s Commitment and participation in Loans under the Agreement as specified in the Schedule.
 - (b) The proposed Transfer Date is [●].
 - (c) The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 37.2 (*Addresses*) of the Agreement are set out in the Schedule.
- (3) The New Lender expressly acknowledges the limitations on the Existing Lender’s obligations set out in paragraph (iii) of Clause 28.4 (*Limitation of responsibility of Existing Lenders*) of the Agreement.
- (4) 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.
- (5) This Transfer Certificate and any non-contractual obligations arising out of or in connection with it are governed by English law.
- (6) 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 transfer a proportionate share of the Existing Lender’s interest in the Transaction Security in all jurisdictions. It is the responsibility of the New Lender to ascertain whether any other documents or other formalities are required to perfect a transfer of such a share in the Existing Lender’s Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.

COMMITMENT/RIGHTS AND OBLIGATIONS TO BE TRANSFERRED

[insert relevant details]

[Facility Office address, fax number and attention details for notices and account details for payments.]

[Existing Lender]

[New Lender]

By:

By:

This Transfer Certificate is accepted by the Agent and the Transfer Date is confirmed as [●].

[Agent]

By:

SCHEDULE 5
FORM OF ASSIGNMENT AGREEMENT

To: [●] as Agent and [●] as Borrower[s], for and on behalf of each Transaction Obligor

From: [the *Existing Lender*] (the “**Existing Lender**”) and [the *New Lender*] (the “**New Lender**”)

Dated:

Facility Agreement dated [●] for up to the amount of US\$19,000,000, as amended and restated from time to time (the “Agreement”)

- (1) We refer to the Agreement. This is an Assignment Agreement. Terms defined in the Agreement have the same meaning in this Assignment Agreement unless given a different meaning in this Assignment Agreement.
- (2) We refer to clause 28.6 (*Procedure for assignment*) of the Agreement:
 - (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 and participations in Loans 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 and participations in Loans 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.
- (3) The proposed Transfer Date is [●].
- (4) On the Transfer Date the New Lender becomes Party to the Finance Documents as a Lender.
- (5) The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 37.2 (*Addresses*) of the Agreement are set out in the Schedule.
- (6) The New Lender expressly acknowledges the limitations on the Existing Lender’s obligations set out in paragraph (c) of Clause 28.4 (*Limitation of responsibility of Existing Lenders*) of the Agreement.
- (7) This Assignment Agreement acts as notice to the Agent (on behalf of each Finance Party) and, upon delivery in accordance with Clause 28.7 (*Copy of Transfer Certificate or Assignment Agreement*) of the Agreement, to the Borrower[s] (on behalf of each Transaction Obligor) of the assignment referred to in this Assignment Agreement.
- (8) This Assignment Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Assignment Agreement.
- (9) This Assignment Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.
- (10) This Assignment Agreement has been entered into on the date stated at the beginning of this Assignment Agreement.

RIGHTS TO BE ASSIGNED AND OBLIGATIONS TO BE RELEASED AND UNDERTAKEN

[insert relevant details]

[Facility office address, fax number and attention details for notices and account details for payments]

[Existing Lender]

[New Lender]

By:

By:

This Assignment Agreement is accepted by the Agent and the Transfer Date is confirmed as [●].

Signature of this Assignment Agreement 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:

Note: The execution of this Assignment Agreement may not transfer a proportionate share of the Existing Lender's interest in the Security in all jurisdictions. It is the responsibility of the New Lender to ascertain whether any other documents or other formalities are required to perfect a transfer of such a share in the Existing Lender's Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.

**SCHEDULE 6
FORM OF COMPLIANCE CERTIFICATE**

To: Hayfin Services LLP as Agent

From: [Borrower[s]]

Dated: [●]

Dear Sirs

Facility Agreement dated [●] for up to the amount of US\$19,000,000, as amended and restated from time to time (the “Agreement”)

- (1) We refer to the Agreement. This is a Compliance Certificate. Terms defined in the Agreement have the same meaning when used in this Compliance Certificate unless given a different meaning in this Compliance Certificate.
- (2) We confirm that:
 - (a) [●]; [and]
 - (b) [●]; [and]
 - (c) [●].
- (3) We set out below calculations establishing the figures in paragraph (2):
[●].
- (4) We confirm that no Event of Default is continuing. *[If this statement cannot be made, the certificate should identify any Event of Default that is continuing and the steps, if any, being taken to remedy it.]*

Signed:

authorised officer
of HoldCo

[insert applicable certification language]

.....

for and on behalf of
[name of auditors of the Borrowers]¹

¹Only applicable if the Compliance Certificate accompanies the audited financial statements and is to be signed by the auditors.

SCHEDULE 7
TIMETABLES

Delivery of a duly completed
Utilisation Request (Clause 5.1
(Delivery of Utilisation Request)

By 9.30 a.m. (London time) five (5) Business Days before the
intended Utilisation Date

Agent notifies the Lenders of the
Loan in accordance with Clause 5.4
(Lenders' participation)

Three (3) Business Days before the intended Utilisation Date

LIBOR is fixed

Quotation Day as of 11:00 a.m. (London time)

SCHEDULE 8 DETAILS OF VESSELS

VESSEL A

1.	Name of Vessel:	Teton (tbn Syros Trader)
2.	Description:	Dry bulk
3.	Owner:	Borrower A
4.	Date and description of MOA:	Memorandum of agreement dated 4 August 2021 between Teton Shipping LP as seller and Lomar Corporation Limited as buyer
5.	Seller:	Teton Shipping LP
6.	Flag State:	Liberia
7.	IMO Number:	9395214
8.	Registered / Official Number:	20397
9.	Classification:	100 A5 Bulk carrier BC(A) BWM DBC DG ERS ESP Holds (2 & 4) may be empty IW +MC AUT
10.	Classification Society:	DNV-GL

VESSEL B

1.	Name of Vessel:	Eolus (tbn Crete Trader)
2.	Description:	Dry bulk
3.	Owner:	Borrower B
4.	Date and description of MOA:	Memorandum of agreement dated 4 August 2021 between Eolus Shipping LP as seller and Lomar Corporation Limited as buyer
5.	Seller:	Eolus Shipping LP
6.	Flag State:	Liberia
7.	IMO Number:	9395264
8.	Registered / Official Number:	20398
9.	Classification:	100 A5 Bulk carrier BC(A) BWMD BC SOLAS-II-2, Reg. 19 ESP Holds (2 and 4) may be empty IWMC AUT
10.	Classification Society:	DNV-GL

DETAILS OF COLLATERAL VESSELS

COLLATERAL VESSEL A

1.	Name of Vessel:	Mirador Express
2.	Description:	Containership
3.	Owner:	Collateral Vessel Facility Borrower A
4.	Flag State:	Liberia
5.	IMO Number:	9243174
6.	Registered / Official Number:	1195522
7.	Classification:	*A1, Container Carrier, ©, *AMS, *ACCU, SH
8.	Classification Society:	ABS

COLLATERAL VESSEL B

1.	Name of Vessel:	Velika Express
2.	Description:	Containership
3.	Owner:	Collateral Vessel Facility Borrower B
4.	Flag State:	Liberia
5.	IMO Number:	9243162
6.	Registered / Official Number:	1195531
7.	Classification:	*A1, Container Carrier, ©, *AMS, *ACCU, SH
8.	Classification Society:	ABS

COLLATERAL VESSEL C

1.	Name of Vessel:	Sounion Trader
2.	Description:	Containership
3.	Owner:	Collateral Vessel Facility Borrower C
4.	Flag State:	Liberia
5.	IMO Number:	9243198

6.	Registered / Official Number:	1191634
7.	Classification:	A1 , Container Carrier, ©, AMS , ACCU , SH
8.	Classification Society:	ABS

COLLATERAL VESSEL D

1.	Name of Vessel:	Spartel Trader
2.	Description:	Containership
3.	Owner:	Collateral Vessel Facility Borrower D
4.	Flag State:	Liberia
5.	IMO Number:	9243203
6.	Registered / Official Number:	1173772
7.	Classification:	A1 , Container Carrier, ©, AMS , ACCU , SH
8.	Classification Society:	ABS

COLLATERAL VESSEL E

9.	Name of Vessel:	Antibes Express
10.	Description:	Containership
11.	Owner:	Collateral Vessel Facility Borrower E
12.	Flag State:	Liberia
13.	IMO Number:	9243186
14.	Registered / Official Number:	1191641
15.	Classification:	A1 , Container Carrier, ©, AMS , ACCU , SH
16.	Classification Society:	ABS

SCHEDULE 9
SCREEN RATE CONTINGENCY PERIODS

Screen Rate
LIBOR

Period
15 Business Days

EXECUTION PAGE

BORROWERS

Signed by George Nicholas Georgiou
for and on behalf of **SYROS TRADER
SHIPPING LIMITED**

In the presence of

Name: Flora Stafanos
Address: 13-14 Hobart Place, Belgravia,
London SW1W 0HH

Signed by George Nicholas Georgiou
for and on behalf of **CRETE TRADER
SHIPPING LIMITED**

In the presence of

Name: Flora Stafanos
Address: 13-14 Hobart Place, Belgravia,
London SW1W 0HH

INTERMEDIATE HOLDCO

Signed by George Nicholas Georgiou
for and on behalf of **DAHLIA SHIPHOLDINGS
LIMITED**

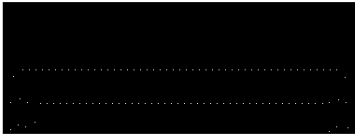
In the presence of


Name: Flora Stafanos
Address: same as above

HOLDCO

Signed by George Nicholas Georgiou
for and on behalf of **FUCHSIA**
SHIPHOLDINGS LIMITED

)
)
)



In the presence of: 

Name: Flora Stafanos
Address: same as above

**COLLATERAL VESSEL FACILITY
BORROWERS**

Signed by George Nicholas Georgiou
for and on behalf of **MIRADOR MARINE SA**

In the presence of:

Name:Flora Stafanos
Address:same as above

Signed by George Nicholas Georgiou
for and on behalf of **VELIKA MARINE SA**

In the presence of:

Name:Flora Stafanos
Address:same as above

Signed by George Nicholas Georgiou
for and on behalf of **SPARTEL MARINE SA**

In the presence of:

Name: Flora Stafanos
Address: same as above

Signed by George Nicholas Georgiou
for and on behalf of **ANTIBES MARINE SA**

In the presence of:

Name: Flora Stefanos
Address: same as above

Signed by George Nicholas Georgiou
for and on behalf of **SOUNION MARINE SA**

In the presence of:

Name: Flora Stafanos
Address: same as above

**COLLATERAL VESSEL FACILITY
INTERMEDIATE HOLDCO**

Signed by George Nicholas Georgiou
for and on behalf of **HUDDLING INVESTMENT
HOLDING LTD.**

In the presence of:

Name: Flora Stafanos
Address: same as above

**COLLATERAL VESSEL FACILITY
HOLDCO**

Signed by George Nicholas Georgiou
for and on behalf of **GATHERING
INVESTMENT HOLDING LTD.**

In the presence of:

Name: Flora Stafanos
Address: same as above

ORIGINAL LENDERS

Signed by John Molloy)
for and on behalf of HAYFIN DLF III)
LUXCO 1 SARL)

Signed by Emmanuel Mougeolle)
for and on behalf of HAYFIN BIG)
CYPRESS LUXCO SARL)

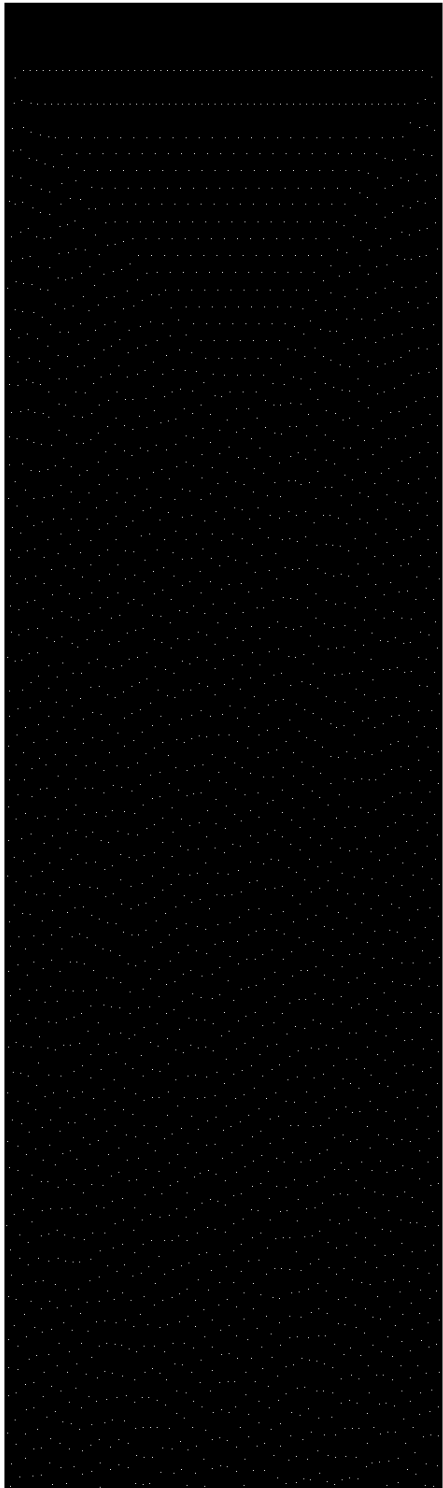
Signed by Joshua Gallitano)
for and on behalf of HAYFIN OPAL 2020)
(A) LP acting by its general partner Hayfin)
Opal 2020 GP Limited)

Signed by Joshua Gallitano)
for and on behalf of HAYFIN OPAL 2020)
(B) LP acting by its general partner Hayfin)
Opal 2020 GP Limited)

Signed by Ugo De Benedetti)
for and on behalf of HAYFIN PT LUXCO)
2 S.À.R.L.)

Signed by Ugo De Benedetti)
for and on behalf of HAYFIN HAMILTON)
LUXCO SARL)

Signed by John Molloy)
for and on behalf of INFINITY HOLDCO)
PRIVATE DEBT II SARL)



Signed by Vikas Mehta)
for and on behalf of **VG HCM EU PD**)
S.À.R.L. acting by its manager Hayfin)
Capital Management LLP)

AGENT

Signed by Vikas Mehta)
for and on behalf of)
HAYFIN SERVICES LLP)

SECURITY AGENT

Signed by Vikas Mehta)
for and on behalf of)
HAYFIN SERVICES LLP)

