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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

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**FORM 6-K**

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**REPORT OF FOREIGN PRIVATE ISSUER  
PURSUANT TO RULE 13a-16 OR 15d-16  
OF THE SECURITIES EXCHANGE ACT OF 1934**

**Dated: January 17, 2018**

**Commission File No. 001-33311**

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**NAVIOS MARITIME HOLDINGS INC.**

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**7 Avenue de Grande Bretagne, Office 11B2  
Monte Carlo, MC 98000 Monaco  
(Address of Principal Executive Offices)**

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Indicate by check mark whether the registrant files or will file annual reports under cover Form 20-F or Form 40-F:

Form 20-F       Form 40-F

Indicate by check mark if the registrant is submitting the Form 6-K in paper as permitted by Regulation S-T Rule 101(b)(1):

Yes       No

Indicate by check mark if the registrant is submitting the Form 6-K in paper as permitted by Regulation S-T Rule 101(b)(7):

Yes       No

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## DVB Bank Facility Agreement

On December 21, 2017, Kleimar NV, a wholly owned subsidiary of Navios Maritime Holdings Inc. (“Navios Holdings” or the “Company”), entered into a facility agreement (the “Facility Agreement”) with DVB Bank SE for an amount up to \$18,253,968.25 relating to the financing of the Navios Taurus, the Navios Northern Star and the Navios Amitie (“the DVB Facility”). The facility bears interest at a rate of LIBOR plus 325 basis points. The DVB Facility is repayable in 14 quarterly installments of \$730,158.73 followed by a final balloon installment of \$8,031,746.03. To date, the Facility Agreement has been fully drawn.

The Company is a guarantor of the obligations under the Facility Agreement. The Facility Agreement also requires compliance with certain financial covenants, including covenants under the indenture for Navios Holdings’ outstanding secured notes. Among other events, it will be an event of default under the Facility Agreement if the financial covenants are not complied with or if Angeliki Frangou and her affiliates, together, own less than 20% of the outstanding share capital of Navios Holdings.

The foregoing description is subject in all respects to the actual terms of the Facility Agreement. A copy of the Facility Agreement is furnished as Exhibit 10.1 to this Report and is incorporated herein by reference.

## Results of the Annual Meeting of Stockholders

On December 15, 2017, the Company held its 2017 Annual Meeting of Stockholders (the “Annual Meeting”). The record date for the Annual Meeting was October 17, 2017. As of the record date, a total of 119,547,372 shares of the Company’s common stock were entitled to vote at the Annual Meeting. There were 55,614,564 shares of common stock present in person or by proxy at the Annual Meeting. Set forth below are the matters acted upon by the stockholders, and the final voting results of each such proposal.

1. **Election of Directors.** The Company’s stockholders voted to elect Angeliki Frangou and Vasiliki Papaefthymiou as Class C Directors of the Company, whose terms, upon election, will expire in 2020.

	<u>For</u>	<u>Withhold</u>
Angeliki Frangou	54,664,822	949,742
Vasiliki Papaefthymiou	54,068,366	1,546,198

2. **Approval of an amendment to the Charter.** Consistent with the Certificates of Designation for the Company’s Series G and Series H Preferred Stock (the “Certificates of Designation”), the Company proposed an amendment to the Charter to effectuate any and all such changes as may be necessary to permit the Series G and/or Series H Holders the ability to exercise certain voting rights pursuant to the Certificates of Designation. This proposal failed to receive the affirmative vote of holders of two-thirds of the Company’s issued and outstanding common stock entitled to vote at the Annual Meeting which was required to approve the proposal.

<u>For</u>	<u>Against</u>	<u>Abstain</u>
54,511,058	871,712	231,794

3. **Ratification of appointment of PricewaterhouseCoopers.** The Company's stockholders voted to ratify the appointment of PricewaterhouseCoopers as the Company's independent public accountants for the year ending December 31, 2017.

<u>For</u>	<u>Against</u>	<u>Abstain</u>
55,172,276	384,910	57,378

### **Operational and Financial Results**

On November 21, 2017, the Company issued a press release announcing the operational and financial results for the three and nine months periods ended September 30, 2017. A copy of the press release is furnished as Exhibit 99.1 to this Report and is incorporated herein by reference.

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this Report to be signed on its behalf by the undersigned, thereunto duly authorized.

NAVIOS MARITIME HOLDINGS INC.

By: /s/ Angeliki Frangou  
Angeliki Frangou  
Chief Executive Officer  
Date: January 17, 2018

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**EXHIBIT INDEX**

**Exhibit  
No.**

**Exhibit**

10.1	Facility Agreement relating to a facility of up to \$18,253,968.25, dated December 21, 2017, between Kleimar NV. and DVB Bank SE
99.1	Press Release, dated November 21, 2017: Navios Maritime Holdings Inc. Reports Financial Results for the Third Quarter and Nine Months Ended September 30, 2017.

Up to \$18,253,968.25

**FACILITY AGREEMENT**

**Dated 21 December 2017**

for

**KLEIMAR NV**  
as Borrower

guaranteed by

**NAVIOS MARITIME HOLDINGS INC.**  
as Corporate Guarantor

and

**TRIANGLE SHIPPING CORPORATION**  
**ESMERALDA SHIPPING CORPORATION**  
as Collateral Guarantors

arranged by

**DVB BANK SE**  
as Arranger

with

**DVB BANK SE**  
acting as Facility Agent

**DVB BANK SE**  
acting as Security Agent

and

**DVB BANK SE**  
acting as Account Bank

relating to the financing of  
m.vs. "NAVIOS TAURUS", "NAVIOS NORTHERN STAR" and "NAVIOS AMITIE"

WATSON FARLEY  
&  
WILLIAMS

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## PARTIES

- (1) **KLEIMAR NV**, a company existing under the laws of Belgium whose registered office is at 5 Suikerrui, 2000 Antwerp, Belgium as borrower (the "**Borrower**")
- (2) **NAVIOS MARITIME HOLDINGS INC.**, a corporation incorporated in the Republic of the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, The Marshall Islands MH96960 (the "**Corporate Guarantor**")
- (3) **TRIANGLE SHIPPING CORPORATION**, a corporation incorporated in the Republic of the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, The Marshall Islands MH96960 ("**Collateral Guarantor A**")
- (4) **ESMERALDA SHIPPING CORPORATION**, a corporation incorporated in the Republic of the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, The Marshall Islands MH96960 ("**Collateral Guarantor B**")
- (5) **DVB BANK SE** as arranger (the "**Arranger**")
- (6) **THE FINANCIAL INSTITUTIONS** listed in Part B of Schedule 1 (*The Parties*) as lenders (the "**Original Lenders**")
- (7) **DVB BANK SE** as agent of the other Finance Parties (the "**Facility Agent**")
- (8) **DVB BANK SE** as security agent for the Creditor Parties (the "**Security Agent**")
- (9) **DVB BANK SE** acting through its office at Platz der Republik 6, 60325, Frankfurt/Main, Germany as account bank (the "**Account Bank**")

## OPERATIVE PROVISIONS

**SECTION 1**  
**INTERPRETATION**

**1 DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Agreement:

“**Account Bank**” means DVB Bank SE acting through its office at Platz der Republik 6, 60325, Frankfurt/Main, Germany.

“**Accounts**” means:

- (a) the Earnings Account;
- (b) the Time Deposit Account; and
- (c) with the express written consent of the Facility Agent, any other accounts opened by the Borrower with the Account Bank, the Facility Agent or the Security Agent for the purposes of the Finance Documents.

“**Account Security**” means a document creating Security over any Account in agreed form.

“**Advance**” means the borrowing of the Facility under this Agreement.

“**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 Broker**” means any firm or firms of insurance brokers approved in writing by the Facility Agent, acting with the authorisation of the Lenders.

“**Approved Classification**” means, in relation to a Vessel, as at the date of this Agreement, the classification in relation to that Vessel specified in Schedule 8 (*Vessel Details*) with the relevant Approved Classification Society or the equivalent classification with another Approved Classification Society.

“**Approved Classification Society**” means, in relation to a Vessel, as at the date of this Agreement, the classification society in relation to that Vessel specified in Schedule 8 (*Vessel Details*) or any other classification society approved in writing by the Facility Agent acting with the authorisation of the Lenders.

“**Approved Flag**” means, in relation to a Vessel, the Republic of Malta, the Republic of Panama or any other country in which the Agent (acting on the instructions of the Majority Lenders) may approve that that Vessel is or, as the case may be, shall be registered;

“**Approved Collateral Manager**” means, in relation to a Collateral Vessel, as at the date of this Agreement, the Borrower in its capacity as commercial and technical manager of that Collateral Vessel and/or any Affiliate of the Corporate Guarantor, or any other person approved in writing by the Facility Agent, acting with the authorisation of the Majority Lenders, as the technical and commercial manager of that Collateral Vessel.

“**Approved Manager**” means, in relation to a Borrower Vessel, as at the date of this Agreement, the Borrower in its capacity as commercial and technical manager of that Borrower Vessel and/or any Affiliate of the Corporate Guarantor, or any other person approved in writing by the Facility Agent, acting with the authorisation of the Majority Lenders, as the technical and commercial manager of that Borrower Vessel.

**“Approved Valuer”** means H Clarkson & Co. Ltd., Fearnleys, Maritime Strategies International Ltd., VesselValue.com, Arrow Valuations Ltd., Braemar ACM Shipbroking, Barry Rogliano and Salles (BRS), Golden Destiny S.A., Maersk Broker K/S, Simpson Spence & Young Shipbrokers Limited and E.A. Gibson Shibrokers Ltd (or any Affiliate of such person through which valuations are commonly issued) and any other firm or firms of independent sale and purchase shipbrokers approved in writing by the Facility Agent, acting with the authorisation of the Lenders.

**“Assignable Charter”** means any time charterparty, consecutive voyage charter or other contract of affreightment in respect of a Borrower Vessel having a duration of more than 12 months (or capable of exceeding a duration of 12 months taking into account any extension options), including, without limitation, the Initial Charter and any guarantee of the obligations of the Charterer under such charter or any bareboat charter in respect of a Borrower Vessel and any guarantee of the obligations of the Charterer under such bareboat charter, entered or to be entered into by a Borrower and a Charterer or, as the context may require, bareboat charterer and, in the plural, means all of them.

**“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.

**“Authorisation”** means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation, legalisation or registration.

**“Availability Period”** means the period from and including the date of this Agreement to and including 31 December 2017.

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

- (a) the amount of its participation in the outstanding Loan; and
- (b) in relation to the proposed Drawdown, the amount of its participation in the Advance that is due to be made on or before the proposed Drawdown 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 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time; and
- (b) in relation to any other state, 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.

**“Borrower Vessel”** means Borrower Vessel A, Borrower Vessel B or Borrower Vessel C.

**“Borrower Vessel A”** has the meaning given to that term in Schedule 8 (*Vessel Details*).

**“Borrower Vessel B”** has the meaning given to that term in Schedule 8 (*Vessel Details*).

**“Borrower Vessel C”** has the meaning given to that term in Schedule 8 (*Vessel Details*).

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

- (a)
  - (i) the interest 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 an Unpaid Sum to the last day of the current Interest Period in relation to the Loan, the relevant part of the Loan or that Unpaid Sum, had the principal amount or Unpaid Sum received been paid on the last day of that Interest Period

exceeds

  - (ii) 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, or
- (b) where a Lender is providing a fixed interest rate under Clause 8.3 (*Fixed rate of interest*) and only for the period for which the fixed rate of interest shall apply, any claim, expense, liability or loss incurred by a Lender in terminating, or otherwise in connection with, any interest and/or currency swap or any other transaction entered into (whether with another legal entity or with another office or department of the Lender concerned) to hedge any exposure in connection with the Lender providing a fixed interest rate under Clause 8.3 (*Fixed rate of interest*) or that part which the Lender concerned determines is fairly attributable to this Agreement of the amount of the claim, expense, liability or loss incurred by it in terminating, or otherwise in connection with, a number of transactions for which this Agreement is one.

“**Business Day**” means a day (other than a Saturday or Sunday) on which banks are open for general business in London (in relation to a determination of an interest rate only), Frankfurt (in relation to funding only), New York (in relation to Dollar payments only) and otherwise Amsterdam and Athens.

“**Change of Control**” means, in relation to:

- (a) the Borrower, a change in:
  - (i) the beneficial ownership of any of the shares in the Borrower; or
  - (ii) the legal ownership of any of those shares; or
  - (iii) ultimate control of the voting rights attaching to any of the shares in the Borrower; or
- (b) the Corporate Guarantor, change which results in Mrs Angeliki Frangou either directly or indirectly (through entities owned and controlled by her or trusts or foundations of which she is the beneficiary) being the ultimate beneficial owner of, or having ultimate control of the voting rights attaching to, less than 20 per cent. of all the issued shares in the Corporate Guarantor;

“**Charter**” means, in relation to a Vessel, any charter relating to that Vessel, or other contract for its employment, whether or not already in existence.

“**Charter Guarantee**” means any guarantee, bond, letter of credit or other instrument (whether or not already issued) supporting a Charter.

**“Charterparty Assignment”** means, in relation to an Assignable Charter, the assignment creating Security over the rights of the relevant Owner under that Assignable Charter and any Charter Guarantee relative thereto in the agreed form.

**“Charterer”** means, in relation to a Charter, a party to that Charter (other than the Owner of the relevant Vessel), including, without limitation, the Initial Charterer.

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

**“Collateral Account Security”** means the document creating second priority security in respect of the Collateral Earnings Account in agreed form.

**“Collateral Earnings Account”** means:

- (a) an account in the name of Collateral Guarantor A with account number 2910057429; and
- (b) an account in the name of Collateral Guarantor B with account number 2910057410.

**“Collateral Existing Shares Pledge”** means, in relation to a Collateral Guarantor, the document creating Security over the share capital in that Collateral Guarantor each dated 12 January 2016.

**“Collateral Facility Agreement”** means the facility agreement dated 5 January 2016 (as the same may be amended and supplemented from time to time) made between (i) the Collateral Guarantors as joint and several borrowers, (ii) the Corporate Guarantor, as parent guarantor, (iii) the financial institutions listed in schedule 1 thereto as lenders, (iv) DVB Bank SE as arranger, (v) DVB Bank SE as facility agent and (vi) DVB Bank SE as security agent.

**“Collateral General Assignment”** means, in relation to a Collateral Vessel, the second priority general assignment creating Security in respect of that Collateral Vessel's earnings, its insurances and any requisition compensation in respect of that Collateral Vessel in agreed form.

**“Collateral Guarantor”** means Collateral Guarantor A or Collateral Guarantor B.

**“Collateral Loan”** means the aggregate principal amount outstanding for the time being under the Collateral Facility Agreement.

**“Collateral Manager's Undertaking”** means, in relation to a Collateral Vessel, the letter of undertaking from the Approved Collateral Manager subordinating the rights of the Approved Collateral Manager respectively against that Collateral Vessel and the relevant Collateral Guarantor to the rights of the Finance Parties and assigning the rights and interests of the Approved Collateral Manager in the Insurances to the Finance Parties in agreed form.

**“Collateral Mortgage”** means, in relation to a Collateral Vessel, the second preferred Panamanian ship mortgage on the Collateral Vessel in agreed form.

**“Collateral Security Documents”** means, together, the Collateral Shares Pledge, the Collateral Account Security, the Collateral Mortgages, the Collateral General Assignments and the Collateral Manager's Undertakings.

**“Collateral Shares Pledge”** means, in relation to a Collateral Guarantor, a document creating Security over the share capital in that Collateral Guarantor.

**“Collateral Vessel”** means Collateral Vessel A or Collateral Vessel B.

**“Collateral Vessel A”** has the meaning given to that term in Schedule 8 (*Vessel Details*).

“**Collateral Vessel B**” has the meaning given to that term in Schedule 8 (*Vessel Details*).

“**Commitment**” means:

- (a) in relation to an Original Lender, the amount set opposite its name under the heading “Commitment” in Part B of Schedule 1 (*The Parties*) and the amount of any other Commitment transferred to it under this Agreement; and
- (b) in relation to any other Lender, the amount of any Commitment transferred 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 in any other form agreed between the Corporate Guarantor, the Borrower and the Facility Agent.

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

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

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

- (i) information that:
  - (A) is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of Clause 43 (*Confidential Information*); or
  - (B) is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers; or
  - (C) is known by that Finance Party before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with the Group and which, in either case, as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality; and
- (ii) any Funding Rate or Reference Bank Quotation.

“**Confidentiality Undertaking**” means a confidentiality undertaking in substantially the appropriate form recommended by the LMA from time to time or in any other form agreed between the Borrower and the Facility Agent.

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

“**Creditor Party**” means each Finance Party from time to time party to this Agreement, a Receiver or any Delegate.

“**Deed of Covenant**” means, in relation to a Borrower Vessel, the first priority deed of covenant collateral to the Mortgage on that Borrower Vessel and creating Security over that Borrower Vessel in agreed form.

“**Default**” means an Event of Default or a Potential Event of Default.

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

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

- (a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the Facility (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties or, if applicable, any Transaction Obligor; 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 or, if applicable, any Transaction Obligor preventing that, or any other, Party or, if applicable, any Transaction Obligor:
  - (i) from performing its payment obligations under the Finance Documents; or
  - (ii) from communicating with other Parties or, if applicable, any Transaction Obligor 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 or, if applicable, any Transaction Obligor whose operations are disrupted.

“**Document of Compliance**” has the meaning given to it in the ISM Code.

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

“**Drawdown**” means the drawdown of the Facility.

“**Drawdown Date**” means the date of the drawdown, being the date on which the Advance is to be made.

“**Drawdown Request**” means a notice substantially in the form set out in Part A of Schedule 3 (*Requests*).

“**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 Security Agent and which arise out of or in connection with or relate to the use or operation of that Vessel, including (but not limited to):

- (a) the following, save to the extent that any of them is, with the prior written consent of the Facility Agent, pooled or shared with any other person:
  - (i) all freight, hire and passage moneys including, without limitation, all moneys payable under, arising out of or in connection with a Charter or a Charter Guarantee;

- (ii) the proceeds of the exercise of any lien on sub-freights;
  - (iii) compensation payable to the Borrower or the Security Agent in the event of requisition of that Vessel for hire or use;
  - (iv) remuneration for salvage and towage services;
  - (v) demurrage and detention moneys;
  - (vi) without prejudice to the generality of sub-paragraph (i) above, damages for breach (or payments for variation or termination) of any charterparty or other contract for the employment of that Vessel;
  - (vii) all moneys which are at any time payable under any Insurances in relation to loss of hire;
  - (viii) all monies which are at any time payable to the Borrower in relation to general average contribution; and
- (b) if and whenever that Vessel is employed on terms whereby any moneys falling within sub-paragraphs (i) to (vii) of paragraph (a) above are pooled or shared with any other person, that proportion of the net receipts of the relevant pooling or sharing arrangement which is attributable to that Vessel.

**“Earnings Account”** means an account opened or to be opened in the name of the Borrower with the Account Bank and designated “Kleimar N.V. – Earnings Account”.

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

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

**“Environmental Claim”** means any claim 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 any Vessel or into or upon the air, sea, land or soils (including the seabed) or surface water of Environmentally Sensitive Material within or from any 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 any Vessel and which involves a collision between any Vessel and such other vessel or some other incident of navigation or operation, in either case, in connection with which any Vessel is actually or potentially liable to be arrested, attached, detained or injuncted and/or any 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 any Vessel and in connection with which any Vessel is actually or potentially liable to be arrested and/or where any Transaction Obligor and/or any operator or manager of any 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 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 26 (*Events of Default*).

**“Existing Facility Agreement”** means the facility agreement dated 19 September 2013 (as amended and supplemented from time to time) and entered into between the Borrower as borrower, DVB Bank SE as lender and DVB Bank SE as arranger, agent and security trustee.

**“Existing Indebtedness”** means all amounts due and payable under the Existing Facility Agreement.

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

**“Facility Office”** means the office or offices notified by a Lender to the Facility Agent in writing on or before the date it becomes a Lender (or, following that date, by not less than 5 Business Days’ written notice) as the office or offices through which it will perform its obligations under this Agreement.

**“FATCA”** means:

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

**“FATCA Application Date”** means:

- (a) in relation to a “withholdable payment” described in section 1473(1)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014;
- (b) in relation to a “withholdable payment” described in section 1473(1)(A)(ii) of the Code (which relates to “gross proceeds” from the disposition of property of a type that can produce interest from sources within the US), 1 January 2019; or

- (c) in relation to a “passthru payment” described in section 1471(d)(7) of the Code not falling within paragraphs (a) or (b) above, 1 January 2019,

or, in each case, such other date from which such payment may become subject to a deduction or withholding required by FATCA as a result of any change in FATCA after the date of this Agreement.

“**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 any of the Arranger, the Facility Agent and the Security Agent and any Obligor setting out any of the fees referred to in Clause 11 (*Fees*).

“**Fleet Vessel**” means any vessel which is wholly or partially owned by the Borrower, including, without limitation, the Borrower Vessels.

“**Finance Document**” means:

- (a) this Agreement;
- (b) any Fee Letter;
- (c) the Drawdown Request;
- (d) any Security Document;
- (e) any other document which is executed for the purpose of establishing any priority or subordination arrangement in relation to the Secured Liabilities; or
- (f) any other document designated as such by the Facility Agent and the Borrower.

“**Finance Party**” means the Facility Agent, the Security Agent, the Arranger, the Account Bank or a Lender.

“**Financial Indebtedness**” means any indebtedness for or in relation to:

- (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) the amount of any liability in relation to any lease or hire purchase contract which would, in accordance with the applicable GAAP, be treated as a balance sheet liability;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) 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;

- (g) 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);
- (h) any counter-indemnity obligation in relation to a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and
- (i) the amount of any liability in relation to any guarantee or indemnity for any of the items referred to in paragraphs (a) to (f) above.

“**Funding Rate**” means any individual rate notified by a Lender to the Facility Agent pursuant to sub-paragraph (ii) of paragraph (a) of Clause 10.4 (*Cost of funds*).

“**GAAP**” means generally accepted accounting principles in relation to the:

- (a) Corporate Guarantor, in the US; and
- (b) Borrower, in Belgium.

“**General Assignment**” means, in relation to a Borrower Vessel, the general assignment creating Security over that Borrower Vessel’s Earnings, its Insurances and any Requisition Compensation in relation to that Borrower Vessel in agreed form.

“**Guarantor**” means the Corporate Guarantor, Collateral Guarantor A or Collateral Guarantor B.

“**Group**” means the Corporate Guarantor and its Subsidiaries for the time being (including without limitation the Borrower, but excluding any Subsidiaries whose shares are listed on any public stock exchange and whose financial statements are not consolidated into the financial statements of the Corporate Guarantor) and “**member of the Group**” shall be construed accordingly.

“**Guarantee**” means the guarantee of the Guarantors contained in this Agreement.

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

“**Indemnified Person**” has the meaning given to it in Clause 14.2 (*Other indemnities*).

“**Indenture Definitions**” means the definitions set out in Schedule 11 (*Indenture Definitions*).

“**Indenture Event of Default**” has the meaning ascribed to it in Schedule 11 (*Indenture Definitions*).

“**Indenture Excerpt**” means the excerpt from the Refinanced Indenture set out in Schedule 10 (*Indenture Excerpt*).

“**Indentures**” means, together, the Refinanced Indenture and the Secured Indenture and in the singular means either or both of them.

“**Initial Charter**” has the meaning given to that term in Schedule 8 (*Vessel Details*).

“**Initial Charterer**” has the meaning given to that term in Schedule 8 (*Vessel Details*).

**“Initial Market Value”** means, in relation to a Vessel, the Market Value of a Vessel determined in accordance with the valuations provided pursuant to paragraph 3.3 of Schedule 2, Part B.

**“Insurances”** means, in relation to a Vessel:

- (a) all policies and contracts of insurance, including entries of that Vessel in any protection and indemnity or war risks association, effected in relation to the Vessel, the Earnings or otherwise in relation to the Vessel whether before, on or after the date of this Agreement; and
- (b) all rights and other assets relating to, or derived from, any of such policies, contracts or entries, including any rights to a return of premium and any rights in relation to any claim whether or not the relevant policy, contract of insurance or entry has expired on or before the date of this Agreement.

**“Interest Payment Date”** has the meaning given to it in paragraph (a) of Clause 8.2 (*Payment of interest*).

**“Interest Period”** means, in relation to the Loan or any part of the Loan, each period determined in accordance with Clause 8.3 (*Fixed rate of interest*), Clause 9 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 8.4 (*Default interest*).

**“Interpolated Screen Rate”** means, in relation to the Loan or any part of 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 or that part 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 or that part of the Loan,

each as of the Specified Time for dollars.

**“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.

**“ISPS Code”** means the International Ship and Port Facility Security (ISPS) Code as adopted by the International Maritime Organization’s (IMO) Diplomatic Conference of December 2002, as the same may be amended or supplemented from time to time.

**“ISSC”** means an International Ship Security Certificate issued under the ISPS Code.

**“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 27 (*Changes to the Lenders*),

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

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

- (a) the applicable Screen Rate as of the Specified Time for dollars and for a period equal in length to the Interest Period of the Loan or that part of the Loan; or
- (b) as otherwise determined pursuant to Clause 10.1 (*Unavailability of Screen Rate*),

and if, in either case, that rate is less than zero, LIBOR shall be deemed to be zero.

“**LMA**” means the Loan Market Association.

“**Loan**” means the loan to be made available under the Facility or the aggregate principal amount outstanding for the time being of the borrowings under the Facility and a “**part of the Loan**” means the Advance or any other part of the Loan as the context may require.

“**Major Casualty**” means, in relation to a Vessel, any casualty to that Vessel in relation to which the claim or the aggregate of the claims against all insurers, before adjustment for any relevant franchise or deductible, exceeds US\$500,000 or the equivalent in any other currency.

“**Majority Lenders**” means:

- (a) if no Advance has yet been made, a Lender or Lenders whose Commitments aggregate more than 66  $\frac{2}{3}$  per cent. of the Total Commitments; or
- (b) at any other time, a Lender or Lenders whose participations in the Loan aggregate more than 66  $\frac{2}{3}$  per cent. of the amount of the Loan then outstanding or, if the Loan has been repaid or prepaid in full, a Lender or Lenders whose participations in the Loan immediately before repayment or prepayment in full aggregate more than 66  $\frac{2}{3}$  per cent. of the Loan immediately before such repayment.

“**Management Agreement**” means, in relation to a Vessel, the agreement entered into between the Owner owning that Vessel and an Approved Manager (other than the Borrower) or the Approved Collateral Manager (as the case may be) regarding the commercial and technical management of that Vessel.

“**Manager’s Undertaking**” means, in relation to a Borrower Vessel, the letter of undertaking from an Approved Manager (other than the Borrower) subordinating the rights of such Approved Manager respectively against that Borrower Vessel and the Borrower to the rights of the Finance Parties and assigning the rights and interests of such Approved Manager in the Insurances to the Finance Parties in agreed form.

“**Margin**” means 3.25 per cent. per annum.

“**Market Value**” means, in relation to a Vessel or any other vessel, at any date, the market value of that Vessel or vessel determined in accordance with Clause 24.7 (*Provision of valuations*) and prepared:

- (a) unless otherwise specified, as at a date not more than 14 days previously;
- (b) by an Approved Valuer or Approved Valuers;
- (c) without physical inspection of that Vessel or vessel (as the Facility Agent may require); and
- (d) on the basis of a 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 Charter.

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

- (a) the business, operations, property, condition (financial or otherwise) or prospects of the Group as a whole; or
- (b) the ability of any 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 intended to be granted pursuant to any of, the Finance Documents or the rights or remedies of any Finance Party under any of the Finance Documents.

“**Maturity Date**” means 30 September 2021.

“**Minimum Liquidity Amount**” has the meaning ascribed to it in Clause 20.1 (*Minimum liquidity*).

“**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:

- (a) (subject to paragraph (c) below) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day;
- (b) 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
- (c) if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end.

The above rules will only apply to the last Month of any period.

“**Mortgage**” means, in relation to a Borrower Vessel, the first priority Maltese ship mortgage on that Borrower Vessel in agreed form.

“**Negative Pledge**” means, in relation to the shares of the Borrower, the negative pledge agreement to be entered into by the Shareholders in favour of the Security Agent in agreed form;

“**Obligor**” means the Borrower or a Guarantor.

“**Original Financial Statements**” means:

- (a) in relation to the Corporate Guarantor, its unaudited financial statements for the financial quarter ended on 30 September 2017; and
- (b) in relation to the Borrower, its annual audited consolidated balance sheet and profit loss accounts for its financial year ended on 31 December 2015.

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

“**Overseas Regulations**” means the Overseas Companies Regulations 2009 (SI 2009/1801).

“**Owner**” means the Borrower or a Collateral Guarantor.

**"Parallel Debt"** means any amount which an Obligor owes to the Security Agent under Clause 30.2 (*Parallel Debt (Covenant to pay the Security Agent)*) or under that clause as incorporated by reference or in full in any other Finance Document.

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

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

**"Permitted Charter"** means a Charter:

- (a) which is a time, voyage or consecutive voyage charter;
- (b) the duration of which does not exceed and is not capable of exceeding, by virtue of any optional extensions, 12 months plus a redelivery allowance of not more than 30 days;
- (c) which is entered into on bona fide arm's length terms at the time at which the Vessel is fixed; and
- (d) in relation to which not more than two months' hire is payable in advance,

and any other Charter which is approved in writing by the Facility Agent acting with the authorisation of the Majority Lenders.

**"Permitted Financial Indebtedness"** means:

- (a) any Financial Indebtedness incurred under the Finance Documents or the Indentures;
- (b) the Existing Indebtedness;
- (c) any Financial Indebtedness disclosed in the Group's filings with the US Securities and Exchange Commission;
- (d) any Financial Indebtedness that is subordinated to all Financial Indebtedness incurred under the Finance Documents and which is, in the case of any such Financial Indebtedness of the Borrower, the subject of Subordinated Debt Security.

**"Permitted Security"** means:

- (a) Security created by the Finance Documents and/or by the Collateral Facility Agreement;
- (b) any netting or set-off arrangement entered into by any member of the Group in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances;
- (c) liens for unpaid master's and crew's wages in accordance with first class ship ownership and management practice;
- (d) liens for salvage;
- (e) liens for master's disbursements incurred in the ordinary course of trading; and
- (f) any other lien arising by operation of law or otherwise in the ordinary course of the operation, repair or maintenance of the Vessel and not as a result of any default or

omission by the Borrower and subject, in the case of liens for repair or maintenance, to Clause 23.16 (*Restrictions on chartering, appointment of managers etc.*).

**“Potential Event of Default”** means any event or circumstance specified in Clause 26 (*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.

**“Prohibited Person”** means any person (whether designated by name or by reason of being included in a class of persons) against whom Sanctions are directed.

**“Protected Party”** has the meaning given to it in Clause 12.1 (*Definitions*).

**“Quotation Day”** means, in relation to any period for which an interest rate is to be determined, two 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 Facility 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 Assets.

**“Reference Bank Quotation”** means any quotation supplied to the Facility Agent by a Reference Bank.

**“Reference Bank Rate”** means the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Facility Agent at its request by the Reference Banks:

(a) if:

(i) the Reference Bank is a contributor to the Screen Rate; and

(ii) it consists of a single figure,

as the rate (applied to the relevant Reference Bank and the relevant currency and period) which contributors to the Screen Rate are asked to submit to the relevant administrator; or

(b) in any other case, as the rate at which the relevant Reference Bank could fund itself in dollars for the relevant period with reference to the unsecured wholesale funding market.

**“Reference Banks”** means the principal London offices of any three banks from the ICE LIBOR panel or such other entities as may be appointed by the Facility Agent in consultation with the Borrower.

**“Refinanced Indenture”** means the Indenture dated as of 21 November 2017 for \$305,000,000 issued by the Corporate Guarantor and Navios Maritime Finance II (US) Inc. for 11.25 per cent Senior Notes due on 15 August 2022.

**“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.

**“Relevant Interbank Market”** means the London interbank market.



**“Relevant Jurisdiction”** means, in relation to a Transaction Obligor:

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

**“Relevant Percentage”** has the meaning ascribed to it the Collateral Facility Agreement.

**“Repayment Date”** means each date on which a Repayment Instalment is required to be paid under Clause 6.1 (*Repayment of Loan*).

**“Repayment Instalment”** has the meaning given to it in Clause 6.1 (*Repayment of Loan*).

**“Repeating Representation”** means each of the representations set out in Clause 18 (*Representations*) except Clause 18.10 (*Insolvency*), Clause 18.11 (*No filing or stamp taxes*), Clause 18.12 (*Deduction of Tax*) and Clause 18.17 (*No proceedings pending or threatened*) and any representation of any Transaction Obligor made in any other Finance Document that is expressed to be a “Repeating Representation” or is otherwise expressed to be repeated.

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

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

- (a) any expropriation, confiscation, requisition (excluding a requisition for hire or use which does not involve a requisition for title) or acquisition of that Vessel, whether for full consideration, a consideration less than its proper value, a nominal consideration or without any consideration, which is effected (whether *de jure* or *de facto*) by any government or official authority or by any person or persons claiming to be or to represent a government or official authority; and
- (b) any capture or seizure of that Vessel (including any hijacking or theft) by any person whatsoever.

**“Requisition Compensation”** includes all compensation or other moneys payable to the Borrower by reason of any Requisition or any arrest or detention of the Vessel in the exercise or purported exercise of any lien or claim.

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

**“Safety Management Certificate”** has the meaning given to it in the ISM Code.

**“Safety Management System”** has the meaning given to it in the ISM Code.

**“Sanctions”** means any sanctions, embargoes, 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, the United Nations or its Security Council or the United States of America; or

(b) otherwise imposed by any law or regulation.

**"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 dollars for the relevant period displayed on page 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 service ceases to be available, the Facility Agent may specify another page or service displaying the relevant rate after consultation with the Borrower.

**"Secured Indenture"** means the indenture dated as of 29 November 2013 for \$650,000,000 issued by the Corporate Guarantor and Navios Maritime Finance II (US) Inc. for 7.375% First Priority Ship Mortgage Notes due in 2022.

**"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 Creditor Party under or in connection with each Finance Document.

**"Security"** means a mortgage, pledge, lien, charge, assignment, hypothecation or security interest or any other agreement or arrangement having the effect of conferring security.

**"Security Assets"** means all of the assets of the Transaction Obligors which from time to time are, or are expressed to be, the subject of the Transaction Security.

**"Security Document"** means:

- (a) the Negative Pledge;
- (b) any Charterparty Assignment;
- (c) any Mortgage;
- (d) any Deed of Covenant;
- (e) any General Assignment;
- (f) any Account Security;
- (g) any Manager's Undertaking;
- (h) any Collateral Security Document;
- (i) any other document (whether or not it creates Security) which is executed as security for the Secured Liabilities;  
or
- (j) any other document designated as such by the Facility Agent and the Borrower.

**"Security Period"** means the period starting on the date of this Agreement and ending on the date on which the Facility Agent is satisfied that there is no outstanding Commitment in force and that the Secured Liabilities have been irrevocably and unconditionally paid and discharged in full.

**"Security Property"** means:

- (a) the Transaction Security expressed to be granted in favour of the Security Agent as trustee for the Creditor Parties and all proceeds of that Transaction Security;

- (b) all obligations expressed to be undertaken by a Transaction Obligor to pay amounts in relation to the Secured Liabilities to the Security Agent as trustee for the Creditor 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 Creditor Parties;
- (c) the Security Agent's interest in any turnover trust created under the Finance Documents;
- (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 Creditor Parties,

except:

- (i) rights intended for the sole benefit of the Security Agent; and
- (ii) any moneys or other assets which the Security Agent has transferred to the Facility Agent or (being entitled to do so) has retained in accordance with the provisions of this Agreement.

**"Selection Notice"** means a notice substantially in the form set out in Part B of Schedule 3 (*Requests*) given in accordance with Clause 9 (*Interest Periods*).

**"Servicing Party"** means the Facility Agent or the Security Agent.

**"Shareholders"** means, together, NAV Holdings Limited and Camco Holdings Ltd., each a company existing under the laws of Malta whose registered office is at 25/16, Vincenti Buildings, Strait Street, Valletta VLT1432, the Republic of Malta.

**"Specified Time"** means a day or time determined in accordance with Schedule 7 (*Timetables*).

**"Subsidiary"** a company (S) is a subsidiary of another company (P) if:

- (a) a majority of the issued shares in S (or a majority of the issued shares in S which carry unlimited rights to capital and income distributions) are directly owned by P or are indirectly attributable to P; and
- (b) P has direct or indirect control over a majority of the voting rights attached to the issued shares of S;

and any company of which S is a subsidiary is a parent company of S.

**"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).

**"Tax Credit"** has the meaning given to it in Clause 12.1 (*Definitions*).

**"Tax Deduction"** has the meaning given to it in Clause 12.1 (*Definitions*).

**"Tax Payment"** has the meaning given to it in Clause 12.1 (*Definitions*).

**"Terms and Conditions"** means the Special Conditions for Time Deposit Accounts for Commercial Clients (including but not limited to the Account Bank's General Terms and Conditions of Business) as set out in the Application for Opening of the Time Deposit Account.

“**Test Date**” has the meaning ascribed to it in Clause 20.4 (*Definitions*).

“**Third Parties Act**” has the meaning given to it in Clause 1.5 (*Third party rights*).

“**Time Deposit Account**” means an account opened or to be opened in the name of the Borrower with the Account Bank and designated “Kleimar N.V. – Time Deposit Account”.

“**Total Commitments**” means the aggregate of the Commitments, being an amount equal to the lesser of (a) the Existing Indebtedness on the Drawdown Date and (b) \$18,253,968.25.

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

- (a) actual, constructive, compromised, agreed or arranged total loss of that Vessel; or
- (b) in the case of any of the events described in paragraph (a) of the definition “Requisition”, any such Requisition of a Vessel unless that Vessel is returned to the full control of the relevant Borrower within 60 days of such Requisition; and
- (c) in the case of any of the events described in paragraph (b) of the definition “Requisition”, any such Requisition of a Vessel unless that Vessel is returned to the full control of the relevant Borrower within 90 days of such Requisition, provided that in the case of hijacking, if the relevant underwriters confirm to the Facility Agent in writing (in customary terms) prior to the end of the 90 day period that that Vessel will be fully covered by that Borrower’s war risk insurance, the shorter of 12 months and the period for which such cover is confirmed to attach.

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

- (a) in the case of an actual loss of the Vessel, the date on which it occurred or, if that is unknown, the date when the Vessel was last heard of;
- (b) in the case of a constructive, compromised, agreed or arranged total loss of the Vessel, the earlier 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 Borrower with the Vessel’s insurers in which the insurers agree to treat the Vessel as a total loss; and
- (c) in the case of any other type of Total Loss, the date (or the most likely date) on which it appears to the Facility Agent that the event constituting the total loss occurred.

“**Transaction Document**” means:

- (a) a Finance Document;
- (b) any Assignable Charter and any related Charter Guarantee; or
- (c) any other document designated as such by the Facility Agent and the Borrower.

“**Transaction Obligor**” means an Obligor, the Shareholders, any Approved Manager or Approved Collateral Manager who is a member of the Group or any other member of the Group who executes a Transaction Document.

“**Transaction Security**” means the Security created or evidenced or expressed to be created or evidenced under the Security Documents.

“**Transfer Certificate**” means a certificate in the form set out in Schedule 4 (*Form of Transfer Certificate*) or any other form agreed between the Facility Agent and the Borrower.

“**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 Facility Agent executes the relevant Assignment Agreement or Transfer Certificate.

“**UK Establishment**” means a UK establishment as defined in the Overseas Regulations.

“**Unpaid Sum**” means any sum due and payable but unpaid by a Transaction Obligor under the Finance Documents.

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

“**US Tax Obligor**” means:

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

“**VAT**” means:

- (a) 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
- (b) any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph (a) above, or imposed elsewhere.

“**VAT Group**” means two or more companies or limited liability partnerships which register as a single taxable entity for VAT purposes.

“**Vessel**” means a Borrower Vessel or a Collateral Vessel.

“**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 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 “**Arranger**”, the “**Facility Agent**”, any “**Finance Party**”, any “**Lender**”, any “**Obligor**”, any “**Party**”, any “**Creditor 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;
- (ii) “**assets**” includes present and future properties, revenues and rights of every description;
- (iii) a liability which is “**contingent**” means a liability which is not certain to arise and/or the amount of which remains unascertained;
- (iv) “**document**” includes a deed and also a letter, fax or telex;
- (v) “**expense**” means any kind of cost, charge or expense (including all legal costs, charges and expenses) and any applicable Tax including VAT;
- (vi) a “**Finance Document**”, a “**Security Document**” or “**Transaction Document**” or any other agreement or instrument is a reference to that Finance Document, Security Document or Transaction Document or other agreement or instrument as amended or novated;
- (vii) “**indebtedness**” includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (viii) “**law**” includes any order or decree, any form of delegated legislation, any treaty or international convention and any regulation or resolution of the Council of the European Union, the European Commission, the United Nations or its Security Council;
- (ix) “**proceedings**” means, in relation to any enforcement provision of a Finance Document, proceedings of any kind, including an application for a provisional or protective measure;
- (x) a “**person**” includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership or other entity (whether or not having separate legal personality);
- (xi) a “**regulation**” includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
- (xii) a provision of law is a reference to that provision as amended or re-enacted;
- (xiii) a time of day is a reference to Amsterdam;
- (xiv) any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of a jurisdiction other than England, be deemed to include that which most nearly approximates in that jurisdiction to the English legal term;

- (xv) words denoting the singular number shall include the plural and vice versa; and
- (xvi) “**including**” and “**in particular**” (and other similar expressions) shall be construed as not limiting any general words or expressions in connection with which they are used.
- (b) The determination of the extent to which a rate is “**for a period equal in length**” to an Interest Period shall disregard any inconsistency arising from the last day of that Interest Period being determined pursuant to the terms of this Agreement.
- (c) Section, Clause and Schedule headings are for ease of reference only and are not to be used for the purposes of construction or interpretation of the Finance Documents.
- (d) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under, or in connection with, any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
- (e) A Potential 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 Construction of insurance terms

In this Agreement:

“**approved**” means, for the purposes of Clause 22 (*Insurance Undertakings*), approved in writing by the Facility Agent;

“**excess risks**” means the proportion of claims for general average, salvage and salvage charges not recoverable under the hull and machinery policies in respect of the Vessel in consequence of its insured value being less than the value at which the Vessel is assessed for the purpose of such claims;

“**obligatory insurances**” means all insurances effected, or which the Borrower is obliged to effect, under Clause 22 (*Insurance Undertakings*) or any other provision of this Agreement or of another Finance Document;

“**policy**” includes a slip, cover note, certificate of entry or other document evidencing the contract of insurance or its terms;

“**protection and indemnity risks**” means the usual risks covered by a protection and indemnity association managed in London, 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 International Hull Clauses (1/11/02 or 1/11/03), clause 8 of the Institute Time Clauses (Hulls) (1/10/83) (1/11/95) or the Institute Amended Running Down Clause (1/10/71) or any equivalent provision; and

“**war risks**” includes the risk of mines and all risks excluded by clause 29 of the International Hull Clauses (1/11/02 or 1/11/03), clause 24 of the Institute Time Clauses (Hulls) (1/11/95) or clause 23 of the Institute Time Clauses (Hulls) (1/10/83).

### 1.4 Agreed forms of Finance Documents

References in Clause 1.1 (*Definitions*) to any Finance Document being in “agreed form” are to that Finance Document:

- (a) in a form attached to a certificate dated the same date as this Agreement (and signed by the Borrower and the Facility Agent); or

- (b) in any other form agreed in writing between the Borrower and the Facility Agent acting with the authorisation of the Majority Lenders or, where Clause 42.2 (*All Lender matters*) applies, all the Lenders.

### **1.5 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) Subject to Clause 42.3 (*Other exceptions*) but otherwise 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, Affiliate or any other person described in paragraph (d) of Clause 14.2 (*Other indemnities*), paragraph (b) of Clause 29.11 (*Exclusion of liability*) or paragraph (b) of Clause 30.11 (*Exclusion of liability*) may, subject to this Clause 1.5 (*Third party rights*) and the Third Parties Act, rely on any Clause of this Agreement which expressly confers rights on it.



## SECTION 2

### THE FACILITY

#### 2 THE FACILITY

##### 2.1 The Facility

Subject to the terms of this Agreement, the Lenders agree to make available to the Borrower a dollar term loan facility in an aggregate amount not exceeding the Total Commitments.

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

- (a) The obligations of each Finance Party under the Finance Documents are several. Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.
- (b) The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from a Transaction Obligor is a separate and independent debt in respect of which a Finance Party shall be entitled to enforce its rights in accordance with paragraph (c) below. The rights of each Finance Party include any debt owing to that Finance Party under the Finance Documents and, for the avoidance of doubt, any part of the Loan or any other amount owed by a Transaction Obligor which relates to a Finance Party's participation in the Facility or its role under a Finance Document (including any such amount payable to the Facility Agent on its behalf) is a debt owing to that Finance Party by that Transaction Obligor.
- (c) A Finance Party may, except as specifically provided in the Finance Documents, separately enforce its rights under or in connection with the Finance Documents.

#### 3 PURPOSE

##### 3.1 Purpose

The Borrower shall apply all amounts borrowed by it under the Facility only for the purpose of refinancing the Existing Indebtedness.

##### 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 DRAWDOWN

##### 4.1 Conditions precedent to delivery of a Drawdown Request

The Borrower may not deliver a Drawdown Request unless the Facility Agent has received all of the documents and other evidence listed in Part A of Schedule 2 (*Conditions Precedent and Subsequent*) in form and substance satisfactory to the Facility Agent.

##### 4.2 Further conditions precedent

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

- (a) on the date of the Drawdown Request and on the proposed Drawdown Date and before the Advance is made available:

- (i) no Default is continuing or would result from the proposed Advance;
  - (ii) the Repeating Representations to be made by each Transaction Obligor are true;
- (b) on the Drawdown Date, the Facility Agent has received, or is satisfied that it will receive when the Advance is made available, all of the documents and other evidence listed in Part B of Schedule 2 (*Conditions Precedent and Subsequent*) in form and substance satisfactory to the Facility Agent (acting on the instructions of all the Lenders).

#### **4.3 Conditions subsequent**

Save in the case of documentary evidence which must be provided when the Advance is made available (as a same day condition subsequent) that the Mortgages and the Collateral Mortgages have been duly registered on such date (as required under paragraph 2(a) of Part D of Schedule 2 (*Conditions Precedent and Subsequent*), the Borrower undertakes to deliver or cause to be delivered to the Facility Agent within five Business Days after that Drawdown Date, the additional documents and other evidence listed in Part D of Schedule 2 (*Conditions Precedent and Subsequent*) in form and substance satisfactory to the Facility Agent.

#### **4.4 Notification of satisfaction of conditions precedent**

- (a) The Facility Agent shall notify the Borrower and the Lenders promptly upon being satisfied as to the satisfaction of the conditions precedent and subsequent referred to in Clause 4.1 (*Conditions precedent to delivery of a Drawdown Request*), Clause 4.2 (*Further conditions precedent*) and Clause 4.3 (*Conditions subsequent*).
- (b) Other than to the extent that the Majority Lenders notify the Facility Agent in writing to the contrary before the Facility Agent gives the notification described in paragraph (a) above, the Lenders authorise (but do not require) the Facility Agent to give that notification. The Facility Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.

#### **4.5 Waiver of conditions precedent**

If the Lenders, at their discretion, permit the Advance to be prepositioned or released before any of the conditions precedent referred to in Clause 4 (*Conditions of Drawdown*) or Clause 4.2 (*Further conditions precedent*) has been satisfied, the Borrower shall ensure that that condition is satisfied within five Business Days after the Drawdown Date (as applicable) or such later date as the Facility Agent, acting with the authorisation of the Lenders, may agree in writing with the Borrower.

**SECTION 3**  
**DRAWDOWN**

**5 DRAWDOWN**

**5.1 Delivery of a Drawdown Request**

The Borrower may utilise the Facility by delivery to the Facility Agent of a duly completed Drawdown Request not later than the Specified Time.

**5.2 Completion of a Drawdown Request**

(a) The Drawdown Request is irrevocable and will not be regarded as having been duly completed unless:

- (i) the proposed Drawdown Date is a Business Day within the Availability Period;
- (ii) the currency and amount of the Drawdown comply with Clause 5.3 (*Currency and amount*); and
- (iii) the proposed Interest Period complies with Clause 9 (*Interest Periods*).

(b) Only one Drawdown Request may be delivered.

**5.3 Currency and amount**

(a) The currency specified in a Drawdown Request must be dollars.

(b) The amount of the proposed Advance must be an amount which is not more than the Total Commitments.

(c) The amount of the proposed Advance must be an amount which would not oblige the Borrower to provide additional security or prepay part of the Advance if the ratio set out in Clause 24 (*Security Cover*) were applied and notice was given by the Facility Agent under Clause 24.1 (*Minimum required security cover*) immediately after the Advance was made.

**5.4 Lenders' participation**

(a) If the conditions set out in this Agreement have been met, each Lender shall make its participation in the Advance available by the Drawdown Date through its Facility Office.

(b) The amount of each Lender's participation in the Advance will be equal to the proportion borne by its Commitment to the Total Commitments immediately before making the Advance.

(c) The Facility Agent shall notify each Lender of the amount of the Advance and the amount of its participation in the Advance by the Specified Time.

**5.5 Cancellation of Commitments**

The Commitments which are unutilised at the end of the Availability Period shall then be cancelled.

## SECTION 4

### REPAYMENT, PREPAYMENT AND CANCELLATION

#### 6 REPAYMENT

##### 6.1 Repayment of Loan

The Borrower shall repay the Loan by 15 equal consecutive quarterly instalments, the first 14 such instalments each in an amount of \$730,158.73 and the 15<sup>th</sup> and final such instalment in an amount of \$8,031,746.03 (comprising an instalment of \$730,158.73 and a balloon payment of \$7,301,587.3) (each a "**Repayment Instalment**"), the first of which shall be paid on the date falling three Months after the Drawdown Date and the last on the Maturity Date.

##### 6.2 Effect of cancellation and prepayment on scheduled repayments

- (a) If the Available Commitment of any Lender is cancelled under Clause 7.1 (*Illegality*) then the Repayment Instalments falling after that cancellation will reduce pro rata by the amount of the Available Commitments so cancelled.
- (b) If the whole or any part of any Available Commitment is cancelled in accordance with Clause 7.2 (*Voluntary and automatic cancellation*) or if the whole or part of any Commitment is cancelled pursuant to Clause 5.5 (*Cancellation of Commitments*), the Repayment Instalments for each Repayment Date falling after that cancellation will be reduced pro rata by the amount of the Commitments so cancelled.
- (c) If any part of the Loan is repaid or prepaid in accordance with Clause 7.1 (*Illegality*) then the Repayment Instalments for each Repayment Date falling after that repayment or prepayment will be reduced in chronological order by the amount of the Loan repaid or prepaid.
- (d) If any part of the Loan is prepaid in accordance with Clause 7.3 (*Voluntary prepayment of Loan*) then the amount of the Repayment Instalments for each Repayment Date falling after that repayment or prepayment will be reduced in chronological order by the amount of the Loan repaid or prepaid.

##### 6.3 Maturity Date

On the Maturity Date, the Borrower shall additionally pay to the Facility Agent for the account of the Finance Parties all other sums then accrued and owing under the Finance Documents.

##### 6.4 Reborrowing

The Borrower may not reborrow any part of the Facility which is repaid.

#### 7 PREPAYMENT AND CANCELLATION

##### 7.1 Illegality

If it becomes unlawful in any applicable jurisdiction for a Lender to perform any of its obligations as contemplated by this Agreement or to fund or maintain its participation in the Advance or 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 Facility Agent upon becoming aware of that event;

- (b) upon the Facility Agent notifying the Borrower, the Available Commitment of that Lender will be immediately cancelled; and
- (c) the Borrower shall prepay that Lender's participation in the Loan on the last day of the Interest Period for the Loan occurring after the Facility Agent has notified the Borrower or, if earlier, the date specified by the Lender in the notice delivered to the Facility Agent (being no earlier than the last day of any applicable grace period permitted by law) and that Lender's corresponding Commitment shall be cancelled in the amount of the participation prepaid.

## 7.2 Voluntary and automatic cancellation

- (a) The Borrower may, if it gives the Facility Agent not less than 5 Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, cancel the whole or any part (being a minimum amount of \$500,000 or a multiple of that amount) of the Available Facility. Any cancellation under this Clause 7.2 (*Voluntary and automatic cancellation*) shall reduce the Commitments of the Lenders rateably.
- (b) The unutilised Commitment (if any) of each Lender shall be automatically cancelled at close of business on the date on which the Advance is made available.

## 7.3 Voluntary prepayment of Loan

- (a) Subject to paragraph (b) below, the Borrower may, if it gives the Facility Agent not less than five Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, prepay the whole or any part of the Loan (but, if in part, being an amount that reduces the amount of the Loan by a minimum amount of \$500,000 or a multiple of that amount).
- (b) The Loan may only be prepaid after the last day of the Availability Period (or, if earlier, the day on which the Available Facility is zero).

## 7.4 Mandatory prepayment on sale, arrest or Total Loss of a Borrower Vessel

- (a) If a Borrower Vessel is sold, arrested or becomes a Total Loss, the Borrower shall repay the Relevant Amount on the Relevant Date.
- (b) In this Clause 7.4 (*Mandatory prepayment on sale, arrest or Total Loss of a Borrower Vessel*):

"**Relevant Date**" means:

- (i) in the case of a sale of a Borrower Vessel, on the date on which the sale is completed by delivery of that Borrower Vessel to the buyer of that Borrower Vessel; or
- (ii) in the case of any arrest of a Borrower Vessel, where that Borrower Vessel is not within 30 days redelivered to the full control of the Borrower, on or before the date falling 37 days after the date of the arrest of that Borrower Vessel; or
- (iii) in the case of a Total Loss of a Borrower Vessel, on the earlier of:
  - (A) the date falling 180 days after the Total Loss Date; and
  - (B) the date of receipt by the Security Agent of the proceeds of insurance relating to such Total Loss.

"**Relevant Amount**" means an amount (if any) which after the application of the prepayment to be made pursuant to this Clause 7.4 (*Mandatory prepayment on sale, arrest or Total Loss of a Borrower Vessel*) results in the minimum required security cover set out in 24.1 (*Minimum required security cover*) being the greater of:

- (i) 135 per cent.; and
- (ii) the percentage which applied immediately prior to the Total Loss, arrest or the sale (as applicable).

#### **7.5 Mandatory prepayment**

- (a) If the Mortgages and the Collateral Mortgages have not been registered on all the Vessels by the last date of the Availability Period, the Borrower shall prepay the Loan in full within 7 days from the last day of the Availability Period, unless the Lenders in their sole discretion agree otherwise.
- (b) If the Refinanced Indenture has not been refinanced by the Corporate Guarantor by the date falling 3 months prior to its maturity the Borrower shall prepay the Loan in full within 15 days for the date falling 3 months prior to its maturity.

#### **7.6 Mandatory prepayment on sale, arrest or Total Loss of a Collateral Vessel**

If a Collateral Vessel is sold, arrested or becomes a Total Loss, the relevant Collateral Guarantor shall apply the proceed as follows:

- (a) first, towards repayment of the Collateral Loan (or any part thereof) in accordance with clause 7.4 of the Collateral Facility Agreement; and
- (b) second, to the extent that there is any balance, in or towards prepayment of the Loan to the extent necessary to ensure compliance with Clause 24.1 (*Minimum required security cover*).

#### **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.
- (b) Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and all other amounts accrued under the Finance Documents and, subject to the fee provided for in Clause 11.3 (*Prepayment fee*) and any Break Costs, without premium or penalty.
- (c) The Borrower may not reborrow any part of the Facility which is prepaid.
- (d) the Commitments except at the times and in the manner expressly provided for in this Agreement.
- (e) No amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.
- (f) If the Facility Agent receives a notice under this Clause 7 (*Prepayment and Cancellation*) it shall promptly forward a copy of that notice to either the Borrower or the affected Lender, as appropriate.
- (g) If all or part of any Lender's participation in the Loan is repaid or prepaid, an amount of that Lender's Commitment (equal to the amount of the participation which is repaid or prepaid) will be deemed to be cancelled on the date of repayment or prepayment.

#### **7.8 Application of prepayments**

Any prepayment of any part of the Loan (other than a prepayment pursuant to Clause 7.1 (*Illegality*)) shall be applied pro rata to each Lender's participation in that part of the Loan.

## SECTION 5

### COSTS OF DRAWDOWN

#### 8 INTEREST

##### 8.1 Calculation of interest

The rate of interest on the Loan or any part of the Loan for each Interest Period is the percentage rate per annum which is the aggregate of:

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

##### 8.2 Payment of interest

- (a) The Borrower shall pay accrued interest on the Loan or any part of the Loan on the last day of each Interest Period (each an "**Interest Payment Date**").
- (b) If an Interest Period is longer than three Months, the Borrower shall also pay interest then accrued on the Loan or the relevant part of the Loan on the dates falling at three Monthly intervals after the first day of the Interest Period.

##### 8.3 Fixed rate of interest

- (a) The Borrower may, by giving not less than five Business Days' notice in writing, request that a fixed rate of interest shall apply on the whole of the Loan for a period of 12 months or more by giving to the Facility Agent a notice which shall specify the period for which the fixed rate of interest shall apply and shall be given at least five Business Days before the end of the then current Interest Period. The Facility Agent shall notify the Borrower of the fixed rate of interest to apply (which shall be determined at the level of the actual refinancing rates available to the Lenders (as certified by them) for the relevant period to which such fixed rate is to apply plus the Margin) and the Borrower shall either accept or refuse the offer promptly in writing and in any event within one Business Day. Such offer and acceptance shall be in a form that shall constitute a Finance Document. Once accepted, the Borrower may not revoke its acceptance and the relevant fixed rate of interest shall apply to the Loan from the first day of the next Interest Period. If the Borrower refuses the offer or fails to accept it within the time permitted for acceptance, the other provisions of this Clause 8 (*Interest*) shall continue to apply.
- (b) The Borrower acknowledges and agrees that in fixing the interest rate under this Clause 8.3 (*Fixed rate of interest*), a Lender may enter into internal or external interest rate swaps and that any claim, expense, liability or loss arising as a result of the early termination of such internal or external rate swap shall be for the account of the Borrower.

##### 8.4 Default interest

- (a) If a Transaction Obligor fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the Unpaid Sum from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to paragraph (b) below, is 2 per cent. per annum higher than the rate which would have been payable if the Unpaid Sum had, during the period of non-payment, constituted part of the Loan in the currency of the Unpaid Sum for successive Interest Periods, each of a duration selected by the Facility Agent. Any interest accruing under this Clause 8.4 (*Default interest*) shall be immediately payable by the Obligor on demand by the Facility Agent.
- (b) If an Unpaid Sum consists of all or part of the Loan which became due on a day which was not the last day of an Interest Period relating to the Loan or that part of the Loan:



- (i) the first Interest Period for that Unpaid Sum shall have a duration equal to the unexpired portion of the current Interest Period relating to the Loan or that part of the Loan; and
  - (ii) the rate of interest applying to that Unpaid Sum during that first Interest Period shall be 2 per cent. per annum higher than the rate which would have applied if that Unpaid Sum had not become due.
- (c) Default interest (if unpaid) arising on an Unpaid Sum will be compounded with the Unpaid Sum at the end of each Interest Period applicable to that Unpaid Sum but will remain immediately due and payable.

#### **8.5 Notification of rates of interest**

- (a) The Facility Agent shall promptly notify the Lenders and the Borrower of the determination of a rate of interest under this Agreement.
- (b) The Facility Agent shall promptly notify the Borrower of each Funding Rate relating to the Loan, any part of the Loan or any Unpaid Sum.

### **9 INTEREST PERIODS**

#### **9.1 Selection of Interest Periods**

- (a) The first Interest Period for the Loan as specified in the Drawdown Request shall be three Months from the Drawdown Date.
- (b) Subject to paragraph (g) below, the Borrower may select each subsequent Interest Period in respect of the Loan in a Selection Notice.
- (c) Each Selection Notice is irrevocable and must be delivered to the Facility Agent by the Borrower not later than the Specified Time.
- (d) If the Borrower fails to deliver a Selection Notice to the Facility Agent in accordance with paragraphs (b) and (c) above, the relevant Interest Period will, subject to Clause 9.2 (*Changes to Interest Periods*) and paragraph (g) below, be three Months.
- (e) Subject to Clause 8.3 (*Fixed rate of interest*) and this Clause 9 (*Interest Periods*), the Borrower may select an Interest Period of three Months or any other period (up to a maximum of 12 Months) agreed between the Borrower and the Facility Agent (acting on the instructions of all the Lenders).
- (f) An Interest Period in respect of the Loan or any part of the Loan shall not extend beyond the Maturity Date.
- (g) In respect of a Repayment Instalment, the Borrower may request in the relevant Selection Notice that an Interest Period for a part of the Loan equal to such Repayment Instalment shall end on the Repayment Date relating to it and, subject to paragraph (e) above, select a longer Interest Period for the remaining part of the Loan.
- (h) Subject to paragraph (i) below, the first Interest Period for the Loan shall start on the Drawdown Date and each subsequent Interest Period shall start on the last day of the preceding Interest Period.
- (i) Except for the purposes of paragraph (g) above and Clause 9.2 (*Changes to Interest Periods*) below, the Loan shall have one Interest Period only at any time.

## 9.2 Changes to Interest Periods

- (a) In respect of a Repayment Instalment, prior to determining the interest rate for the Loan, the Facility Agent may establish an Interest Period for a part of the Loan equal to such Repayment Instalment to end on the Repayment Date relating to it and the remaining part of the Loan shall have the Interest Period selected in the relevant Selection Notice, subject to paragraph (e) of Clause 9.1 (*Selection of Interest Periods*).
- (b) If after the Borrower has selected and the Lenders have agreed an Interest Period longer than three Months, any Lender notifies the Facility Agent within two] Business Days after the Specified Time relating to the relevant Drawdown Request or Selection Notice that it is not satisfied that deposits in dollars for a period equal to the Interest Period will be available to it in the Relevant Interbank Market when the Interest Period commences, the Facility Agent shall shorten the Interest Period to three Months.
- (c) If the Facility Agent makes any change to an Interest Period referred to in this Clause 9.2 (*Changes to Interest Periods*), it shall promptly notify the Borrower and the Lenders.

## 9.3 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 Unavailability of Screen Rate

- (a) *Interpolated Screen Rate*: If no Screen Rate is available for LIBOR for the Interest Period of the Loan or any part of the Loan, the applicable LIBOR shall be the Interpolated Screen Rate for a period equal in length to the Interest Period of the Loan or that part of the Loan.
- (b) *Reference Bank Rate*: If no Screen Rate is available for LIBOR for:
  - (i) dollars; or
  - (ii) the Interest Period of the Loan or any part of the Loan and it is not possible to calculate the Interpolated Screen Rate,

the applicable LIBOR shall be the Reference Bank Rate as of the Specified Time and for a period equal in length to the Interest Period of the Loan or that part of the Loan.

- (c) *Cost of funds*: If paragraph (b) above applies but no Reference Bank Rate is available for dollars or the relevant Interest Period there shall be no LIBOR for the Loan or that part of the Loan (as applicable) and Clause 10.4 (*Cost of funds*) shall apply to the Loan or that part of the Loan for that Interest Period.

### 10.2 Calculation of Reference Bank Rate

- (a) Subject to paragraph (b) below, if LIBOR is to be determined on the basis of a Reference Bank Rate but a Reference Bank does not supply a quotation by the Specified Time, the Reference Bank Rate shall be calculated on the basis of the quotations of the remaining Reference Banks.
- (b) If at or about noon on the Quotation Day none or only one of the Reference Banks supplies a quotation, there shall be no Reference Bank Rate for the relevant Interest Period.

### 10.3 Market disruption

If before close of business in London on the Quotation Day for the relevant Interest Period the Facility Agent receives notification from a Lender or Lenders (whose participations in the Loan or the relevant part of the Loan exceed 10 per cent. of the Loan or the relevant part of the Loan as appropriate) (the "**Relevant Lender**") that the cost to it of funding its participation in the Loan or that part of the Loan from whatever source it may reasonably select would be in excess of LIBOR then Clause 10.4 (*Cost of funds*) shall apply to the Loan or that part of the Loan (as applicable) for the relevant Interest Period.

### 10.4 Cost of funds

- (a) If this Clause 10.4 (*Cost of funds*) applies, the rate of interest on each Lender's share of the Loan or the relevant part of the Loan for the relevant Interest Period shall be the percentage rate per annum which is the sum of:
- (i) the Margin; and
  - (ii) the rate notified to the Facility 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 the relevant Lender of funding its participation in the Loan or that part of the Loan from whatever source it may reasonably select.
- (b) If this Clause 10.4 (*Cost of funds*) applies and the Facility Agent or the Borrower so requires, the Facility Agent and the Borrower shall enter into negotiations (for a period of not more than 30 days) with a view to agreeing a substitute basis for determining the rate of interest or (as the case may be) an alternative basis for funding.
- (c) Subject to Clause 42.4 (*Replacement of Screen Rate*), any substitute or alternative basis agreed pursuant to paragraph (b) above shall, with the prior consent of all the Lenders and the Borrower, be binding on all Parties.
- (d) If paragraph (e) below does not apply and any rate notified to the Facility Agent under sub-paragraph (ii) of paragraph (a) above is less than zero, the relevant rate shall be deemed to be zero.
- (e) If this Clause 10.4 (*Cost of funds*) applies pursuant to Clause 10.3 (*Market disruption*) and:
- (i) a Lender's Funding Rate is less than LIBOR; or
  - (ii) a Lender does not supply a quotation by the time specified in sub-paragraph (ii) of paragraph (a) above,
- the cost to that Lender of funding its participation in the Loan or the relevant part of the Loan for that Interest Period shall be deemed, for the purposes of paragraph (a) above, to be LIBOR.
- (f) If this Clause 10.4 (*Cost of funds*) applies but any Lender does not supply a quotation by the time specified in sub-paragraph (ii) of paragraph (a) above the rate of interest shall be calculated on the basis of the quotations of the remaining Lenders.

### 10.5 Notification to Borrower

If Clause 10.4 (*Cost of funds*) applies the Facility Agent shall, as soon as is practicable, notify the Borrower.

## **10.6 Break Costs**

- (a) The Borrower shall, within three Business Days of demand by a Finance Party, pay to that Finance Party its Break Costs attributable to all or any part of the Loan or Unpaid Sum being paid by the Borrower on a day other than the last day of an Interest Period for the Loan, the relevant part of the Loan or that Unpaid Sum.
- (b) Each Lender shall, as soon as reasonably practicable after a demand by the Facility 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 Borrower shall pay to the Facility Agent (for the account of each Lender) a fee computed at the rate of 1 per cent. per annum on that Lender's Available Commitment from time to time for the Availability Period.
- (b) The accrued commitment fee is payable on the last day of each successive period of three Months which ends during the Availability Period, on the last day of the Availability Period and, if cancelled, on the cancelled amount of the relevant Lender's Commitment at the time the cancellation is effective.

### **11.2 Arrangement fee**

The Borrower shall pay to the Arranger an arrangement fee in the amount and at the times agreed in a Fee Letter.

### **11.3 Prepayment fee**

- (a) If the Borrower makes a prepayment for the purpose of refinancing the Facility (in whole or in part) after the Drawdown Date with an entity which is not affiliated to any of the Lenders, the Borrower shall pay to the Facility Agent for each Lender a prepayment fee on the date of prepayment of all or any part of the Loan.
- (b) The amount of the prepayment fee is:
  - (i) if the prepayment occurs on or before the first anniversary of the relevant Drawdown Date, three per cent. of the amount prepaid;
  - (ii) if the prepayment occurs after the first but on or before the second anniversary of the relevant Drawdown Date, two per cent. of the amount prepaid; and
  - (iii) if the prepayment occurs after the second but on or before the third anniversary of the relevant Drawdown Date, one per cent. of the amount prepaid.
- (c) No prepayment fee shall be payable under this Clause if the prepayment is made under Clause 7.1 (*Illegality*), Clause 7.4 (*Mandatory prepayment on sale, arrest or Total Loss of a Borrower Vessel*), Clause 7.5 (*Mandatory prepayment*) or after the third anniversary of the Drawdown Date.

## SECTION 6

### ADDITIONAL PAYMENT OBLIGATIONS

#### 12 TAX GROSS UP AND INDEMNITIES

##### 12.1 Definitions

(a) In this Agreement:

“**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.

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

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

“**Tax Payment**” means either the increase in a payment made by an Obligor to a Finance Party under Clause 12.2 (*Tax gross-up*) or a payment under Clause 12.3 (*Tax indemnity*).

(b) Unless a contrary indication appears, in this Clause 12 (*Tax Gross Up and Indemnities*) reference to “**determines**” or “**determined**” means a determination made in the absolute discretion of the person making the determination.

##### 12.2 Tax gross-up

(a) Each Obligor shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.

(b) The Borrower shall promptly upon becoming aware that an Obligor must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Facility Agent accordingly. Similarly, a Lender shall notify the Facility Agent on becoming so aware in respect of a payment payable to that Lender. If the Facility Agent receives such notification from a Lender it shall notify the Borrower and that Obligor.

(c) If a Tax Deduction is required by law to be made by an Obligor, the amount of the payment due from that Obligor shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.

(d) If an Obligor is required to make a Tax Deduction, that Obligor shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.

(e) Within 30 days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Obligor making that Tax Deduction shall deliver to the Facility 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.

##### 12.3 Tax indemnity

(a) The Obligors shall (within three Business Days of demand by the Facility Agent) pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document.

- (b) Paragraph (a) above shall not apply:
- (i) with respect to any Tax assessed on a Finance Party:
    - (A) under the law of the jurisdiction in which that Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Finance Party is treated as resident for tax purposes; or
    - (B) under the law of the jurisdiction in which that Finance Party's Facility Office is located in respect of amounts received or receivable in that jurisdiction,  
  
if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Finance Party; or
  - (ii) to the extent a loss, liability or cost:
    - (A) is compensated for by an increased payment under Clause 12.2 (*Tax gross-up*); or
    - (B) relates to a FATCA Deduction required to be made by a Party.
- (c) A Protected Party making, or intending to make, a claim under paragraph (a) above shall promptly notify the Facility Agent of the event which will give, or has given, rise to the claim, following which the Facility Agent shall notify the Obligors.
- (d) A Protected Party shall, on receiving a payment from an Obligor under this Clause 12.3 (*Tax indemnity*), notify the Facility Agent.

#### **12.4 Tax Credit**

If an 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 received; and
- (b) that Finance Party has obtained and utilised that Tax Credit,

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

#### **12.5 Stamp taxes**

The Obligors shall pay and, within three Business Days of demand, indemnify each Creditor Party against any cost, loss or liability which that Creditor 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 to a Finance Party which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and accordingly, subject to paragraph (b) below, if VAT is or becomes chargeable on any supply made by any Finance Party to any Party under a Finance Document and such Finance Party is required to account to the relevant tax authority for the VAT, that Party must pay to such Finance Party (in addition to and at the same time as paying any other consideration for such

supply) an amount equal to the amount of the VAT (and such Finance Party must promptly provide an appropriate VAT invoice to that Party).

- (b) If VAT is or becomes chargeable on any supply made by any Finance Party (the “**Supplier**”) to any other Finance Party (the “**Recipient**”) under a Finance Document, and any Party other than the Recipient (the “**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 sub-paragraph (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 of it 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 (VAT) to any Party shall, at any time when that Party is treated as a member of a group or unity (or fiscal unity) for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the person who is treated at that time as making the supply, or (as appropriate) receiving the supply, under the grouping rules (provided for in Article 11 of Council Directive 2006/112/EC (or as implemented by the relevant member state of the European Union) so that a reference to a Party shall be construed as a reference to that Party or the relevant group or unity (or fiscal unity) of which that Party is a member for VAT purposes at the relevant time or the relevant representative member (or representative or head) of that group or unity at the relevant time (as the case may be).
- (e) In relation to any supply made by a Finance Party to any Party under a Finance Document, if reasonably requested by such Finance Party, that Party must promptly provide such Finance Party with details of that Party’s VAT registration and such other information as is reasonably requested in connection with such Finance Party’s VAT reporting requirements in relation to such supply.

## 12.7 FATCA Information

- (a) Subject to paragraph (c) below, each Party shall, within 10 Business Days of a reasonable request by another Party:
  - (i) confirm to that other Party whether it is:
    - (A) a FATCA Exempt Party; or
    - (B) not a FATCA Exempt Party; and

- (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 sub-paragraph (i) of paragraph (a) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not, or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.
- (c) Paragraph (a) above shall not oblige any Finance Party to do anything and sub-paragraph (iii) of paragraph (a) above shall not oblige any other Party to do anything which would or might in its reasonable opinion constitute a breach of:
- (i) any law or regulation;
  - (ii) any fiduciary duty; or
  - (iii) any duty of confidentiality.
- (d) If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with sub-paragraphs (i) or (ii) of paragraph (a) above (including, for the avoidance of doubt, where paragraph (c) above applies), then such Party shall be treated for the purposes of the Finance Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.
- (e) If the Borrower is a US Tax Obligor, or the Facility Agent reasonably believes that its obligations under FATCA or any other applicable law or regulation require it, each Lender shall, within 10 Business Days of:
- (i) where the Borrower is a US Tax Obligor and the relevant Lender is an Original Lender, the date of this Agreement;
  - (ii) where the Borrower is a US Tax Obligor on a Transfer Date and the relevant Lender is a New Lender, the relevant Transfer Date; or
  - (iii) where the Borrower is not a US Tax Obligor, the date of a request from the Facility Agent,
- supply to the Facility Agent:
- (i) a withholding certificate on Form W-8, Form W-9 or any other relevant form; or
  - (ii) any withholding statement or other document, authorisation or waiver as the Facility Agent may require to certify or establish the status of such Lender under FATCA or that other law or regulation.
- (f) The Facility Agent shall provide any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to paragraph (e) above to the Borrower.
- (g) If any withholding certificate, withholding statement, document, authorisation or waiver provided to the Facility Agent by a Lender pursuant to paragraph (e) above 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 Facility Agent unless it is unlawful for the Lender to do so (in which case the Lender shall promptly notify the Facility Agent). The Facility Agent shall provide any such updated withholding certificate, withholding statement, document, authorisation or waiver to the Borrower.

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

## 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 each Obligor and the Facility Agent and the Facility Agent shall notify the other Finance Parties.

## 13 INCREASED COSTS

### 13.1 Increased costs

- (a) Subject to Clause 13.3 (*Exceptions*), the Borrower shall, within three Business Days of a demand by the Facility Agent, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates 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 made, in each case after the date of this Agreement; or
  - (iii) the implementation, application of or compliance with Basel III or CRD IV or any law or regulation that implements or applies Basel III or CRD IV.
- (b) In this Agreement:
- (i) **“Basel III”** means:
    - (A) the agreements on capital requirements, a leverage ratio and liquidity standards contained in “Basel III: A global regulatory framework for more resilient banks and banking systems”, “Basel III: International framework for liquidity risk measurement, standards and monitoring” and “Guidance for national authorities operating the countercyclical capital buffer” published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated;
    - (B) the rules for global systemically important banks contained in “Global systemically important banks: assessment methodology and the additional loss absorbency requirement - Rules text” published by the Basel Committee on Banking Supervision in November 2011, as amended, supplemented or restated; and

- (C) any further guidance or standards published by the Basel Committee on Banking Supervision relating to “Basel III”.
- (ii) “**CRD IV**” means:
- (A) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending regulation (EU) No. 648/2012;
  - (B) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC; and
  - (C) any other law or regulation which implements Basel III.
- (iii) “**Increased Costs**” means:
- (A) a reduction in the rate of return from the Facility or on a Finance Party’s (or its Affiliate’s) overall capital;
  - (B) an additional or increased cost; or
  - (C) a reduction of any amount due and payable under any Finance Document,

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

**13.2 Increased cost claims**

- (a) A Finance Party intending to make a claim pursuant to Clause 13.1 (*Increased costs*) shall notify the Facility Agent of the event giving rise to the claim, following which the Facility Agent shall promptly notify the Borrower.
- (b) Each Finance Party shall, as soon as practicable after a demand by the Facility Agent, provide a certificate confirming the amount of its Increased Costs.

**13.3 Exceptions**

Clause 13.1 (*Increased costs*) does not apply to the extent any Increased Cost is:

- (a) attributable to a Tax Deduction required by law to be made by an Obligor;
- (b) attributable to a FATCA Deduction required to be made by a Party;
- (c) 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 paragraph (b) of Clause 12.3 (*Tax indemnity*) applied);
- (d) compensated for by any payment made pursuant to Clause 14.3 (*Mandatory Cost*); or
- (e) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation.

**14 OTHER INDEMNITIES**

**14.1 Currency indemnity**

- (a) If any sum due from an Obligor under the Finance Documents (a “**Sum**”), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the “**First Currency**”) in which that Sum is payable into another currency (the “**Second Currency**”) for the purpose of:
- (i) making or filing a claim or proof against that Obligor; or
  - (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,
- that Obligor shall, as an independent obligation, on demand, indemnify each Creditor Party to which 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 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 Obligor shall, on demand, indemnify each Creditor Party against any cost, loss or liability incurred by it 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 32 (*Sharing among the Finance Parties*);
  - (iii) funding, or making arrangements to fund, its participation in the Advance or the Loan requested by the Borrower in a Drawdown 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 Creditor Party alone); or
  - (iv) the Loan (or part of the Loan) not being prepaid in accordance with a notice of prepayment given by the Borrower.
- (b) Each Obligor shall, on 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 (*Other indemnities*) 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, the 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 14.2 (*Other indemnities*) subject to Clause 1.5 (*Third party rights*) and the provisions of the Third Parties Act.

#### **14.3 Mandatory Cost**

The Borrower shall, on demand by the Facility Agent, pay to the Facility Agent for the account of the relevant Lender, such amount which any Lender certifies in a notice to the Facility Agent to be its good faith determination of the amount necessary to compensate it for complying with:

- (a) in the case of a Lender lending from a Facility Office in a Participating Member State, the minimum reserve requirements (or other requirements having the same or similar purpose) of the European Central Bank or any other authority or agency which replaces all or any of its functions) in respect of loans made from that Facility Office; and
- (b) in the case of any Lender lending from a Facility Office in the United Kingdom, any reserve asset, special deposit or liquidity requirements (or other requirements having the same or similar purpose) of the Bank of England (or any other governmental authority or agency) and/or paying any fees to the Financial Conduct Authority and/or the Prudential Regulation Authority (or any other governmental authority or agency which replaces all or any of their functions),

which, in each case, is referable to that Lender's participation in the Loan.

#### **14.4 Indemnity to the Facility Agent**

Each Obligor shall, on demand, indemnify the Facility Agent against:

- (a) any cost, loss or liability incurred by the Facility 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 the Finance Documents; and
- (b) any cost, loss or liability incurred by the Facility Agent (otherwise than by reason of the Facility Agent's gross negligence or wilful misconduct) or, in the case of any cost, loss or liability pursuant to Clause 33.11 (*Disruption to Payment Systems etc.*) notwithstanding the Facility Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Facility Agent in acting as Facility Agent under the Finance Documents.

#### **14.5 Indemnity to the Security Agent**

- (a) Each Obligor shall, on demand, indemnify the Security Agent and every Receiver and Delegate against any cost, loss or liability incurred by any of them:
- (i) in relation to or as a result of:
    - (A) any failure by the Borrower to comply with its obligations under Clause 16 (*Costs and Expenses*);
    - (B) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;

- (C) the taking, holding, protection or enforcement of the Finance Documents and the Transaction Security;
- (D) 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;
- (E) any default by any Transaction Obligor in the performance of any of the obligations expressed to be assumed by it in the Finance Documents;
- (F) any action by any Transaction Obligor which vitiates, reduces the value of, or is otherwise prejudicial to, the Transaction Security; and
- (G) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under the Finance Documents.

(ii) acting as Security Agent, Receiver or Delegate under the Finance Documents or which otherwise relates to any of the Security Property or the performance of the terms of this Agreement or the other Finance Documents (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 Creditor Parties, indemnify itself out of the Security Assets in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this Clause 14.5 (*Indemnity to the Security Agent*) and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all monies payable to it.

## **15 MITIGATION BY THE FINANCE PARTIES**

### **15.1 Mitigation**

(a) Each Finance Party shall, in consultation with the Borrower, 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*), Clause 13 (*Increased Costs*) or paragraph (a) of Clause 14.3 (*Mandatory Cost*).

(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) Each Obligor shall, on 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 either:

- (i) a Default has occurred and is continuing; or
- (ii) 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**

The Obligors shall, on demand, pay the Facility Agent, the Security Agent and the Arranger the amount of all costs and expenses (including legal fees) reasonably incurred by any Creditor Party 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; and
- (b) any other Finance Documents executed after the date of this Agreement.

### **16.2 Amendment costs**

If:

- (a) a Transaction Obligor requests an amendment, waiver or consent; or
- (b) an amendment is required pursuant to Clause 33.9 (*Change of currency*); or
- (c) a Transaction] Obligor requests, and the Security Agent agrees to, the release of all or any part of the Security Assets from the Transaction Security,

the Obligors shall, on demand, reimburse each of the Facility Agent and the Security Agent for the amount of all costs and expenses (including legal fees) reasonably incurred by each Creditor Party in responding to, evaluating, negotiating or complying with that request or requirement.

### **16.3 Enforcement and preservation costs**

The Obligors shall, on demand, pay to each Creditor Party the amount of all costs and expenses (including legal fees) incurred by that Creditor 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 Creditor Party as a consequence of it entering into a Finance Document, taking or holding the Transaction Security, or enforcing those rights.

## SECTION 7

### GUARANTEES

#### 17 GUARANTEE AND INDEMNITY

##### 17.1 Guarantee and indemnity

Each Guarantor irrevocably and unconditionally jointly and severally with the other Guarantors:

- (a) guarantees to each Finance Party punctual performance by each other Transaction Obligor of all such other Transaction Obligor's obligations under the Finance Documents;
- (b) undertakes with each Finance Party that whenever another Transaction Obligor does not pay any amount when due under or in connection with any Finance Document, each Guarantor shall immediately on demand pay that amount as if it 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 another Transaction Obligor 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 a Guarantor under this indemnity will not exceed the amount it would have had to pay under this Clause 17 (*Guarantee and Indemnity*) if the amount claimed had been recoverable on the basis of a guarantee.

##### 17.2 Continuing guarantee

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

##### 17.3 Reinstatement

If any discharge, release or arrangement (whether in respect of the obligations of any Transaction Obligor or any security for those obligations or otherwise) is made by a Creditor 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 each Guarantor under this Clause 17 (*Guarantee and Indemnity*) will continue or be reinstated as if the discharge, release or arrangement had not occurred.

##### 17.4 Waiver of defences

The obligations of each Guarantor under this Clause 17 (*Guarantee and Indemnity*) and in respect of any Transaction Security will not be affected or discharged by an act, omission, matter or thing which, but for this Clause 17.4 (*Waiver of defences*), would reduce, release or prejudice any of its obligations under this Clause 17 (*Guarantee and Indemnity*) or in respect of any Transaction Security (without limitation and whether or not known to it or any Creditor Party) including:

- (a) any time, waiver or consent granted to, or composition with, any Transaction Obligor or other person;
- (b) 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;

- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect or delay in perfecting, or refusal or neglect to take up or enforce, or delay in taking or enforcing any rights against, or security over assets of, any 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;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of a Transaction Obligor 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.

#### **17.5 Immediate recourse**

- (a) Each Guarantor waives any right it may have of first requiring any Creditor 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 (including without limitation to commence any proceedings under any Finance Document or to enforce any Transaction Security) before claiming or commencing proceedings under this Clause 17 (*Guarantee and Indemnity*). This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.
- (b) Each Guarantor acknowledges the right of the Facility Agent pursuant to Clause 26.18 (*Acceleration*) to enforce or direct the Security Agent to enforce or exercise any or all of its rights, remedies powers or discretions under any guarantee or indemnity contained in this Agreement.

#### **17.6 Appropriations**

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 Creditor 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 Creditor Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Guarantor shall be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from any Guarantor or on account of any Guarantor's liability under this Clause 17 (*Guarantee and Indemnity*).

#### **17.7 Deferral of Guarantor's rights**

All rights which any Guarantor at any time has (whether in respect of this Guarantee, a mortgage or any other transaction) against the Borrower, any other Transaction Obligor or their respective assets shall be fully subordinated to the rights of the Creditor Parties under the Finance Documents and until the end of the Security Period and unless the Facility Agent otherwise directs, no Guarantor will exercise any rights which it may have (whether in respect of any Finance Document to which it is a Party or any other transaction) 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 (*Guarantee and Indemnity*):



- (a) to be indemnified by a Transaction Obligor;
- (b) to claim any contribution from any third party providing security for, or any other guarantor of, any Transaction Obligor'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 Creditor Parties under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Creditor Party;
- (d) 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 Guarantor has given a guarantee, undertaking or indemnity under Clause 17.1 (*Guarantee and indemnity*);
- (e) to exercise any right of set-off against any Transaction Obligor; and/or
- (f) to claim or prove as a creditor of any Transaction Obligor in competition with any Creditor Party.

If a 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 Creditor Parties by the Transaction Obligors under or in connection with the Finance Documents to be repaid in full on trust for the Creditor Parties and shall promptly pay or transfer the same to the Facility Agent or as the Facility Agent may direct for application in accordance with Clause 33 (*Payment Mechanics*).

#### **17.8 Additional security**

This Guarantee and any other Security given by a Guarantor 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 Creditor Party or any right of set-off or netting or right to combine accounts in connection with the Finance Documents.

#### **17.9 Applicability of provisions of Guarantee to other Security**

Clauses 17.2 (*Continuing guarantee*), 17.3 (*Reinstatement*), 17.4 (*Waiver of defences*), 17.5 (*Immediate recourse*), 17.6 (*Appropriations*), 17.7 (*Deferral of Guarantor's rights*) and 17.8 (*Additional security*) shall apply, with any necessary modifications, to any Security which the Guarantor creates (whether at the time at which it signs this Agreement or at any later time) to secure the Secured Liabilities or any part of them.

## SECTION 8

### REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT

#### 18 REPRESENTATIONS

##### 18.1 General

Each Obligor makes and procures (as the case may be) that each other Transaction Obligor makes the representations and warranties set out in this Clause 18 (*Representations*) to each Finance Party on the date of this Agreement.

##### 18.2 Status

- (a) It is a corporation, duly incorporated and validly existing in good standing under the law of its Original Jurisdiction.
- (b) It has the power to own its assets and carry on its business as it is being conducted.

##### 18.3 Share capital and ownership

- (a) The Borrower has an authorised share capital of 3,203,072.87 divided into 56,900 registered shares of no par value, all of which shares have been issued and paid up in full.
- (b) The legal title to and beneficial interest in the shares in the Borrower is held free of any Security (other than Permitted Security) or any other claim by the Shareholders, each being a wholly owned Subsidiary of the Corporate Guarantor.
- (c) None of the shares in the Borrower is subject to any option to purchase, pre-emption rights or similar rights.

##### 18.4 Binding obligations

The obligations expressed to be assumed by it in each Transaction Document to which it is a party are legal, valid, binding and enforceable obligations.

##### 18.5 Validity, effectiveness and ranking of Security

- (a) Each Finance Document to which it is a party does now or, as the case may be, will upon execution and delivery and, where applicable, registration as provided for in that Finance Document create the Security it purports to create over any assets to which such Security, by its terms, relates, and such Security will, when created or intended to be created, be valid and effective.
- (b) No third party has or will have any Security (except for Permitted Security) over any assets that are the subject of any Transaction Security granted by it.
- (c) The Transaction Security granted by it to the Security Agent or any other Creditor Party has or will when created or intended to be created have first ranking priority, or in the case of the Collateral Security Documents, second ranking priority, or such other priority it is expressed to have in the Finance Documents and is not subject to any prior ranking or *pari passu* ranking security.
- (d) No concurrence, consent or authorisation of any person is required for the creation of or otherwise in connection with any Transaction Security.

##### 18.6 Non-conflict with other obligations

The entry into and performance by it of, and the transactions contemplated by, each Transaction Document to which it is a party do not and will not conflict with:

- (a) any law or regulation applicable to it;
- (b) the constitutional documents of any member of the Group; or
- (c) any agreement or instrument binding upon it or any member of the Group or any member of the Group's assets or constitute a default or termination event (however described) under any such agreement or instrument.

#### **18.7 Power and authority**

- (a) It has the power to enter into, perform and deliver, and has taken all necessary action to authorise
  - (i) its entry into, performance and delivery of, each Transaction Document to which it is or will be a party and the transactions contemplated by those Transaction Documents; and
  - (ii) in the case of each Owner, its registration of the Vessel owned by it under the Approved Flag.
- (b) No limit on its powers will be exceeded as a result of the borrowing, granting of security or giving of guarantees or indemnities contemplated by the Transaction Documents to which it is a party.

#### **18.8 Validity and admissibility in evidence**

All Authorisations required or desirable:

- (a) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Transaction Documents to which it is a party; and
- (b) to make the Transaction Documents to which it is a party admissible in evidence in its Relevant Jurisdictions, have been obtained or effected and are in full force and effect.

#### **18.9 Governing law and enforcement**

- (a) The choice of governing law of each Transaction Document to which it is a party will be recognised and enforced in its Relevant Jurisdictions.
- (b) Any judgment obtained in relation to a Transaction Document to which it is a party in the jurisdiction of the governing law of that Transaction Document will be recognised and enforced in its Relevant Jurisdictions.

#### **18.10 Insolvency**

No:

- (a) corporate action, legal proceeding or other procedure or step described in paragraph (a) of Clause 26.8 (*Insolvency proceedings*); or
- (b) creditors' process described in Clause 26.9 (*Creditors' process*),

has been taken or, to its knowledge, threatened in relation to a member of the Group; and none of the circumstances described in Clause 26.7 (*Insolvency*) applies to a member of the Group.

#### **18.11 No filing or stamp taxes**

Under the laws of its Relevant Jurisdictions it is not necessary that the Finance Documents to which it is a party be registered, filed, recorded, notarised or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar Taxes or fees be paid on or in relation to the Finance Documents to which it is a party or the transactions contemplated by those Finance Documents except registration of each Mortgage and Collateral Mortgage at the Vessel's Registry where title to each Vessel is registered in the ownership of the relevant Borrower and payment of associated fees, which registration and fees will be made and paid promptly after the date of the relevant Finance Document.

#### **18.12 Deduction of Tax**

It is not required to make any Tax Deduction from any payment it may make under any Finance Document to which it is a party.

#### **18.13 No default**

- (a) No Event of Default and, on the date of this Agreement and the, the Drawdown Date, no Default is continuing or might reasonably be expected to result from the making of the Drawdown or the release of the Advance by the Prepositioning Bank (on the instructions of the Facility Agent) or the entry into, the performance of, or any transaction contemplated by, any Transaction Document.
- (b) No other event or circumstance is outstanding which constitutes a default or a termination event (however described) under any other agreement or instrument which is binding on it or any of its Subsidiaries or to which its (or any of its Subsidiaries') assets are subject.

#### **18.14 No misleading information**

- (a) Any factual information provided by any member of the Group for the purposes of this Agreement was true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated.
- (b) The financial projections contained in any such information have been prepared on the basis of recent historical information and on the basis of reasonable assumptions.
- (c) Nothing has occurred or been omitted from any such information and no information has been given or withheld that results in any such information being untrue or misleading in any material respect.

#### **18.15 Financial Statements**

- (a) The Original Financial Statements were prepared in accordance with the applicable GAAP consistently applied.
- (b) The Original Financial Statements give a true and fair view of the Borrower's and the Corporate Guarantors financial condition as at the end of the relevant financial year and results of operations during the relevant financial year (consolidated in the case of the Corporate Guarantor).
- (c) There has been no material adverse change in the assets, business or financial condition of the Borrower, or the assets, business or consolidated financial condition of the Group since 30 September 2017.

- (d) The Borrower's and the Corporate Guarantor's most recent financial statements delivered pursuant to Clause 19.2 (*Financial statements*):
- (i) have been prepared in accordance with Clause 19.4 (*Requirements as to financial statements*); and
  - (ii) give a true and fair view of (if audited) or fairly represent (if unaudited) its financial condition as at the end of the relevant financial year and operations during the relevant financial year (consolidated in the case of the Corporate Guarantor).
- (e) Since the date of the most recent financial statements delivered pursuant to Clause 19.2 (*Financial statements*) there has been no material adverse change in the Borrower's or the Corporate Guarantor's business, assets or financial condition (or the business or consolidated financial condition of the Group, in the case of the Guarantor).

**18.16 *Pari passu* ranking**

Its payment obligations 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.

**18.17 No proceedings pending or threatened**

- (a) No litigation, arbitration or administrative proceedings or investigations (including proceedings or investigations relating to any alleged or actual breach of the ISM Code or of the ISPS Code) of or before any court, arbitral body 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 (having made due and careful enquiry)) been started or threatened against it or any member of the Group.
- (b) No judgment or order of a court, arbitral tribunal or other tribunal or any order or sanction of any governmental or other regulatory body which might reasonably be expected to have a Material Adverse Effect has (to the best of its knowledge and belief (having made due and careful enquiry)) been made against it or any member of the Group.

**18.18 Validity and completeness of the Transaction Documents**

- (a) Each of the Transaction Documents to which any Charterer and each Transaction Obligor is a party constitutes legal, valid, binding and enforceable obligations of that Charterer and each Transaction Obligor.
- (b) The copies of the Transaction Documents delivered to the Facility Agent before the date of this Agreement are true and complete copies.
- (c) No amendments or additions to the Transaction Documents have been agreed nor has any of the Charterer or any Transaction Obligor waived any of its respective rights under the Transaction Documents.

**18.19 Valuations**

- (a) All information supplied by it or on its behalf to an Approved Valuer for the purposes of a valuation delivered to the Facility Agent in accordance with this Agreement was true and accurate as at the date it was supplied 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 an Approved Valuer which, if disclosed, would adversely affect any valuation prepared by such Approved Valuer.

(c) There has been no change to the factual information provided pursuant to paragraph (a) above in relation to any valuation between the date such information was provided and the date of that valuation which, in either case, renders that information untrue or misleading in any material respect.

**18.20 No breach of laws**

It has not (and no other member of the Group has) breached any law or regulation which breach has or is reasonably likely to have a Material Adverse Effect.

**18.21 No Charter**

No Vessel is subject to any Charter other than a Permitted Charter and in the case of the Borrower Vessel C, the Initial Charter.

**18.22 Compliance with Environmental Laws**

All Environmental Laws relating to the ownership, operation and management of each Vessel and the business of each member of the Group (as now conducted and as reasonably anticipated to be conducted in the future) and the terms of all Environmental Approvals have been complied with.

**18.23 No Environmental Claim**

No Environmental Claim has been made or threatened against any member of the Group or any Vessel.

**18.24 No Environmental Incident**

No Environmental Incident has occurred and no person has claimed that an Environmental Incident has occurred.

**18.25 ISM and ISPS Code compliance**

All requirements of the ISM Code and the ISPS Code as they relate to the Borrower, the Approved Manager, the Approved Collateral Manager and each Vessel have been complied with.

**18.26 Taxes paid**

(a) It is not and no other member of the Group is materially overdue in the filing of any Tax returns and it is not (and no other member of the Group is) overdue in the payment of any amount in respect of Tax.

(b) No claims or investigations are being, or are reasonably likely to be, made or conducted against it (or any other member of the Group) with respect to Taxes.

**18.27 Financial Indebtedness**

No Transaction Obligor has any Financial Indebtedness outstanding other than Permitted Financial Indebtedness.

**18.28 Overseas companies**

No Transaction Obligor has delivered particulars, whether in its name stated in the Finance Documents or any other name, of any UK Establishment to the Registrar of Companies as required under the Overseas Regulations or, if it has so registered, it has provided to the Facility Agent sufficient details to enable an accurate search against it to be undertaken by the Lenders at the Companies Registry.

### **18.29 Good title to assets**

It and each other member of the Group has good, valid and marketable title to, or valid leases or licences of, and all appropriate Authorisations to use, the assets necessary to carry on its business as presently conducted.

### **18.30 Ownership**

- (a) Each Owner is the sole legal and beneficial owner of all rights and interests which any Charter creates in favour of that Owner.
- (b) Each Owner is the sole legal and beneficial owner of the Vessel owned by it, its Earnings and its Insurances.
- (c) To the best of the Obligors' knowledge, the Initial Charterer is the sole legal and beneficial owner of all rights and interests the Initial Charter creates in its favour.
- (d) With effect on and from the date of its creation or intended creation, each Transaction Obligor will be the sole legal and beneficial owner of any asset that is the subject of any Transaction Security created or intended to be created by such Transaction Obligor.
- (e) The constitutional documents of each Transaction Obligor do not and could not restrict or inhibit any transfer of the shares of the Borrower on creation or enforcement of the security conferred by the Security Documents.

### **18.31 Centre of main interests and establishments**

For the purposes of The Council of the European Union Regulation No. 1346/2000 on Insolvency Proceedings (the "**Regulation**"), its centre of main interest (as that term is used in Article 3(1) of the Regulation) is not situated in the US (save for the Corporate Guarantor) or the United Kingdom and it has no "establishment" (as that term is used in Article 2(h) of the Regulation) in any other jurisdiction.

### **18.32 Place of business**

No Transaction Obligor has a place of business in the US (save for the Corporate Guarantor) or the United Kingdom and its head office functions are carried out at the address stated in Schedule 1 Part A (*The Obligors.*)

### **18.33 No employee or pension arrangements**

No Transaction Obligor has any employees or any liabilities under any pension scheme.

### **18.34 Sanctions**

- (a) No Transaction Obligor:
  - (i) and no director or officer, or to the best of its knowledge employee, of a Transaction Obligor, is a Prohibited Person;
  - (ii) is owned or controlled by or acting directly or indirectly on behalf of or for the benefit of, a Prohibited Person; or
  - (iii) owns or controls a Prohibited Person.
- (b) No proceeds of the Loan shall be made available, directly or indirectly, to or for the benefit of a Prohibited Person nor shall they be otherwise directly or indirectly, applied in a manner or for a purpose prohibited by Sanctions.

### **18.35 US Tax Obligor**

No Transaction Obligor is a US Tax Obligor.

### **18.36 Indentures**

The entry into this Agreement and the Security Documents by the Transaction Obligors and the borrowing of the Loan by the Borrower does not breach section 4.10 (incurrence of indebtedness and issuance of disqualified stock and preferred stock) or any other provision of either Indenture.

### **18.37 Ownership of the Corporate Guarantor**

Mrs Angeliki Frangou either directly or indirectly (through entities owned and controlled by her or trusts or foundations of which she is the beneficiary) is the ultimate beneficial owner of, or has ultimate control of the voting rights attaching to, at least 20 per cent. of all the issued shares in the Corporate Guarantor.

### **18.38 Repetition**

The Repeating Representations are deemed to be made by each Obligor by reference to the facts and circumstances then existing on the date of the Drawdown Request and the first day of each Interest Period.

## **19 INFORMATION UNDERTAKINGS**

### **19.1 General**

The undertakings in this Clause 19 (*Information Undertakings*) remain in force throughout the Security Period unless the Facility Agent, acting with the authorisation of the Majority Lenders (or, where specified, all the Lenders), may otherwise permit.

### **19.2 Financial statements**

The Obligors shall supply to the Facility Agent in sufficient copies for all the Lenders:

- (a) in relation to the Borrower, as soon as they are filed with the relevant authorities, its annual audited consolidated balance sheet and profit and loss accounts;
- (b) in relation to the Corporate Guarantor, as soon as they become available, but in any event within:
  - (i) 180 days after the end of each of its financial years its annual audited consolidated financial statements for that financial year;
  - (ii) 90 days after the end of each 6-month period ending on 30 June its unaudited financial statements for that financial half-year;
  - (iii) 90 days after the end of each 3-month period ending on 31 March, 30 June and 30 September quarter its unaudited financial statements for that financial quarter;
- (c) the financial statements required to be provided by the Obligors in relation to the Borrower or the Corporate Guarantor under paragraphs (a) and (b) above shall include, or shall be supplemented by, updated details of all off balance sheet and time charter hire commitments.

### **19.3 Compliance Certificate**



- (a) The Corporate Guarantor shall supply to the Facility Agent, with each set of financial statements delivered pursuant to sub-paragraph (iii) of paragraph (b) of 19.2 (*Financial statements*), a Compliance Certificate setting out (in reasonable detail) computations as to compliance with Clause 20 (*Financial Covenants*) as of the relevant Test Date.
- (b) Each Compliance Certificate shall be signed by one director or officer of the Corporate Guarantor and, if required to be delivered with the financial statements delivered pursuant to sub-paragraph (i) of paragraph (i) of Clause 19.2 (*Financial statements*), shall be reported on by the Obligor's auditors in the form agreed by the Obligor and all the Lenders before the date of this Agreement by the Obligor's auditors.

#### **19.4 Requirements as to financial statements**

- (a) Each set of financial statements delivered by the Obligors pursuant to Clause 19.2 (*Financial statements*) shall be certified by a director of the company as giving a true and fair view (if audited) or fairly representing (if unaudited) its financial condition and operations as at the date as at which those financial statements were drawn up if they have not been filed with the US Securities and Exchange Commission.
- (b) The Obligors shall procure that each set of financial statements of the Borrower and the Corporate Guarantor delivered pursuant to Clause 19.2 (*Financial statements*) is prepared using the applicable GAAP, accounting practices and financial reference periods consistent with those applied in the preparation of the Original Financial Statements for the Borrower and the Corporate Guarantor unless, in relation to any set of financial statements, it notifies the Facility Agent that there has been a change in the applicable GAAP, the accounting practices or reference periods and, unless such change is described in the filings made with the US Securities and Exchange Commission, its auditors (or, if appropriate, the auditors of the the Borrower and the Corporate Guarantor) deliver to the Facility Agent:
  - (i) a description of any change necessary for those financial statements to reflect the applicable GAAP, accounting practices and reference periods upon which the Borrower's and the Corporate Guarantor's Obligor's Original Financial Statements were prepared; and
  - (ii) sufficient information, in form and substance as may be reasonably required by the Facility Agent, to enable the Lenders to determine whether Clause 20 (*Financial Covenants*) has been complied with and make an accurate comparison between the financial position indicated in those financial statements and the Borrower's and the Corporate Guarantor's Obligor's Original Financial Statements.

Any reference in this Agreement to those financial statements shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which the Original Financial Statements were prepared.

#### **19.5 Information: miscellaneous**

Each Obligor shall and shall procure that each other Transaction Obligor shall supply to the Facility Agent (in sufficient copies for all the Lenders, if the Facility Agent so requests):

- (a) all documents dispatched by it to its shareholders (or any class of them) or its creditors generally at the same time as they are dispatched unless the contents of such communication have already been disclosed in the filings made with the US Securities and Exchange Commission;
- (b) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings or investigations (including proceedings or investigations relating to any alleged or actual breach of the ISM Code or of the ISPS Code) which are current, threatened or pending against any member of the Group, and which might, if adversely determined, have a Material Adverse Effect;

- (c) promptly upon becoming aware of them, the details of any judgment or order of a court, arbitral tribunal or other tribunal or any order or sanction of any governmental or other regulatory body which is made against any member of the Group and which might have a Material Adverse Effect;
- (d) promptly, its constitutional documents where these have been amended or varied unless, in respect of the Corporate Guarantor, these changes have been disclosed in the filings with the US Securities and Exchange Commission;
- (e) promptly, such further information and/or documents regarding:
  - (i) the Vessel, goods transported on the Vessel, the Earnings or the Insurances;
  - (ii) the Security Assets;
  - (iii) compliance of the Transaction Obligors with the terms of the Finance Documents;
  - (iv) the financial condition, business and operations of any member of the Group,as any Finance Party (through the Facility Agent) may reasonably request; and
- (f) promptly, such further information and/or documents as any Finance Party (through the Facility Agent) may reasonably request so as to enable such Finance Party to comply with any laws applicable to it or as may be required by any regulatory authority.

#### **19.6 Notification of Event of Default**

- (a) Each Obligor shall, and shall procure that each other Transaction Obligor shall, notify the Facility Agent (i) of any Event of Default (and the steps, if any, being taken to remedy it (including, without limitation, the occurrence of an Indenture Event of Default, in which case the Transaction Obligor shall also provide to the Facility Agent copies of all demands or notices made or given in connection therewith) promptly upon becoming aware of its occurrence (unless that Obligor is aware that a notification has already been provided by another Obligor); and (ii) promptly upon becoming aware of the same, of any breach of any Sanctions applicable to the Vessel, any Transaction Obligor or any party to any agreement relating to any Vessel.
- (b) Promptly upon a request by the Facility Agent, the Borrower shall supply to the Facility Agent a certificate signed by two of its directors or senior officers on its behalf certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

#### **19.7 Use of websites**

- (a) Each Obligor may satisfy its obligation under the Finance Documents to which it is a party to deliver any information in relation to those Lenders (the "**Website Lenders**") which accept this method of communication by posting this information onto an electronic website designated by the Borrower and the Facility Agent (the "**Designated Website**") if:
  - (i) the Facility Agent expressly agrees (after consultation with each of the Lenders) that it will accept communication of the information by this method;
  - (ii) both the relevant Obligor and the Facility Agent are aware of the address of and any relevant password specifications for the Designated Website; and
  - (iii) the information is in a format previously agreed between the relevant Obligor and the Facility Agent.

If any Lender (a "**Paper Form Lender**") does not agree to the delivery of information electronically then the Facility Agent shall notify the Obligor accordingly and each Obligor shall supply the information to the Facility Agent (in sufficient copies for each Paper Form Lender) in paper form. In any event each Obligor shall supply the Facility Agent with at least one copy in paper form of any information required to be provided by it.

- (b) The Facility Agent shall supply each Website Lender with the address of and any relevant password specifications for the Designated Website following designation of that website by the Obligor or any of them and the Facility Agent.
- (c) An Obligor shall promptly upon becoming aware of its occurrence notify the Facility Agent if:
  - (i) the Designated Website cannot be accessed due to technical failure;
  - (ii) the password specifications for the Designated Website change;
  - (iii) any new information which is required to be provided under this Agreement is posted onto the Designated Website;
  - (iv) any existing information which has been provided under this Agreement and posted onto the Designated Website is amended; or
  - (v) if that Obligor becomes aware that the Designated Website or any information posted onto the Designated Website is or has been infected by any electronic virus or similar software.

If an Obligor notifies the Facility Agent under sub-paragraph (i) or (v) of paragraph (c) above, all information to be provided by the Obligor under this Agreement after the date of that notice shall be supplied in paper form unless and until the Facility Agent and each Website Lender is satisfied that the circumstances giving rise to the notification are no longer continuing.

- (d) Any Website Lender may request, through the Facility Agent, one paper copy of any information required to be provided under this Agreement which is posted onto the Designated Website. The Obligor shall comply with any such request within 10 Business Days.

#### **19.8 "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 (including, without limitation, a change of ownership 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 a Finance Party (or, in the case of sub-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 Obligor shall promptly upon the request of any Finance Party supply, or procure the supply of, such documentation and other evidence as is reasonably requested by a Servicing Party (for itself or on behalf of any other Finance Party) or any Lender (for itself or, in the case of the event described in sub-paragraph (iii) above, on behalf of any prospective new Lender) in order for such Finance Party or, in the case of the event described in sub-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 a Servicing Party supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Servicing Party (for itself) in order for that Servicing Party 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 FINANCIAL COVENANTS

### 20.1 Minimum liquidity

The Obligors will ensure that at all times during the Security Period an amount not less than \$650,000 (the “**Minimum Liquidity Amount**”) shall:

- (a) unless paragraph (b) below applies, be credited in its entirety to the Earnings Account;
- (b) where the Borrower has opened and elected to place funds on the Time Deposit Account, be credited in its entirety to the Time Deposit Account.

### 20.2 Corporate Guarantor’s Financial Covenants

The Corporate Guarantor shall ensure that at all times:

- (a) at no time shall the Current Liabilities of the Group exceed its Current Assets;
- (b) it will at all times maintain Liquidity in an aggregate amount of not less than \$30,000,000;
- (c) the Fixed Charge Coverage Ratio is at least 2.0 to 1.0;
- (d) the Net Total Debt of the Group divided by its Total Assets shall at all times be less than 75 per cent.

### 20.3 Compliance Check

Compliance with the undertakings contained in Clause 20.2 (*Corporate Guarantor’s Financial Covenants*) shall be determined on each Test Date, with the first such determination to take place on 31 March 2018.

### 20.4 Definitions

For the purposes of this Clause 20 (*Financial Covenants*):

“**Current Assets**” means at any time the amount shown in the Latest Accounts as “Current Assets”.

“**Current Liabilities**” means the amount shown in the Latest Accounts as current or short term liabilities provided that it shall include the short term portion of long term debt but shall exclude any balloon payments and debt related prepayments accounted as short term debt.

“**Fixed Charge Coverage Ratio**” has the meaning ascribed to it in *Schedule 11 (Indenture Definitions)* and shall be applied in accordance with the Refinanced Indenture.

“**Latest Accounts**” means, in respect of any financial quarter or year of the Corporate Guarantor, the latest unaudited (in respect

of each financial quarter) or audited (in respect of each financial year) consolidated financial statements required to be prepared pursuant to Clause (20.2 (*Corporate Guarantor's Financial Covenants*)).

**"Net Total Debt"** means total debt as evidenced at any relevant time by the Latest Accounts, in which they shall have been calculated in accordance with the applicable GAAP less unencumbered cash (which shall have the meaning given thereto under the applicable GAAP) of the Corporate Guarantor.

**"Test Date"** means 31 March, 30 June, 30 September and 31 December, being the last day of the financial quarter to which the Latest Accounts relate.

**"Total Assets"** means the total assets as evidenced at any relevant time by the Latest Accounts, in which they shall have been calculated in accordance with the applicable GAAP adjusted (i) for charter free market values of vessels and (ii) by deducting unencumbered cash (which shall have the meaning given thereto under the applicable GAAP).

## **21 GENERAL UNDERTAKINGS**

### **21.1 General**

The undertakings in this Clause 21 (*General Undertakings*) remain in force throughout the Security Period except as the Facility Agent, acting with the authorisation of the Majority Lenders (or, where specified, all the Lenders) may otherwise permit.

### **21.2 Authorisations**

Each Obligor shall, and shall procure that each other Transaction Obligor will, promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect; and
- (b) supply certified copies to the Facility Agent of,

any Authorisation required under any law or regulation of a Relevant Jurisdiction or the state of the Approved Flag at any time of each Vessel to enable it to:

- (i) perform its obligations under the Transaction Documents to which it is a party;
- (ii) ensure the legality, validity, enforceability or admissibility in evidence in any Relevant Jurisdiction and in the state of the Approved Flag at any time of each Vessel or any Transaction Document to which it is a party; and
- (iii) own and operate each Vessel (in the case of the Owners).

### **21.3 Compliance with laws**

Each Obligor shall, and shall procure that each other Transaction Obligor will, comply in all respects with all laws and regulations to which it may be subject, if failure so to comply has or is reasonably likely to have a Material Adverse Effect.

### **21.4 Environmental compliance**

Each Obligor shall, and shall procure that each other Transaction Obligor will, and the Corporate Guarantor shall ensure that each other member of the Group will:

- (a) comply with all Environmental Laws;
- (b) obtain, maintain and ensure compliance with all requisite Environmental Approvals;

- (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.

#### **21.5 Environmental claims**

Each Obligor shall, and shall procure that each other Transaction Obligor will, (through the Corporate Guarantor), promptly upon becoming aware of the same, inform the Facility Agent in writing of:

- (a) any Environmental Claim against any member of the Group 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 member of the Group,

where the claim, if determined against that member of the Group, has or is reasonably likely to have a Material Adverse Effect.

#### **21.6 Taxation**

- (a) Each Obligor shall, and shall procure that each other Transaction Obligor will, 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 maintained for those Taxes and the costs required to contest them and both have been disclosed in its latest financial statements delivered to the Facility Agent under Clause 19.2 (*Financial statements*); and
- (iii) such payment can be lawfully withheld and failure to pay those Taxes does not have or is not reasonably likely to have a Material Adverse Effect.

- (b) No Obligor shall and the Obligors shall procure that no other Transaction Obligor will, change its residence for Tax purposes.

#### **21.7 Overseas companies**

Each Obligor shall, and shall procure that each other Transaction Obligor will, promptly inform the Facility Agent if it delivers to the Registrar particulars required under the Overseas Regulations of any UK Establishment and it shall comply with any directions given to it by the Facility Agent regarding the recording of any Transaction Security on the register which it is required to maintain under The Overseas Companies (Execution of Documents and Registration of Charges) Regulations 2009.

#### **21.8 *Pari passu* ranking**

Each Obligor shall, and shall procure that each other Transaction Obligor will, ensure that at all times any unsecured and unsubordinated claims of a Finance Party against it under the 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.

**21.9 Title**

- (a) Each Owner shall hold the legal title to, and own the entire beneficial interest in:
- (i) the Vessel owned by it, its Earnings and its Insurances; and
  - (ii) with effect on and from its creation or intended creation, any other assets the subject of any Transaction Security created or intended to be created by the relevant Owner.
- (b) The Corporate Guarantor shall hold the legal title to, and own the entire beneficial interest in with effect on and from its creation or intended creation, any assets the subject of any Transaction Security created or intended to be created by the Corporate Guarantor.

**21.10 Negative pledge**

- (a) No Obligor shall (and the Corporate Guarantor shall ensure that no other member of the Group will) create or permit to subsist any Security over any of its assets which are, in the case of members of the Group, the subject of the Security created or intended to be created by the Finance Documents.
- (b) The Borrower in relation to any of its assets which are the subject of the Security created or intended to be created by the Finance Documents shall not:
- (i) 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;
  - (ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
  - (iii) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
  - (iv) enter into any other preferential arrangement having a similar effect,
- in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.
- (c) Paragraphs (a) and (b) above do not apply to any Permitted Security.

**21.11 Disposals**

Subject to Clause 23.16 (*Restrictions on chartering, appointment of managers etc.*), no Owner 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 which is the subject of the Security created or intended to be created by the Finance Documents (including without limitation any Vessel owned by it, its Earnings or its Insurances).

**21.12 Merger**

No Obligor shall enter into any amalgamation, demerger, merger, consolidation or corporate reconstruction except in circumstances where the Corporate Guarantor is the surviving entity of any such event.

**21.13 Change of business**

- (a) The Corporate Guarantor shall procure that no substantial change is made to the general nature of the business of the Corporate Guarantor or the Group from that carried on at the date of this Agreement.
- (b) The Borrower shall not engage in any business other than the ownership of the Fleet Vessels and operation (including, without limitation, chartering and managing) of the Fleet Vessels or any vessel owned by a member of the Group.
- (c) Each Collateral Guarantor shall not engage in any business other than the ownership and operation of its Collateral Vessel.

#### **21.14 Financial Indebtedness**

The Borrower shall not incur or permit to be outstanding any Financial Indebtedness except Permitted Financial Indebtedness and save as disclosed in the Original Financial Statements of the Borrower.

#### **21.15 Expenditure**

The Borrower shall not incur any expenditure, except for expenditure reasonably incurred in the ordinary course of owning, operating (including, without limitation, chartering and managing), maintaining and repairing a Fleet Vessel or any vessel owned by a member of the Group.

#### **21.16 Share capital**

The Borrower shall not:

- (a) purchase, cancel or redeem any of its share capital;
- (b) increase or reduce its authorised share capital;
- (c) issue any further shares except to the Shareholders (unless the provisions of the Negative Pledge are complied with);
- (d) appoint any further director or of the Borrower (unless the provisions of the Negative Pledge are complied with).

#### **21.17 Dividends**

- (a) The Borrower shall not pay any dividend or make any other form of distribution or effect any form of redemption, purchase or return of share capital if an Event of Default has occurred and is continuing at the relevant time or an Event of Default will result from the payment of a dividend or the making of any other form of distribution.
- (b) The Corporate Guarantor may only make or pay any dividend or other distribution (in cash or in kind) in respect of its share capital of up to \$0.06 per share per annum in accordance with the provisions of the Indentures if no Event of Default has occurred or will result from the making or payment of such dividend or distribution and no waiver or relaxation of the covenants contained in Clause 20.2 (*Corporate Guarantor's Financial Covenants*) is in effect at the relevant time.

#### **21.18 Accounts**

The Borrower shall not, in relation to the Borrower Vessels, open or maintain any account with any bank or financial institution except the Accounts.

#### **21.19 Other transactions**



The Borrower shall not:

- (a) be the creditor in respect of any loan or any form of credit to any person other than another Obligor and where such loan or form of credit is Permitted Financial Indebtedness and save for as disclosed in the Original Financial Statements of the Borrower;
- (b) save for the guarantees issued by the Borrower and the unsecured guarantee issued by each Collateral Guarantor in respect of the Corporate Guarantor under the Indentures give or allow to be outstanding any guarantee or indemnity to or for the benefit of any person in respect of any obligation of any other person or enter into any document under which that Obligor assumes any liability of any other person other than any guarantee or indemnity given under the Finance Documents or the Indentures.
- (c) enter into any material agreement other than:
  - (i) the Transaction Documents;
  - (ii) any other agreement expressly allowed under any other term of this Agreement; and
- (d) enter into any transaction on terms which are, in any respect, less favourable to the Borrower than those which it could obtain in a bargain made at arms' length; or
- (e) acquire any shares or other securities other than US or UK Treasury bills and certificates of deposit issued by major North American or European banks.

#### **21.20 Unlawfulness, invalidity and ranking; Security imperilled**

No Obligor shall, and the Obligors shall procure that no other Transaction Obligor will do (or fail to do) or cause or permit another person to do (or omit to do) anything which is likely to:

- (a) make it unlawful for a Transaction Obligor to perform any of its obligations under the Transaction Documents;
- (b) cause any obligation of a Transaction Obligor under the Transaction Documents to cease to be legal, valid, binding or enforceable;
- (c) cause any Transaction Document to cease to be in full force and effect;
- (d) cause any Transaction Security to rank after, or lose its priority to, any other Security; and
- (e) imperil or jeopardise the Transaction Security.

#### **21.21 Separate corporate existence**

The Borrower shall maintain separate corporate existence and identity, shall keep separate records, books and accounts and shall not co-mingle its assets nor become a member of a VAT Group.

#### **21.22 Accounting reference date**

No Obligor shall change its year end accounting reference date.

#### **21.23 Securitisation**

Each Obligor shall, and the Obligors shall procure that each other Transaction Obligor will, assist the Facility Agent and/or any Lender in achieving a successful securitisation (or similar transaction) in respect of the Facility and the Finance Documents and such Transaction Obligor's reasonable costs for providing such assistance shall be met by the relevant Lender.

Each Owner, if requested by the Facility Agent, shall provide documentation evidencing the purchase price of the Vessel owned by it when acquired by the relevant Owner.

#### **21.24 Constitutional documents**

Without prejudice to Clause 21.16 (*Share capital*) and the terms of any Negative Pledge, no Obligor shall allow any amendment or variation to its constitutional documents unless such amendment or variation would clearly be immaterial to this Agreement and the other Finance Documents.

#### **21.25 Further assurance**

- (a) Each Obligor shall, and the Corporate Guarantor shall procure that each member of the Group will, promptly, and in any event within the time period specified by the Security Agent do all such acts (including procuring or arranging any registration, notarisation or authentication or the giving of any notice) or execute or procure execution of all such documents (including assignments, transfers, mortgages, charges, notices, instructions, acknowledgments, proxies and powers of attorney), as the Security Agent may specify (and in such form as the Security Agent may require in favour of the Security Agent or its nominee(s)):
- (i) to create, perfect, vest in favour of the Security Agent or protect the priority of the Security or any right of any kind created or intended to be created under or evidenced by the Finance 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 Transaction Security) or for the exercise of any rights, powers and remedies of any of the Creditor Parties provided by or pursuant to the Finance Documents or by law;
  - (ii) to confer on the Security Agent or confer on the Creditor Parties Security over any property and assets of that Transaction Obligor located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to the Finance Documents;
  - (iii) to facilitate or expedite the realisation and/or sale of, the transfer of title to or the grant of, any interest in or right relating to the assets which are, or are intended to be, the subject of the Transaction Security or to exercise any power specified in any Finance Document in respect of which the Security has become enforceable; and/or
  - (iv) to enable or assist the Security Agent to enter into any transaction to commence, defend or conduct any proceedings and/or to take any other action relating to any item of the Security Property.
- (b) Each Obligor shall, and shall procure that each other Transaction Obligor will, 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 Creditor Parties by or pursuant to the Finance Documents.
- (c) At the same time as an Obligor delivers to the Security Agent any document executed by itself or another Transaction Obligor pursuant to this Clause 21.25 (*Further assurance*), that Obligor shall deliver, or shall procure that such other Transaction Obligor will deliver, to the Security Agent a certificate signed by two of that Obligor's or Transaction Obligor's directors or officers (as appropriate) which shall:
- (i) set out the text of a resolution of that Obligor's or Transaction Obligor's directors specifically authorising the execution of the document specified by the Security Agent; and

- (ii) state that either the resolution was duly passed at a meeting of the directors validly convened and held, throughout which a quorum of directors entitled to vote on the resolution was present, or that the resolution has been signed by all the directors or officers (as appropriate) and is valid under that Obligor's or Transaction Obligor's articles of incorporation, articles of association or other constitutional documents.

## 21.26 Indentures

Each Obligor shall comply with all obligations undertaken under the Refinanced Indenture which are set out in the Indenture Excerpt and each Obligor further agrees that:

- (a) any terms used in the Indenture Excerpt shall have the meanings ascribed thereto in the Indenture Definitions;
- (b) no waiver or variation of any term of either Indenture by any person shall waive or vary any Obligor's obligation hereunder to comply with the obligations in the Indenture Excerpt;
- (c) each Obligor shall continue to be bound by its obligations as set out in the Indenture Excerpt following a Covenant Defeasance or a Legal Defeasance (both terms as defined in the Secured Indenture) or other termination or cancellation of either Indenture; and
- (d) the Corporate Guarantor will not vary any material term of either Indenture, **Provided that** the Corporate Guarantor's right of partial or full prepayment of either Indenture shall not be affected by the provisions of this paragraph (d).

## 21.27 Collateral Shares Pledge

If at any time during the Security Period the Collateral Facility Agreement has been repaid in full and the Security granted thereunder, including the Collateral Existing Shares Pledges, has been released, the Collateral Guarantors shall procure that the Collateral Shares Pledges are executed in favour of the Security Agent within 15 days from the release of such Security and that the Facility Agent has received documents and other evidence of the type referred to in Clauses 1 and 2 of Part A of Schedule 2 in all respects satisfactory to the Facility Agent.

## 22 INSURANCE UNDERTAKINGS

### 22.1 General

The undertakings in this Clause 22 (*Insurance Undertakings*) remain in force on and from the Drawdown Date and throughout the rest of the Security Period except as the Facility Agent, acting with the authorisation of the Majority Lenders (or, where specified, all the Lenders) may otherwise permit.

### 22.2 Maintenance of obligatory insurances

Each Owner shall keep the Vessel owned by it insured at its expense against:

- (a) hull and machinery plus freight interest and hull interest and/or increased value and any other usual marine risks (including excess risks);
- (b) war risks (including the London Blocking and Trapping addendum or its equivalent);
- (c) protection and indemnity risks (including liability for oil pollution for an amount of no less than \$1,000,000,000 and excess war risk P&I cover) on standard Club Rules, covered by a Protection and Indemnity association which is a member of the International Group of Protection and Indemnity Associations (or, if the International Group ceases to exist, any other leading protection and indemnity association or other leading provider of protection and indemnity insurance) (including, without limitation, the proportion (if any) of any collision liability not covered under the terms of the hull cover);

- (d) freight, demurrage and defence; and
- (e) any other risks against which the Facility Agent acting on the instructions of the Majority Lenders considers, having regard to practices and other circumstances prevailing at the relevant time, it would be reasonable for the Borrower to insure and which are specified by the Facility Agent by notice to the Borrower.

### **22.3 Terms of obligatory insurances**

Each Owner shall effect such insurances in respect of the Vessel owned by it:

- (a) in dollars;
- (b) in the case of hull and machinery and usual marine risks and war risks, in an amount on an agreed value basis at least the greater of:
  - (i) in relation to a Borrower Vessel:
    - (A) an amount which (when aggregated with the amounts for which any other vessels providing first priority security for the Secured Liabilities are insured for such risks) equals 120 per cent. of the Loan; and
    - (B) the Market Value of that Borrower Vessel;
  - (ii) in relation to a Collateral Vessel:
    - (A) an amount which ensures compliance with clause 24.1 of the Collateral Facility Agreement; and
    - (B) the Market Value of that Collateral Vessel.
- (c) in the case of oil pollution liability risks, for an aggregate amount equal to the highest level of cover from time to time available under basic protection and indemnity club entry and in the international marine insurance market but such amount shall not be less than \$1,000,000,000;
- (d) in the case of protection and indemnity risks, in respect of the full tonnage of its Vessel;
- (e) in the case of the hull and machinery insurance, on the basis that the deductible is not higher than the Major Casualty figure;
- (f) in the case where a Vessel is insured on a fleet policy, on the basis that each vessel insured on that fleet policy is deemed to be insured on an individual basis;
- (g) on approved terms; and
- (h) 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.

### **22.4 Further protections for the Finance Parties**

In addition to the terms set out in Clause 22.3 (*Terms of obligatory insurances*), each Owner shall procure that the obligatory insurances effected by it shall:

- (a) subject always to paragraph (b), name that Owner as the sole named insured unless the interest of every other named insured is limited:
  - (i) in respect of any obligatory insurances for hull and machinery and war risks;

- (A) to any provable out-of-pocket expenses that it has incurred and which form part of any recoverable claim on underwriters; and
  - (B) to any third party liability claims where cover for such claims is provided by the policy (and then only in respect of discharge of any claims made against it); and
- (ii) in respect of any obligatory insurances for protection and indemnity risks, to any recoveries it is entitled to make by way of reimbursement following discharge of any third party liability claims made specifically against it;

and that it 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;

- (b) whenever the Facility Agent requires, name (or be amended to name) the Security Agent as additional named insured for its rights and interests, warranted no operational interest and with full waiver of rights of subrogation against the Security Agent, but without the Security Agent being liable to pay (but having the right to pay) premiums, calls or other assessments in respect of such insurance;
- (c) name the Security Agent as loss payee with such directions for payment as the Facility Agent may specify;
- (d) 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;
- (e) provide that the obligatory insurances shall be primary without right of contribution from other insurances which may be carried by the Security Agent or any other Finance Party; and
- (f) provide that the Security Agent may make proof of loss if that Owner fails to do so.

## **22.5 Renewal of obligatory insurances**

Each Owner shall:

- (a) at least 10 days before the expiry of any obligatory insurance effected by it:
  - (i) notify the Facility Agent of the Approved Brokers (or other insurers) and any protection and indemnity or war risks association through or with which it proposes to renew that obligatory insurance and of the proposed terms of renewal; and
  - (ii) obtain the Facility Agents' approval to the matters referred to in sub-paragraph (i) of paragraph (a) above;
- (b) at least 14 days before the expiry of any obligatory insurance, renew that obligatory insurance in accordance with the Facility Agent's approval pursuant to paragraph (a) above; and
- (c) procure that the Approved Brokers and/or the approved war risks and protection and indemnity associations with which such a renewal is effected shall promptly after the renewal notify the Facility Agent in writing of the terms and conditions of the renewal.

## **22.6 Copies of policies; letters of undertaking**

Each Owner shall ensure that the Approved Brokers provide the Security Agent with:

- (a) *pro forma* copies of all policies relating to the obligatory insurances which they are to effect or renew; and
- (b) a letter or letters or undertaking in a form required by the Facility Agent and including undertakings by the Approved Brokers that:
  - (i) they will have endorsed on each policy, immediately upon issue, a loss payable clause and a notice of assignment complying with the provisions of Clause 22.4 (*Further protections for the Finance Parties*);
  - (ii) they will hold such policies, and the benefit of such insurances, to the order of the Security Agent in accordance with such loss payable clause;
  - (iii) they will advise the Security Agent immediately of any material change to the terms of the obligatory insurances;
  - (iv) they will, if they have not received notice of renewal instructions from the relevant Owner or its agents, notify the Security Agent not less than 14 days before the expiry of the obligatory insurances;
  - (v) if they receive instructions to renew the obligatory insurances, they will promptly notify the Facility Agent of the terms of the instructions;
  - (vi) they will not set off against any sum recoverable in respect of a claim relating to the Vessel owned by that Owner 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
  - (vii) they will arrange for a separate policy to be issued in respect of the Vessel owned by that Owner forthwith upon being so requested by the Facility Agent.

#### **22.7 Copies of certificates of entry**

Each Owner shall ensure that any protection and indemnity and/or war risks associations in which the Vessel owned by it is entered provide the Security Agent with:

- (a) a certified copy of the certificate of entry for that Vessel;
- (b) a letter or letters of undertaking in such form as may be required by the Facility Agent acting on the instructions of Majority Lenders; and
- (c) 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 that Vessel.

#### **22.8 Deposit of original policies**

Each Borrower shall ensure that all policies relating to obligatory insurances effected by it are deposited with the Approved Brokers through which the insurances are effected or renewed.

#### **22.9 Payment of premiums**

Each Owner shall punctually pay all premiums or other sums payable in respect of the obligatory insurances effected by it and produce all relevant receipts when so required by the Facility Agent or the Security Agent.

#### **22.10 Guarantees**

Each 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.

#### **22.11 Compliance with terms of insurances**

- (a) Each Owner shall not do nor omit to do (nor 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.
- (b) Without limiting paragraph (a) above, each Owner shall:
  - (i) 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 sub-paragraph (iii) of paragraph (b) of Clause 22.6 (*Copies of policies; letters of undertaking*)) ensure that the obligatory insurances are not made subject to any exclusions or qualifications to which the Facility Agent has not given its prior approval;
  - (ii) not 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;
  - (iii) make (and promptly supply copies to the Facility Agent of) all quarterly or other voyage declarations which may be required by the protection and indemnity risks association in which the Vessel owned by it is entered to maintain cover for trading to the United States of America and Exclusive Economic Zone (as defined in the United States Oil Pollution Act 1990 or any other applicable legislation); and
  - (iv) not employ the Vessel owned by it, nor 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 insurers and complying with any requirements (as to extra premium or otherwise) which the insurers specify.

#### **22.12 Alteration to terms of insurances**

No Owner shall make or agree to any alteration to the terms of any obligatory insurance or waive any right relating to any obligatory insurance.

#### **22.13 Settlement of claims**

Each Owner shall:

- (a) not settle, compromise or abandon any claim under any obligatory insurance for Total Loss or for a Major Casualty; and
- (b) 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.

#### **22.14 Provision of copies of communications**

Each Owner shall provide the Security Agent, at the time of each such communication, with copies of all written communications between that Owner and:

- (a) the Approved Brokers;

(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) the Owner'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 Owner and any of the persons referred to in paragraphs (a) or (b) above relating wholly or partly to the effecting or maintenance of the obligatory insurances.

## **22.15 Provision of information**

Each Owner shall promptly provide the Facility Agent (or any persons which it may designate) with any information which the Facility 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 22.16 (*Mortgagee's interest, additional perils and mortgagee's rights insurances*) or dealing with or considering any matters relating to any such insurances,

and the Owners shall, forthwith upon demand, indemnify the Facility Agent in respect of all fees and other expenses incurred by or for the account of the Facility Agent in connection with any such report as is referred to in paragraph (a) above.

## **22.16 Mortgagee's interest, additional perils and mortgagee's rights insurances**

The Security Agent shall be entitled from time to time to effect, maintain and renew:

(a) a mortgagee's interest insurance in an amount equal to 120 per cent. of the Loan;

(b) a mortgagee's interest additional perils insurance in an amount equal to 120 per cent. of the Loan;

(c) a mortgagee's rights insurance in an amount equal to 110 per cent. of the Loan,

and the Borrower shall upon demand fully indemnify the Finance Parties in respect of all premiums and other expenses which are incurred in connection with or with a view to effecting, maintaining or renewing any such insurance or dealing with, or considering, any matter arising out of any such insurance.

## **23 VESSEL UNDERTAKINGS**

### **23.1 General**

The undertakings in this Clause 23 (*Vessel Undertakings*) remain in force on and from the Drawdown Date and throughout the rest of the Security Period except as the Facility Agent, acting with the authorisation of the Majority Lenders (or, where specified, all the Lenders) may otherwise permit.

### **23.2 Vessel's names and registration**

Each Owner shall, in respect of the Vessel owned by it:



- (a) keep that Vessel registered in its name under the Approved Flag from time to time at its port of registration;
- (b) not do or allow to be done anything as a result of which such registration might be suspended, cancelled or imperilled; and
- (c) not change the name of that Vessel without prior notification to, and consent of, the Facility Agent.

### **23.3 Repair and classification**

Each Owner shall keep the Vessel owned by it in a good and safe condition and state of repair:

- (a) consistent with first class ship ownership and management practice; and
- (b) so as to maintain the Approved Classification free of overdue recommendations and conditions affecting that Vessel's class.

### **23.4 Modifications**

Each Owner shall not make any modification or repairs to, or replacement of, the Vessel owned by it or equipment installed on it which would or might materially alter the structure, type or performance characteristics of that Vessel or materially reduce its value.

### **23.5 Removal and installation of parts**

- (a) Subject to paragraph (b) below, no Owner shall remove any material part of the Vessel owned by it , or any item of equipment installed on that Vessel unless:
  - (i) 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;
  - (ii) the replacement part or item is free from any Security in favour of any person other than the Security Agent; and
  - (iii) the replacement part or item becomes, on installation on that Vessel, the property of the relevant Owner and subject to the security constituted by the Mortgage, the Collateral Mortgage and the Collateral Deed of Covenant (as applicable).
- (b) Each Owner may install equipment owned by a third party if the equipment can be removed without any risk of damage to the Vessel owned by it.

### **23.6 Surveys**

The Owner shall submit the Vessel owned by it regularly to all periodic or other surveys which may be required for classification purposes and, if so required by the Facility Agent acting on the instructions of the Majority Lenders, provide the Facility Agent, with copies of all survey reports.

### **23.7 Inspection**

- (a) At the request of the Facility Agent, each Owner shall permit the Security Agent (acting through 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** such technical survey shall not interfere with the ordinary trading of the Vessel owned by it (unless an Event of Default is in existence at the relevant time).

- (b) The cost of all inspections under this Clause 23.7 (*Inspection*) shall be for the account of the Owners but no more than once during each calendar year, unless a Default has occurred in which case any additional inspection will be at the Owners' cost.

**23.8 Prevention of and release from arrest**

- (a) Each Owner shall promptly discharge:
  - (i) all liabilities which give or may give rise to maritime or possessory liens on or claims enforceable against the Vessel owned by it, its Earnings or its Insurances;
  - (ii) all Taxes, dues and other amounts charged in respect of the Vessel owned by it, its Earnings or its Insurances; and
  - (iii) all other outgoings whatsoever in respect of the Vessel owned by it, its Earnings or its Insurances.
- (b) Each Borrower shall immediately upon receiving notice of the arrest of the Vessel owned by it or of its detention in exercise or purported exercise of any lien or claim, take all steps necessary to procure its release by providing bail or otherwise as the circumstances may require.

**23.9 Compliance with laws etc.**

Each Obligor shall , and shall procure that each Charterer, each Approved Manager and each Approved Collateral Manager, shall:

- (a) comply, or procure compliance with all laws or regulations:
  - (i) relating to its business generally; and
  - (ii) relating to the relevant Vessel, its ownership, employment, operation, management and registration, including, but not limited to, the ISM Code, the ISPS Code, all Environmental Laws, all Sanctions and the laws of the Approved Flag;
- (b) obtain, comply with and do all that is necessary to maintain in full force and effect any Environmental Approvals;
- (c) without limiting paragraph (a) above, not employ any Vessel nor allow its employment, operation or management in any manner contrary to any law or regulation including but not limited to the ISM Code, the ISPS Code, all Environmental Laws and all Sanctions; and
- (d) not appoint any manager or agent to manage the Vessel owned by it unless such party undertakes to procure that any agreement entered into relating to the management, employment or operation of that Vessel contains a clause in which the counterparty undertakes to comply with all Sanctions.

**23.10 ISPS Code**

Without limiting paragraph (a) of Clause 23.9 (*Compliance with laws etc.*), each Ownerr shall in relation to the Vessel owned by it:

- (a) procure that that Vessel and the company responsible for that Vessel's compliance with the ISPS Code comply with the ISPS Code; and
- (b) maintain an ISSC for that Vessel; and

- (c) notify the Facility Agent immediately in writing of any actual or threatened withdrawal, suspension, cancellation or modification of the ISSC.

### **23.11 Sanctions and Vessel trading**

Without limiting Clause 23.9 (*Compliance with laws etc.*), each Owner shall procure in relation to the Vessel owned by it:

- (a) that Vessel it shall not be used by or for the benefit of a Prohibited Person;
- (b) that Vessel shall not be used in trading in any manner contrary to Sanctions (or which could be contrary to Sanctions if Sanctions were binding on each Transaction Obligor); and
- (c) that Vessel shall not be traded in any manner which would trigger the operation of any sanctions limitation or exclusion clause (or similar) in the Insurances.

### **23.12 Trading in war zones**

In the event of hostilities in any part of the world (whether war is declared or not), each Owner shall 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 that Vessel's war risks insurers unless:

- (a) the prior written consent of the Security Agent acting on the instructions of the Majority Lenders has been given; and
- (b) that Owner has (at its expense) effected any special, additional or modified insurance cover which the Security Agent acting on the instructions of the Majority Lenders may require.

### **23.13 Monitoring**

- (a) Each Owner shall (or shall procure that any Charterer, the Approved Manager and the Approved Collateral Manager shall) allow the Security Agent (or its agents), at any time and from time to time, to access all information pertaining to the Vessel owned by it (including the movement of that Vessel) using any and all available means.
- (b) All costs incurred by the Security Agent (and any of its agents) under paragraph (a) of Clause 23.13 (*Monitoring*) above shall be for the account of the Lenders.

### **23.14 Provision of information**

Without prejudice to Clause 19.5 (*Information: miscellaneous*) each Owner shall in relation to the Vessel owned by it promptly provide the Facility Agent with any information which it requests regarding:

- (a) that Vessel, its employment, position and engagements;
- (b) that Vessel's Earnings and payments and amounts due to its master and crew;
- (c) any expenditure incurred, or likely to be incurred, in connection with the operation, maintenance or repair of that Vessel and any payments made by it in respect of that Vessel;
- (d) any towages and salvages; and
- (e) its compliance, the Approved Manager's and the Approved Collateral Manager's compliance and the compliance of that Vessel with the ISM Code and the ISPS Code,

and, upon the Facility Agent's request, each Owner shall promptly provide copies of class records, any inspection reports obtained for the Vessel owned by it, any current Charter

relating to that Vessel, any current guarantee of any such Charter, that Vessel's Safety Management Certificate and any relevant Document of Compliance.

### **23.15 Notification of certain events**

Each Owner shall, in relation to the Vessel owned by it, immediately notify the Facility Agent by fax, confirmed forthwith by letter, of:

- (a) any casualty 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 requisition of that Vessel for hire;
- (d) any requirement or recommendation made in relation to that Vessel by any insurer or classification society or by any competent authority which is not immediately complied with;
- (e) 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;
- (f) any unscheduled dry docking of that Vessel;
- (g) any Environmental Claim made against that Owner or in connection with that Vessel, or any Environmental Incident;
- (h) any claim for breach of the ISM Code or the ISPS Code being made against that Owner, an Approved Manager, an Approved Collateral Manager or otherwise in connection with that Vessel; or
- (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 Owner shall keep the Facility Agent advised in writing on a regular basis and in such detail as the Facility Agent shall require as to that Owner's, any such Approved Manager's, any such Approved Collateral Manager or any other person's response to any of those events or matters.

### **23.16 Restrictions on chartering, appointment of managers etc.**

No Owner shall, in relation to the Vessel owned by it:

- (a) enter into any time, voyage or consecutive voyage charter in respect of the Vessel other than a Permitted Charter, the Initial Charter and any Assignable Charter **Provided that** a Charterparty Assignment has been executed in respect of that Assignable Charter and the Facility Agent has received documents and other evidence of the type referred to in Clauses 1 and 2 of Part A of Schedule 2 in all respects satisfactory to the Facility Agent;
- (b) change in any material respect, cancel or terminate (or purport to so change, cancel or terminate), the Initial Charter, any Permitted Charter which has a duration of 12 months or more or any Charter Guarantee in respect of such a Permitted Charter or the Initial Charter;
- (c) change, cancel or terminate a Management Agreement;
- (d) appoint a manager of that Vessel other than an Approved Manager or the Approved Collateral Manager (as applicable);
- (e) de activate or lay up that Vessel; or

- (f) put that Vessel into the possession of any person for the purpose of work being done upon it 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 Security Agent and 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.

#### **23.17 Notice of Mortgage or Collateral Mortgage**

- (a) The Borrower shall keep each Mortgage registered against the relevant Borrower Vessel as a valid first preferred mortgage, carry on board the relevant Borrower Vessel a certified copy of that Mortgage and place and maintain in a conspicuous place in the navigation room and the master's cabin of that Borrower Vessel a framed printed notice stating that that Borrower Vessel is mortgaged by the Borrower to the Security Agent.
- (b) Each Collateral Guarantor shall keep the relevant Collateral Mortgage registered against the relevant Collateral Vessel as a valid second priority mortgage, carry on board the relevant Collateral Vessel a certified copy of that Collateral Mortgage and place and maintain in a conspicuous place in the navigation room and the master's cabin of that Collateral Vessel a framed printed notice stating that that Collateral Vessel is mortgaged by the Owner of that Collateral Vessel to the Security Agent.

#### **23.18 Sharing of Earnings**

No Owner shall enter into any agreement or arrangement for the sharing of any Earnings other than any profit sharing arrangements on arm's length terms.

#### **23.19 Nuclear materials**

No Owner shall permit the Vessel owned by it to carry any nuclear material or any nuclear waste.

#### **23.20 Notification of compliance**

Each Owner shall promptly provide the Facility Agent from time to time with evidence (in such form as the Facility Agent requires) that it is complying with this Clause 23 (*Vessel Undertakings*).

#### **23.21 Charterparty Assignment**

- (a) The Borrower shall enter into a Charterparty Assignment in respect of the Initial Charter and the assignment contemplated thereunder shall be notified to the Initial Charterer and any charter guarantor in accordance with the terms of that Charterparty Assignment and the Borrower shall use its commercially reasonable endeavours to obtain an acknowledgment of that Charterparty Assignment from the Initial Charterer and/or charter guarantor, and shall additionally deliver to the Facility Agent such other documents equivalent to those referred to at paragraphs 1.2, 1.3, 1.5 and 1.8 of Schedule 2, Part A as the Facility Agent may require.
- (b) Each Owner shall, in respect of the Vessel owned by it, promptly after its entry into any Assignable Charter, enter into a Charterparty Assignment in respect of that Assignable Charter and the assignment contemplated thereunder shall be notified to the relevant Charterer and any charter guarantor in accordance with the terms of such Charterparty Assignment and each Owner shall use its commercially reasonable endeavours to obtain an acknowledgment of that Charterparty Assignment from the relevant Charterer and/or charter guarantor, and shall additionally deliver to the Facility Agent such other documents equivalent to those referred to at paragraphs 1.2, 1.3, 1.5 and 1.8 of Schedule 2, Part A as the Facility Agent may require.

## **24 SECURITY COVER**

### **24.1 Minimum required security cover**

Clause 24.2 (*Provision of additional security; prepayment*) applies if the Facility Agent notifies the Borrower that:

- (a) the aggregate Market Value of the Vessels (after deducting, in the case of the Collateral Vessels, that part of the Market Value of those Vessels which results in compliance with the requirements of clause 24.1 of the Collateral Loan Agreement); and
- (b) the net realisable value of additional Security previously provided under this Clause 24.1 (*Minimum required security cover*),

is below, 135 per cent. of the Loan.

### **24.2 Provision of additional security; prepayment**

- (a) If the Facility Agent serves a notice on the Borrower under Clause 24.1 (*Minimum required security cover*), the Borrower or the Corporate Guarantor shall, on or before the date falling one Month after the date on which the Facility Agent's notice is served (the "**Prepayment Date**"), prepay such part of the Loan as shall eliminate the shortfall.
- (b) The Borrower or the Corporate Guarantor may, instead of making a prepayment as described in paragraph (a) above, provide, or ensure that a third party has provided, additional security which, in the opinion of the Facility Agent acting on the instructions of the Majority Lenders:
  - (i) has a net realisable value at least equal to the shortfall; and
  - (ii) is documented in such terms as the Facility Agent may approve or require,

before the Prepayment Date; and conditional upon such security being provided in such manner, it shall satisfy such prepayment obligation.

### **24.3 Value of additional vessel security**

The net realisable value of any additional security which is provided under Clause 24.2 (*Provision of additional security; prepayment*) and which consists of Security over a vessel shall be the Market Value of the vessel concerned after deducting the amount of any indebtedness (other than Secured Liabilities) which is secured by Security over that vessel.

### **24.4 Valuations binding**

Any valuation under this Clause 24 (*Security Cover*) shall be binding and conclusive as regards the Owners.

### **24.5 Provision of information**

- (a) Each Owner shall promptly provide the Facility Agent and any shipbroker acting under this Clause 24 (*Security Cover*) with any information which the Facility Agent or the shipbroker may request for the purposes of the valuation.
- (b) If an Owner fails to provide the information referred to in paragraph (a) above by the date specified in the request, the valuation may be made on any basis and assumptions which the shipbroker or the Facility Agent considers prudent.

## **24.6 Prepayment mechanism**

Any prepayment pursuant to Clause 24.2 (*Provision of additional security*; prepayment) shall be made in accordance with the relevant provisions of Clause 7 (*Prepayment and Cancellation*) and shall be treated as a voluntary prepayment pursuant to Clause 7.3 (*Voluntary prepayment of Loan*).

## **24.7 Provision of valuations**

- (a) For the purpose of the Drawdown and subject to paragraph (b) below, the Market Value of any Vessel shall be determined by reference to one valuation of that Vessel as given by an Approved Valuer selected and appointed by the Owners and addressed to the Facility Agent.
- (b) If requested by the Facility Agent in relation to paragraph (a) above, a second Approved Valuer shall be selected by the Facility Agent, appointed by the Borrowers and its valuation shall be addressed to the Facility Agent, and the Market Value of that Vessel shall be the arithmetic average of the two valuations.
- (c) If one such valuation in respect of a Vessel obtained pursuant to paragraphs (a) and (b) above differs by at least 10 per cent. from the lower valuation, then a third valuation for that Vessel shall be obtained from a third Approved Valuer selected by the Facility Agent, appointed by the Borrowers and such valuation shall be addressed to the Facility Agent and the Market Value of that Vessel shall be the arithmetic average of all three such valuations.
- (d) Subject to paragraph (f) below, the Facility Agent shall be entitled to test the security cover requirement under Clause 24.1 (*Minimum required security cover*) by reference to the Market Value of any Vessel as determined in accordance with paragraphs (a) to (c) above, quarterly during the Security Period.
- (e) Each of the valuations referred to at paragraphs (a), (b) and (c) above shall be obtained not more than 30 days before the relevant Drawdown Date, while each of the valuations referred to in paragraph (d) above shall be obtained not more than 30 days before the Test Date of the relevant quarter.
- (f) The Facility Agent may at any time after a Default has occurred and is continuing obtain valuations of the Vessel and any other vessel over which additional security has been created in accordance with Clause 24.2 (*Provision of additional security*; prepayment) from Approved Valuers to enable the Facility Agent to determine the Market Values of the Vessel and any other vessel.
- (g) The valuations referred to in paragraph (a), (b), (c),(f) shall be obtained at the cost and expense of the Borrower and the Borrower shall within three Business Days of demand by the Facility Agent pay to the Facility Agent all costs and expenses incurred by it in obtaining any such valuation.

## **25 ACCOUNTS AND APPLICATION OF EARNINGS**

### **25.1 Account bank**

Subject to Clause 25.9 (*Location of Accounts*), each Account must be held with the Account Bank.

### **25.2 Accounts**

- (a) The Borrower must operate each Account in accordance with this Clause 25 (*Accounts and Application of Earnings*) and the provisions of the Account Security.
- (b) Account Security must be provided in respect of any Account opened after the date of this Agreement.

### **25.3 Payments into the Time Deposit Account**

Upon opening the Time Deposit Account and the execution of Account Security in relation to such Account, the Borrower may, provided that there is no Event of Default which is continuing, transfer the Minimum Liquidity Amount from the Earnings Account to the Time Deposit Account.

### **25.4 Payments out of the Time Deposit Account**

(a) The Security Agent shall instruct the Account Bank to transfer any amount standing to the credit of the Time Deposit Account:

- (i) on expiry of the term of the deposit on the Time Deposit Account, at the Borrower's request, in accordance with the provisions of the Account Bank's Terms and Conditions; or
- (ii) at any time (subject to the payment of any break costs payable in accordance with the terms of the deposit), to meet the Borrower's prepayment obligations under any of Clauses 7.1 (*Illegality*) or 7.4 (*Mandatory prepayment on sale, arrest or Total Loss*),

**Provided that** in each case:

- (A) there is no Event of Default which is continuing; and
- (B) no breach of Clause 20.1 (*Minimum liquidity*) has occurred or will occur as a result of such transfer.

(b) Where no transfer can be made as a result of the proviso under paragraph (a) above, interest shall be payable on the amount then standing to the credit of the Time Deposit Account at the Account Bank's discretion and in accordance with market standard conditions at that time.

(c) In the event of any conflict between the provisions of the Terms and Conditions and this Agreement, this Agreement shall prevail.

### **25.5 Payment of Earnings**

The Borrower shall ensure that, subject only to the provisions of the General Assignments, all the Earnings are paid in to the Earnings Account.

### **25.6 Application of Earnings**

The Borrower shall transfer from the Earnings Account to the Facility Agent:

- (a) on each Repayment Date, the amount of the Repayment Instalment then due on the Repayment Date; and
- (b) on the last day of each Interest Period, the amount of interest then due on that date; and
- (c) on any day on which an amount is otherwise due from the Borrower under a Finance Document, an amount necessary to meet that due amount,

and the Borrower irrevocably authorizes and instructs:

- (i) the Account Bank to make those transfers in accordance with the instructions of the Facility Agent (copied to the Security Agent, who, as security taker under the Accounts Security, agrees for itself and on behalf of the other pledgees that such transfers may be made);



- (ii) the Facility Agent to apply the transferred amounts in payment of the relevant Repayment Instalment, interest amount or other amount due.

## **25.7 Shortfall in Earnings**

- (a) If the credit balance on the Earnings Account is insufficient to pay any relevant Repayment Instalment, the Borrower shall make up the amount of the insufficiency on demand from the Facility Agent.
- (b) The Borrower may not make up all or any part of the insufficiency from the Minimum Liquidity Amount.

## **25.8 Application of funds**

Until an Event of Default occurs, the Facility Agent shall on each Repayment Date and on each Interest Payment Date distribute to the Finance Parties in accordance with Clause 33.2 (*Distributions by the Facility Agent*) so much of the then balance on the Earnings Account as equals:

- (a) the Repayment Instalment due on that Repayment Date; and
  - (b) the amount of interest payable on that Interest Payment Date,
- in discharge of the Borrower's liability for that Repayment Instalment or that interest.

## **25.9 Location of Accounts**

The Borrower shall promptly:

- (a) comply with any requirement of the Facility Agent as to the location or relocation of the Accounts (or any of them); and
- (b) execute any documents which the Facility 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.

## **25.10 Miscellaneous Accounts provisions**

- (a) No Finance Party is responsible or liable to any Transaction Obligor for:
  - (i) any non-payment of any liability of a Transaction Obligor which could be paid out of moneys standing to the credit of the Earnings Account; or
  - (ii) any withdrawal wrongly made, if made in good faith.

## **26 EVENTS OF DEFAULT**

### **26.1 General**

Each of the events or circumstances set out in this Clause 26 (*Events of Default*) is an Event of Default except for Clause 26.18 (*Acceleration*) and Clause 26.19 (*Enforcement of security*).

### **26.2 Non-payment**

A Transaction Obligor does not pay on the due date any amount payable pursuant to a Finance Document at the place at and in the currency in which it is expressed to be payable unless:

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

(i) administrative or technical error; or

(ii) a Disruption Event; and

(b) payment is made within five Business Days of its due date.

### **26.3 Specific obligations**

A breach occurs of Clause 4.5 (*Waiver of conditions precedent*), Clause 20 (*Financial Covenants*), Clause 21.9 (*Title*), Clause 21.10 (*Negative pledge*), Clause 21.20 (*Unlawfulness, invalidity and ranking; Security imperilled*), Clause 22.2 (*Maintenance of obligatory insurances*), Clause 22.3 (*Terms of obligatory insurances*), Clause 22.5 (*Renewal of obligatory insurances*), Clause 23.9 (*Compliance with laws etc.*) in relation to Sanctions or Clause 24 (*Security Cover*).

### **26.4 Other obligations**

(a) A Transaction Obligor does not comply with any provision of the Finance Documents (other than those referred to in Clause 26.2 (*Non-payment*) and Clause 26.3 (*Specific obligations*)).

(b) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within fifteen days of the Facility Agent giving notice to the Borrower or (if earlier) any Transaction Obligor becoming aware of the failure to comply.

### **26.5 Misrepresentation**

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

### **26.6 Cross default**

(a) Any Financial Indebtedness of any Transaction Obligor is not paid when due nor within any originally applicable grace period.

(b) Any Financial Indebtedness of any Transaction Obligor 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) unless the relevant Transaction Obligor is contesting the declaration of an event of default or of the Financial Indebtedness becoming due and payable in good faith and on substantial grounds by appropriate proceedings and adequate reserves (in the reasonable opinion of the Facility Agent) have been set aside for its payment if such proceedings fail.

(c) Any commitment for any Financial Indebtedness of any Transaction Obligor is cancelled

or suspended by a creditor of that Transaction Obligor as a result of an event of default (however described).

(d) Any creditor of any Transaction Obligor becomes entitled to declare any Financial Indebtedness of that Transaction Obligor due and payable prior to its specified maturity as a result of an event of default (however described) unless the relevant Transaction Obligor is contesting the declaration of an event of default or of the Financial Indebtedness becoming due and payable in good faith and on substantial grounds by appropriate proceedings and adequate reserves (in the reasonable opinion of the Facility Agent) have been set aside for its payment if such proceedings fail.

(e) No Event of Default will occur under this Clause 26.6 (*Cross default*) in respect of a person other than an Owner if the aggregate amount of Financial Indebtedness or commitment for

Financial Indebtedness falling within paragraphs (a) to (d) above is less than \$10,000,000 (or, in each case, its equivalent in any other currency) in aggregate.

## **26.7 Insolvency**

- (a) A Transaction Obligor:
- (i) is unable or admits inability to pay its debts as they fall due;
  - (ii) is deemed to, or is declared to, be unable to pay its debts under applicable law; or
  - (iii) suspends or threatens to suspend making payments on any of its debts.
- (b) A moratorium is declared in respect of any indebtedness of any Transaction Obligor. If a moratorium occurs, the ending of the moratorium will not remedy any Event of Default caused by that moratorium.

## **26.8 Insolvency proceedings**

- (a) Any corporate action, legal proceedings or other procedure or step is taken in relation to:
- (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any Transaction Obligor;
  - (ii) a composition, compromise, assignment or arrangement with any creditor of any Transaction Obligor;
  - (iii) the appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of any Transaction Obligor or any of its assets; or
  - (iv) enforcement of any Security over any assets of any Transaction Obligor, 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 30 days of commencement.

## **26.9 Creditors' process**

Any expropriation, attachment, sequestration, distress or execution (or any analogous process in any jurisdiction) affects any asset or assets of an Obligor (other than an arrest or detention of the Vessel in which case paragraph (ii) of Clause 7.4 (*Mandatory prepayment on sale, arrest or Total Loss*) shall apply).

## **26.10 Ownership of the Corporate Guarantor and the Borrower**

A Change of Control has occurred, without the prior consent of the Majority Lenders, after the date of this Agreement.

## **26.11 Unlawfulness, invalidity and ranking**

- (a) It is or becomes unlawful for a Transaction Obligor to perform any of its obligations under the Finance Documents.
- (b) Any obligation of a Transaction Obligor under the Finance Documents is not or ceases to be legal, valid, binding or enforceable.

- (c) Any Finance Document ceases to be in full force and effect or to be continuing or is or purports to be determined or any Transaction Security 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 loses its priority to, any other Security unless by operation of law.

#### **26.12 Security imperilled; flag instability**

- (a) Any Security created or intended to be created by a Finance Document is in any way imperilled or in jeopardy.
- (b) The state of the Approved Flag of any Vessel is or becomes involved in hostilities or civil war or there is a seizure of power in such state by unconstitutional means, or any other event occurs in relation to a Vessel, the Mortgage, the Collateral Mortgage or the Approved Flag and in the reasonable opinion of the Facility Agent such event is likely to have a Material Adverse Effect unless the relevant Owner, within 30 days of the occurrence of such event (or such longer period as may be agreed by the Facility Agent acting with the authorisation of the Lenders) re-registers that Vessel on an alternative flag approved pursuant to Clause 23.2 (*Vessel's names and registration*) and subject to:
  - (i) that Vessel remaining subject to Security created by a first priority or preferred ship mortgage or second priority or preferred ship mortgage (as applicable) on the Vessel and, if appropriate, a first or, as the case may be, second priority deed of covenant collateral to that mortgage (or equivalent first or, as the case may be, second priority security) on substantially the same terms as the Mortgage or the Collateral Mortgage (as applicable) and if applicable, a Collateral Deed of Covenant and on such other terms and in such other form as the Facility Agent, acting with the authorisation of the Lenders, shall reasonably approve or require; and
  - (ii) the execution of such other documentation amending and supplementing the Finance Documents, as the Facility Agent, acting with the authorisation of the Lenders, shall reasonably approve or require.

#### **26.13 Cessation of business**

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

#### **26.14 Expropriation**

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

- (a) an arrest or detention of a Vessel (in which case paragraph (ii) of Clause 7.4 (*Mandatory prepayment on sale, arrest or Total Loss*) shall apply); or
- (b) any Requisition.

#### **26.15 Repudiation and rescission of agreements**

A Transaction Obligor (or any other relevant party) rescinds or purports to rescind or repudiates or purports to repudiate a Transaction Document or any of the Transaction Security or evidences an intention to rescind or repudiate a Transaction Document or any Transaction Security.

**26.16 Litigation**

Any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced or threatened, or any judgment or order of a court, arbitral tribunal or other tribunal or any order or sanction of any governmental or other regulatory body is made, in relation to any of the Transaction Documents or the transactions contemplated in any of the Transaction Documents or against any member of the Group or its assets which has or is reasonably likely to have a Material Adverse Effect.

**26.17 Material adverse change**

Any event or circumstance occurs which has or is reasonably likely to have a Material Adverse Effect.

**26.18 Acceleration**

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

- (a) cancel the Total Commitments, whereupon they shall immediately be cancelled;
- (b) declare that all or part of the Loan, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon it shall become immediately due and payable; and/or
- (c) declare that all or part of the Loan be payable on demand, whereupon it shall immediately become payable on demand by the Facility Agent acting on the instructions of the Majority Lenders,

and the Facility Agent may serve notices under paragraphs (a), (b) and (c) above simultaneously or on different dates and the Security Agent may take any action referred to in Clause 26.19 (*Enforcement of security*) if no such notice is served or simultaneously with or at any time after the service of any of such notice.

**26.19 Enforcement of security**

On and at any time after the occurrence of an Event of Default the Security Agent may, and shall if so directed by the Majority Lenders, take any action which, as a result of the Event of Default or any notice served under Clause 26.18 (*Acceleration*), the Security Agent is entitled to take under any Finance Document or any applicable law or regulation.

## SECTION 9

### CHANGES TO PARTIES

#### 27 CHANGES TO THE LENDERS

##### 27.1 Assignments and transfers by the Lenders

Subject to this Clause 27 (*Changes to the Lenders*), 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**”).

##### 27.2 Conditions of assignment or transfer

- (a) A notice to and the consent of the Borrower is required for an assignment or transfer by an Existing Lender, unless the assignment or transfer is:
  - (i) to another Lender or an Affiliate of a Lender;
  - (ii) if the Existing Lender is a fund, to a fund which is a Related Fund; or
  - (iii) made at a time when an Event of Default has occurred.
- (b) The consent of the Borrower to an assignment or transfer may not be unreasonably withheld or delayed. The Borrower will be deemed to have given its consent five Business Days after the Existing Lender has requested it unless consent is expressly refused by the Borrower within that time.
- (c) The consent of the Borrower to an assignment or transfer may not be withheld solely because the assignment or transfer may result in an increase to any amount payable under Clause 14.3 (*Mandatory Cost*).
- (d) The consent of the Facility Agent is required for an assignment or transfer by an Existing Lender, such consent not to be unreasonably withheld.
- (e) An assignment will only be effective on:
  - (i) receipt by the Facility Agent (whether in the Assignment Agreement or otherwise) of written confirmation from the New Lender (in form and substance satisfactory to the Facility Agent) that the New Lender will assume the same obligations to the other Creditor Parties as it would have been under if it were an Original Lender; and
  - (ii) performance by the Facility 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 Facility Agent shall promptly notify to the Existing Lender and the New Lender.
- (f) A transfer will only be effective if the procedure set out in Clause 27.5 (*Procedure for transfer*) is complied with.

- (g) 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 under that clause as incorporated by reference or in full in any other Finance Document 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. This paragraph (g) shall not apply in respect of an assignment or transfer made in the ordinary course of the primary syndication of the Facility.

- (h) Each New Lender, by executing the relevant Transfer Certificate or Assignment Agreement, confirms, for the avoidance of doubt, that:
- (A) the Facility 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; and
  - (B) it has received a copy of each of the Security Documents which are governed by German law and which are account pledges, is aware of the contents of such account pledges and expressly consents to the declarations of the Security Agent made on behalf of the New Lender (as future pledgee) in such account pledges.

### **27.3 Assignment or transfer fee**

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

### **27.4 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 Transaction Documents, the Transaction Security 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 Transaction Documents or any other documents; or
  - (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Transaction 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 and the Creditor 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 related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender or any other Finance Party in connection with any Transaction Document or the Transaction Security; and
  - (ii) will continue to make its own independent appraisal of the creditworthiness of each Transaction Obligor and its related entities throughout the Security Period.
- (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 27 (*Changes to the Lenders*); 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 Transaction Documents or otherwise.

## 27.5 Procedure for transfer

- (a) Subject to the conditions set out in Clause 27.2 (*Conditions of assignment or transfer*), a transfer is effected in accordance with paragraph (c) below when the Facility Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender. The Facility 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 this Agreement and delivered in accordance with this Agreement, execute that Transfer Certificate. Upon execution by the Facility Agent, the Security Agent shall also execute the Transfer Certificate.
- (b) The Facility 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 27.9 (*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 and in respect of the Transaction Security, each of the Transaction Obligors and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and in respect of the Transaction Security and their respective rights against one another under the Finance Documents and in respect of the Transaction Security 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 Facility Agent, the Security Agent, the Arranger, the New Lender and other Lenders shall acquire the same rights and assume the same obligations between themselves and in respect of the Transaction Security 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 Facility Agent, the Security Agent, the Arranger and the Existing Lenders 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”.

## 27.6 Procedure for assignment

- (a) Subject to the conditions set out in Clause 27.2 (*Conditions of assignment or transfer*) an assignment may be effected in accordance with paragraph (c) below when the Facility Agent executes an otherwise duly completed Assignment Agreement delivered to it by the Existing Lender and the New Lender. The Facility 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. Upon execution by the Facility Agent, the Security Agent shall also execute the Assignment Agreement.
- (b) The Facility 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 27.9 (*Pro rata interest settlement*), on the Transfer Date:
- (i) the Existing Lender will assign absolutely to the New Lender its rights under the Finance Documents and in respect of the Transaction Security expressed to be the subject of the assignment in the Assignment Agreement;
  - (ii) the Existing Lender will be released from the obligations (the “**Relevant Obligations**”) expressed to be the subject of the release in the Assignment Agreement (and any corresponding obligations by which it is bound in respect of the Transaction Security); and
  - (iii) the New Lender shall become a Party as a “Lender” and will be bound by obligations equivalent to the Relevant Obligations.
- (d) Lenders may utilise procedures other than those set out in this Clause 27.6 (*Procedure for assignment*) to assign their rights under the Finance Documents (but not, without the consent of the relevant Transaction Obligor or unless in accordance with Clause 27.5 (*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 27.2 (*Conditions of assignment or transfer*).

## 27.7 Copy of Transfer Certificate or Assignment Agreement to Borrower

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

## 27.8 Security over Lenders’ rights

In addition to the other rights provided to Lenders under this Clause 27 (*Changes to the Lenders*), 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) 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.

## **27.9 Pro rata interest settlement**

If the Facility 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 27.5 (*Procedure for transfer*) or any assignment pursuant to Clause 27.6 (*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 six Months, on the next of the dates which falls at six 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 27.9 (*Pro rata interest settlement*), have been payable to it on that date, but after deduction of the Accrued Amounts.
- (c) In this Clause 27.9 (*Pro rata interest settlement*) references to “Interest Period” shall be construed to include a reference to any other period for accrual of fees.

## **28 CHANGES TO THE TRANSACTION OBLIGORS**

### **28.1 Assignment or transfer by Transaction Obligors**

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

### **28.2 Release of security**

- (a) If a disposal of any asset subject to security created by a Security Document is made in the following circumstances:
- (i) the disposal is permitted by the terms of any Finance Document;
- (ii) all the Lenders agree to the disposal;

(iii) the disposal is being made at the request of the Security Agent in circumstances where any security created by the Security Documents has become enforceable; or

(iv) the disposal is being effected by enforcement of a Security Document,

the Security Agent may release the asset(s) being disposed of from any security over those assets created by a Security Document. However, the proceeds of any disposal (or an amount corresponding to them) must be applied in accordance with the requirements of the Finance Documents (if any).

(b) If the Security Agent is satisfied that a release is allowed under this Clause 28.2 (*Release of security*) (at the request and expense of the Borrower) each Finance Party must enter into any document and do all such other things which are reasonably required to achieve that release. Each other Finance Party irrevocably authorises the Security Agent to enter into any such document. Any release will not affect the obligations of any other Transaction Obligor under the Finance Documents.

## SECTION 10

### THE FINANCE PARTIES

#### 29 THE FACILITY AGENT, THE ARRANGER AND THE REFERENCE BANKS

##### 29.1 Appointment of the Facility Agent

- (a) Each of the Arranger and the Lenders appoints the Facility Agent to act as its agent under and in connection with the Finance Documents.
- (b) Each of the Arranger and the Lenders authorises the Facility Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Facility Agent under, or in connection with, the Finance Documents together with any other incidental rights, powers, authorities and discretions.

##### 29.2 Instructions

- (a) The Facility 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 Facility Agent in accordance with any instructions given to it by:
    - (A) all Lenders if the relevant Finance Document stipulates the matter is an all Lender decision; and
    - (B) 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 sub-paragraph (i) above (or, if this Agreement stipulates the matter is a decision for any other Finance Party or group of Finance Parties, in accordance with instructions given to it by that Finance Party or group of Finance Parties).
- (b) The Facility 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 Facility Agent may refrain from acting unless and until it receives any such instructions or clarification that it has requested.
- (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 Facility Agent by the Majority Lenders shall override any conflicting instructions given by any other Parties and will be binding on all Finance Parties.
- (d) Paragraph (a) above shall not apply:
  - (i) where a contrary indication appears in a Finance Document;
  - (ii) where a Finance Document requires the Facility Agent to act in a specified manner or to take a specified action;
  - (iii) in respect of any provision which protects the Facility Agent's own position in its personal capacity as opposed to its role of Facility Agent for the relevant Finance Parties.

- (e) If giving effect to instructions given by the Majority Lenders would in the Facility Agent's opinion have an effect equivalent to an amendment or waiver referred to in Clause 42 (*Amendments and Waivers*), the Facility Agent shall not act in accordance with those instructions unless consent to it so acting is obtained from each Party (other than the Facility 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 it has not received any instructions as to the exercise of that discretion the Facility Agent shall do so having regard to the interests of all the Finance Parties.
- (g) The Facility Agent 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 29.2 (*Instructions*), in the absence of instructions, the Facility Agent shall not be obliged to take any action (or refrain from taking action) even if it considers acting or not acting to be in the best interests of the Finance Parties. The Facility Agent may act (or refrain from acting) as it considers to be in the best interest of the Finance Parties.
- (i) The Facility Agent is not 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 Transaction Security or Security Documents.

### **29.3 Duties of the Facility Agent**

- (a) The Facility Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
- (b) Subject to paragraph (c) below, the Facility Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Facility Agent for that Party by any other Party.
- (c) Without prejudice to Clause 27.7 (*Copy of Transfer Certificate or Assignment Agreement to Borrower*), paragraph (b) above shall not apply to any Transfer Certificate or any Assignment Agreement.
- (d) Except where a Finance Document specifically provides otherwise, the Facility Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (e) If the Facility 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 Facility Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than the Facility Agent, the Arranger or the Security Agent) under this Agreement, it shall promptly notify the other Finance Parties.
- (g) The Facility 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).

#### **29.4 Role of the Arranger**

Except as specifically provided in the Finance Documents, the Arranger has no obligations of any kind to any other Party under or in connection with any Finance Document.

#### **29.5 No fiduciary duties**

- (a) Nothing in any Finance Document constitutes the Facility Agent or the Arranger as a trustee or fiduciary of any other person.
- (b) Neither the Facility Agent nor the Arranger shall be bound to account to other Finance Party for any sum or the profit element of any sum received by it for its own account.

#### **29.6 Application of receipts**

Except as expressly stated to the contrary in any Finance Document, any moneys which the Facility Agent receives or recovers in its capacity as Facility Agent shall be applied by the Facility Agent in accordance with Clause 33.5 (*Application of receipts; partial payments*).

#### **29.7 Business with the Group**

The Facility Agent and the Arranger may accept deposits from, lend money to, and generally engage in any kind of banking or other business with, any member of the Group.

#### **29.8 Rights and discretions**

- (a) The Facility Agent may:
  - (i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
  - (ii) assume that:
    - (A) any instructions received by it from the Majority Lenders, any Finance Parties or any group of Finance Parties are duly given in accordance with the terms of the Finance Documents; and
    - (B) unless it has received notice of revocation, that those instructions have not been revoked; and
  - (iii) rely on a certificate from any person:
    - (A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
    - (B) to the effect that such person approves of any particular dealing, transaction, step, action or thing, as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.
- (b) The Facility Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Finance Parties) that:
  - (i) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 26.2 (*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 the Borrower (other than a Drawdown Request or a Selection Notice) is made on behalf of and with the consent and knowledge of all the Transaction Obligors.
- (c) The Facility 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, the Facility Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Facility Agent (and so separate from any lawyers instructed by the Lenders) if the Facility Agent in its reasonable opinion deems this to be desirable.
- (e) The Facility 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 Facility Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- (f) The Facility 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 Facility Agent's gross negligence or wilful misconduct.
- (g) Unless a Finance Document expressly provides otherwise the Facility Agent may disclose to any other Party any information it reasonably believes it has received as agent under the Finance Documents.
- (h) Notwithstanding any other provision of any Finance Document to the contrary, neither the Facility Agent nor the Arranger is obliged to do or omit to do anything if it would or might, in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
- (i) Notwithstanding any provision of any Finance Document to the contrary, the Facility Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

## **29.9 Responsibility for documentation**

Neither the Facility Agent nor the Arranger is responsible or liable for:

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Facility Agent, the Security Agent, the Arranger, a Transaction Obligor or any other person in, or in connection with, any Transaction Document or the transactions contemplated in the Transaction Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document; or
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Transaction 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 Transaction Document or the Security Property; or

- (c) any determination as to whether any information provided or to be provided to any Finance Party or Creditor 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.

**29.10 No duty to monitor**

The Facility Agent shall not be bound to enquire:

- (a) whether or not any Default has occurred;
- (b) as to the performance, default or any breach by any Transaction Obligor of its obligations under any Transaction Document; or
- (c) whether any other event specified in any Transaction Document has occurred.

**29.11 Exclusion of liability**

- (a) Without limiting paragraph (b) below (and without prejudice to paragraph (e) of Clause 33.11 (*Disruption to Payment Systems etc.*) or any other provision of any Finance Document excluding or limiting the liability of the Facility Agent), the Facility Agent will not be liable for:

- (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Transaction 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 Transaction 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 Transaction Document or the Security Property; or
- (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:
  - (A) any act, event or circumstance not reasonably within its control; or
  - (B) the general risks of investment in, or the holding of assets in, any jurisdiction,  
including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event); breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.

- (b) No Party other than the Facility Agent may take any proceedings against any officer, employee or agent of the Facility Agent in respect of any claim it might have against the Facility Agent or in respect of any act or omission of any kind by that officer, employee or



agent in relation to any Transaction Document or any Security Property and any officer, employee or agent of the Facility Agent may rely on this Clause subject to Clause 1.5 (*Third party rights*) and the provisions of the Third Parties Act.

- (c) The Facility Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Facility Agent if the Facility Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Facility Agent for that purpose.
- (d) Nothing in this Agreement shall oblige the Facility Agent or the Arranger to carry out:
  - (i) any “know your customer” or other checks in relation to any person; or
  - (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Finance Party,

on behalf of any Finance Party and each Finance Party confirms to the Facility Agent and the Arranger that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Facility Agent or the Arranger.

- (e) Without prejudice to any provision of any Finance Document excluding or limiting the Facility Agent’s liability, any liability of the Facility Agent arising under or in connection with any Transaction 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 Facility Agent or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Facility Agent at any time which increase the amount of that loss. In no event shall the Facility Agent be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Facility Agent has been advised of the possibility of such loss or damages.

#### **29.12 Lenders’ indemnity to the Facility 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 Facility Agent, within three Business Days of demand, against any cost, loss or liability incurred by the Facility Agent (otherwise than by reason of the Facility Agent’s gross negligence or wilful misconduct) (or, in the case of any cost, loss or liability pursuant to Clause 33.11 (*Disruption to Payment Systems etc.*) notwithstanding the Facility Agent’s negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Facility Agent) in acting as Facility Agent under the Finance Documents (unless the Facility Agent has been reimbursed by a Transaction Obligor pursuant to a Finance Document).
- (b) Subject to paragraph (c) below, the Borrower shall immediately on demand reimburse any Lender for any payment that Lender makes to the Facility 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 Facility Agent to an Obligor.

#### **29.13 Resignation of the Facility Agent**

- (a) The Facility Agent may resign and appoint one of its Affiliates as successor by giving notice to the other Finance Parties and the Borrower.

- (b) Alternatively, the Facility Agent may resign by giving 30 days' notice to the other Finance Parties and the Borrower, in which case the Majority Lenders may appoint a successor Facility Agent.
- (c) If the Majority Lenders have not appointed a successor Facility Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the retiring Facility Agent may appoint a successor Facility Agent.
- (d) If the Facility Agent wishes to resign because (acting reasonably) it has concluded that it is no longer appropriate for it to remain as agent and the Facility Agent is entitled to appoint a successor Facility Agent under paragraph (c) above, the Facility Agent may (if it concludes (acting reasonably) that it is necessary to do so in order to persuade the proposed successor Facility Agent to become a party to this Agreement as Facility Agent) agree with the proposed successor Facility Agent amendments to this Clause 29 (*The Facility Agent, the Arranger and the Reference Banks*) and any other term of this Agreement dealing with the rights or obligations of the Facility Agent consistent with then current market practice for the appointment and protection of corporate trustees together with any reasonable amendments to the agency fee payable under this Agreement which are consistent with the successor Facility Agent's normal fee rates and those amendments will bind the Parties.
- (e) The retiring Facility Agent shall , at its own cost, make available to the successor Facility Agent such documents and records and provide such assistance as the successor Facility Agent may reasonably request for the purposes of performing its functions as Facility Agent under the Finance Documents. The Borrower shall, within three Business Days of demand, reimburse the retiring Facility Agent 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.
- (f) The Facility Agent's resignation notice shall only take effect upon the appointment of a successor.
- (g) Upon the appointment of a successor, the retiring Facility Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (e) above) but shall remain entitled to the benefit of Clause 14.4 (*Indemnity to the Facility Agent*) and this Clause 29 (*The Facility Agent, the Arranger and the Reference Banks*) and any other provisions of a Finance Document which are expressed to limit or exclude its liability (or to indemnify it) in acting as Facility Agent. Any fees for the account of the retiring Facility Agent shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- (h) The Majority Lenders may, by notice to the Facility Agent, require it to resign in accordance with paragraph (b) above. In this event, the Facility Agent shall resign in accordance with paragraph (b) above but the cost referred to in paragraph (e) above shall be for the account of the Borrower.
- (i) The consent of the Borrower (or any other Transaction Obligor) is not required for an assignment or transfer of rights and/or obligations by the Facility Agent.
- (j) The Facility Agent shall resign in accordance with paragraph (b) above (and, to the extent applicable, shall use reasonable endeavours to appoint a successor Facility Agent pursuant to paragraph (c) above) if on or after the date which is three months before the earliest FATCA Application Date relating to any payment to the Facility Agent under the Finance Documents, either:
  - (i) the Facility Agent fails to respond to a request under Clause 12.7 (*FATCA Information*) and a Lender reasonably believes that the Facility 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 Facility Agent pursuant to Clause 12.7 (*FATCA Information*) indicates that the Facility Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or
- (iii) the Facility Agent notifies the Borrower and the Lenders that the Facility 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) a Lender reasonably believes that a Party will be required to make a FATCA Deduction that would not be required if the Facility Agent were a FATCA Exempt Party, and that Lender, by notice to the Facility Agent, requires it to resign.

#### **29.14 Confidentiality**

- (a) In acting as Facility Agent for the Finance Parties, the Facility Agent 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 a division or department of the Facility Agent other than the division or department responsible for complying with the obligations assumed by it under the Finance Documents, that information may be treated as confidential to that division or department, and the Facility Agent shall not be deemed to have notice of it nor shall it be obliged to disclose such information to any Party.
- (c) Notwithstanding any other provision of any Finance Document to the contrary, neither the Facility Agent nor the Arranger 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.

#### **29.15 Relationship with the other Finance Parties**

- (a) Subject to Clause 27.9 (*Pro rata interest settlement*), the Facility Agent may treat the person shown in its records as Lender at the opening of business (in the place of the Facility 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 Business Days' prior notice from that Lender to the contrary in accordance with the terms of this Agreement.

- (b) Each Finance Party shall supply the Facility Agent with any information that the Security Agent may reasonably specify (through the Facility Agent) as being necessary or desirable to enable the Security Agent to perform its functions as Security Agent. Each Finance Party shall deal with the Security Agent exclusively through the Facility Agent and shall not deal directly with the Security Agent.
- (c) Any Lender may by notice to the Facility 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, fax number and (where communication by electronic mail or other electronic means is permitted under Clause 36.5 (*Electronic communication*) electronic mail address and/or any other information required to enable the transmission 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, fax number, electronic mail address (or such other information), department and officer by that Lender for the purposes of Clause 36.2 (*Addresses*) and sub-paragraph (ii) of paragraph (a) of Clause 36.5 (*Electronic communication*) and the Facility 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.

#### **29.16 Credit appraisal by the Finance Parties**

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

#### **29.17 Facility Agent's management time**

Any amount payable to the Facility Agent under Clause 14.4 (*Indemnity to the Facility Agent*), Clause 16 (*Costs and Expenses*) and Clause 29.12 (*Lenders' indemnity to the Facility Agent*) shall include the cost of utilising the Facility Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Facility Agent may notify to the Borrower and the other Finance Parties, and is in addition to any fee paid or payable to the Facility Agent under Clause 11 (*Fees*).]

#### **29.18 Deduction from amounts payable by the Facility Agent**

If any Party owes an amount to the Facility Agent under the Finance Documents, the Facility Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Facility 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.

#### **29.19 Reliance and engagement letters**

Each Creditor Party confirms that each of the Arranger and the Facility Agent has authority to accept on its behalf (and ratifies the acceptance on its behalf of any letters or reports already accepted by the Arranger or the Facility Agent) the terms of any reliance letter or engagement letters or any reports or letters provided by accountants, auditors or providers of due diligence reports in connection with the Finance Documents or the transactions contemplated in the Finance Documents and to bind it in respect of those, reports or letters and to sign such letters on its behalf and further confirms that it accepts the terms and qualifications set out in such letters.]

## 29.20 Full freedom to enter into transactions

Without prejudice to Clause 29.7 (*Business with the Group*) or any other provision of a Finance Document and notwithstanding any rule of law or equity to the contrary, the Facility Agent shall be absolutely entitled:

- (a) to enter into and arrange banking, derivative, investment and/or other transactions of every kind with or affecting any Transaction Obligor or any person who is party to, or referred to in, a Finance Document (including, but not limited to, any interest or currency swap or other transaction, whether related to this Agreement or not, and acting as syndicate agent and/or security agent for, and/or participating in, other facilities to such Transaction Obligor or any person who is party to, or referred to in, a Finance Document);
- (b) to deal in and enter into and arrange transactions relating to:
  - (i) any securities issued or to be issued by any Transaction Obligor or any other person; or
  - (ii) any options or other derivatives in connection with such securities; and
- (c) to provide advice or other services to the Borrower or any person who is a party to, or referred to in, a Finance Document,

and, in particular, the Facility Agent shall be absolutely entitled, in proposing, evaluating, negotiating, entering into and arranging all such transactions and in connection with all other matters covered by paragraphs (a), (b) and (c) above, to use (subject only to insider dealing legislation) any information or opportunity, howsoever acquired by it, to pursue its own interests exclusively, to refrain from disclosing such dealings, transactions or other matters or any information acquired in connection with them and to retain for its sole benefit all profits and benefits derived from the dealings transactions or other matters.

## 29.21 Capital Markets

- (a) For the period between the date of this Agreement and until the Maturity Date should the Borrower or the Corporate Guarantor initiate, engage in, or otherwise enter into any public offering or private placement of any equity or debt securities or a combination thereof, or alternatively should the Borrower or the Corporate Guarantor pursue a structured financing not limited to asset backed securities, (collectively the "**Covered Transactions**"), then Corporate Guarantor shall use best commercial endeavours for the Facility Agent or any of its affiliates to have the right, but not the obligation, to be retained by the Corporate Guarantor as a lead underwriter, co-manager, placement agent, or similar role as the case may be, in connection with such Covered Transactions.
- (b) The role of the Facility Agent (or its affiliate as applicable) in such Covered Transactions will be subject to an appropriate underwriting or placement agreement based on market terms and conditions mutually agreeable to the Facility Agent (or its affiliate as applicable) and the Corporate Guarantor, and the Facility Agent (or its affiliate as applicable) shall be entitled to obtain customary fees in connection with such role, which shall be derived on the basis of the transaction economics paid on a per transaction basis.

## **29.22 Role of Reference Banks**

- (a) No Reference Bank is under any obligation to provide a quotation or any other information to the Facility Agent.
- (b) No Reference Bank will be liable for any action taken by it under or in connection with any Finance Document, or for any Reference Bank Quotation, unless directly caused by its gross negligence or wilful misconduct.
- (c) No Party (other than the relevant Reference Bank) may take any proceedings against any officer, employee or agent of any Reference Bank in respect of any claim it might have against that Reference Bank or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document, or to any Reference Bank Quotation, and any officer, employee or agent of each Reference Bank may rely on this Clause 29.22 (*Role of Reference Banks*), subject to Clause 1.5 (*Third party rights*) and the provisions of the Third Parties Act.

## **29.23 Third Party Reference Banks**

A Reference Bank which is not a Party may rely on Clause 29.22 (*Role of Reference Banks*), Clause 42.3 (*Other exceptions*) and Clause 44 (*Confidentiality of Funding Rates and Reference Bank Quotations*) subject to Clause 1.5 (*Third party rights*) and the provisions of the Third Parties Act.

## **30 THE SECURITY AGENT**

### **30.1 Trust**

- (a) The Security Agent declares that it holds the Security Property on trust for the Creditor Parties on the terms contained in this Agreement and shall deal with the Security Property in accordance with this Clause 30 (*The Security Agent*) and the other provisions of the Finance Documents.
- (b) Each other Finance Party authorises the Security Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Security Agent under, or in connection with, the Finance Documents together with any other incidental rights, powers, authorities and discretions.

### **30.2 Parallel Debt (Covenant to pay the Security Agent)**

- (a) Each Obligor irrevocably and unconditionally undertakes to pay to the Security Agent its Parallel Debt which shall be amounts equal to, and in the currency or currencies of, its Corresponding Debt.
- (b) The Parallel Debt of an 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 the purposes of this Clause 30.2 (*Parallel Debt (Covenant to pay the Security Agent)*), 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 an 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 an Obligor shall be:

(A) decreased to the extent that its Parallel Debt has been irrevocably and unconditionally paid or discharged; and

(B) increased to the extent that its Parallel Debt has increased,

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

(e) All amounts received or recovered by the Security Agent in connection with this Clause 30.2 (*Parallel Debt (Covenant to pay the Security Agent)*) to the extent permitted by applicable law, shall be applied in accordance with Clause 33.5 (*Application of receipts; partial payments*).

(f) This Clause 30.2 (*Parallel Debt (Covenant to pay the Security Agent)*) shall apply, with any necessary modifications, to each Finance Document.

### **30.3 Enforcement through Security Agent only**

The Creditor 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.

### **30.4 Instructions**

(a) The Security Agent shall:

(i) unless a contrary indication appears in a Finance Document, exercise or refrain from exercising any right, power, authority or discretion vested in it as Security Agent in accordance with any instructions given to it by:

(A) all Lenders (or the Facility Agent on their behalf) if the relevant Finance Document stipulates the matter is an all Lender decision; and

(B) in all other cases, the Majority Lenders (or the Facility Agent on their behalf); and

(ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with sub-paragraph (i) above (or if this Agreement stipulates the matter is a decision for any other Finance Party or group of Finance Parties, in accordance with instructions given to it by that Finance Party or group of Finance Parties).

(b) The Security Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Lenders (or the Facility Agent on their behalf) (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 Security Agent may refrain from acting unless and until it receives any such instructions or clarification that it has requested.

- (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 Security Agent by the Majority Lenders shall override any conflicting instructions given by any other Parties and will be binding on all Finance Parties.
- (d) Paragraph (a) above shall not apply:
  - (i) where a contrary indication appears in a Finance Document;
  - (ii) where a Finance Document requires the Security Agent to act in a specified manner or to take a specified action;
  - (iii) in respect of any provision which protects the Security Agent's own position in its personal capacity as opposed to its role of Security Agent for the relevant Creditor Parties.
  - (iv) in respect of the exercise of the Security Agent's discretion to exercise a right, power or authority under any of:
    - (A) Clause 30.28 (*Application of receipts upon enforcement*);
    - (B) Clause 30.29 (*Permitted Deductions*); and
    - (C) Clause 30.30 (*Prospective liabilities*).
- (e) If giving effect to instructions given by the Majority Lenders would in the Security Agent's opinion have an effect equivalent to an amendment or waiver referred to in Clause 42 (*Amendments and Waivers*), the Security Agent shall not act in accordance with those instructions unless consent to it so acting is obtained from each Party (other than the 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 sub-paragraph (iv) of paragraph (d) above,the Security Agent shall do so having regard to the interests of all the Creditor Parties.
- (g) The Security Agent 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 30.4 (*Instructions*), in the absence of instructions, the Security Agent may (but shall not be obliged to) take such action in the exercise of its powers and duties under the Finance Documents as it considers in its discretion to be appropriate.



- (i) The Security Agent is not 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 Transaction Security or Security Documents.

### **30.5 Duties of the Security Agent**

- (a) The Security Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
- (b) The Security Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Security Agent for that Party by any other Party.
- (c) Except where a Finance Document specifically provides otherwise, the Security Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (d) If 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.
- (e) 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).

### **30.6 No fiduciary duties**

- (a) Nothing in any Finance Document constitutes the Security Agent as an agent, trustee or fiduciary of any Transaction Obligor.
- (b) The Security Agent shall not be bound to account to any other Party for any sum or the profit element of any sum received by it for its own account.

### **30.7 Business with the Group**

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

### **30.8 Rights and discretions**

- (a) 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:
    - (A) 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;
    - (B) unless it has received notice of revocation, that those instructions have not been revoked; and
    - (C) if it receives any instructions to act in relation to the Transaction Security, that all applicable conditions under the Finance Documents for so acting have been satisfied; and

- (iii) rely on a certificate from any person:
  - (A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
  - (B) to the effect that such person approves of any particular dealing, transaction, step, action or thing,  
as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.
- (b) The Security Agent shall be entitled to carry out all dealings with the other Finance Parties through the Facility Agent and may give to the Facility Agent any notice or other communication required to be given by the Security Agent to any Finance Party.
- (c) The Security Agent may assume (unless it has received notice to the contrary in its capacity as security agent for the Creditor Parties) that:
  - (i) no Default has occurred;
  - (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 the Borrower (other than a Drawdown Request or a Selection Notice) is made on behalf of and with the consent and knowledge of all the Transaction Obligors.
- (d) 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.
- (e) Without prejudice to the generality of paragraph (d) above or paragraph (f) below, the Security Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Security Agent (and so separate from any lawyers instructed by the Facility Agent or the Lenders) if the Security Agent in its reasonable opinion deems this to be desirable.
- (f) 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 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.
- (g) 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 Security Agent's gross negligence or wilful misconduct.
- (h) Unless a Finance Document expressly provides otherwise the Security Agent may disclose to any other Party any information it reasonably believes it has received as security agent under the Finance Documents.
- (i) Notwithstanding any other provision of any Finance Document to the contrary, the Security Agent is not 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.

- (j) Notwithstanding any provision of any Finance Document to the contrary, the Security Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

### **30.9 Responsibility for documentation**

None of the Security Agent, any Receiver or Delegate is responsible or liable for:

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Facility Agent, the Security Agent, the Arranger, a Transaction Obligor or any other person in, or in connection with, any Transaction Document or the transactions contemplated in the Transaction Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document; or
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Transaction 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 Transaction Document or the Security Property; or
- (c) any determination as to whether any information provided or to be provided to any Creditor 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.

### **30.10 No duty to monitor**

The Security Agent shall not be bound to enquire:

- (a) whether or not any Default has occurred;
- (b) as to the performance, default or any breach by any Transaction Obligor of its obligations under any Transaction Document; or
- (c) whether any other event specified in any Transaction Document has occurred.

### **30.11 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 Security Agent or any Receiver or Delegate), none of the Security Agent nor any Receiver or Delegate will be liable for:
  - (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Transaction 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 Transaction 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 Transaction Document or the Security Property; or

- (iii) any shortfall which arises on the enforcement or realisation of the Security Property; or
- (iv) without prejudice to the generality of sub-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:
  - (A) any act, event or circumstance not reasonably within its control; or
  - (B) the general risks of investment in, or the holding of assets in, any jurisdiction,including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event); breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.

(b) No Party other than the Security Agent, that Receiver or that Delegate (as applicable) may take any proceedings against any officer, employee or agent of the Security Agent, a Receiver or a Delegate in respect of any claim it might have against 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 Transaction Document or any Security Property and any officer, employee or agent of the Security Agent, a Receiver or a Delegate may rely on this Clause subject to Clause 1.5 (*Third party rights*) and the provisions of the Third Parties Act.

(c) The Security Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Security Agent if the Security Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Security Agent for that purpose.

(d) Nothing in this Agreement shall oblige 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 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 Security Agent.

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

### **30.12 Lenders' indemnity to the 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 Security Agent and every Receiver and every Delegate, within three Business Days of demand, against any cost, loss or liability incurred by any of them (otherwise than by reason of the Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct) in acting as Security Agent, Receiver or Delegate under the Finance Documents (unless the Security Agent, Receiver or Delegate has been reimbursed by a Transaction Obligor pursuant to a Finance Document).
- (b) Subject to paragraph (c) below, the Borrower shall immediately on demand reimburse any Lender for any payment that Lender makes to 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 Security Agent to an Obligor.

### **30.13 Resignation of the Security Agent**

- (a) The Security Agent may resign and appoint one of its Affiliates as successor by giving notice to the other Finance Parties and the Borrower.
- (b) Alternatively, the Security Agent may resign by giving 30 days' notice to the other Finance Parties and the Borrower, in which case the Majority Lenders may appoint a successor Security Agent.
- (c) If the Majority Lenders have not appointed a successor Security Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the retiring Security Agent may appoint a successor Security Agent.
- (d) The retiring Security Agent shall, at its own cost, make available to the successor Security Agent such documents and records and provide such assistance as the successor Security Agent may reasonably request for the purposes of performing its functions as Security Agent under the Finance Documents. The Borrower shall, within three Business Days of demand, reimburse the retiring Security Agent 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 Security Agent's resignation notice shall only take effect upon:
  - (i) the appointment of a successor; and
  - (ii) the transfer, by way of a document expressed as a deed, of all the Security Property to that successor.
- (f) Upon the appointment of a successor, the retiring Security Agent shall be discharged, by way of a document executed as a deed, from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (b) of Clause 30.25 (*Winding up of trust*) and paragraph (d) above) but shall remain entitled to the benefit of Clause 14.5 (*Indemnity to the Security Agent*) and this Clause 30 (*The Security Agent*) and any other provisions of a Finance Document which are expressed to limit or exclude its liability (or to indemnify it) in acting as Security Agent. Any fees for the account of the retiring Security Agent shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.

- (g) The Majority Lenders may, by notice to the Security Agent, require it to resign in accordance with paragraph (b) above. In this event, the Security Agent shall resign in accordance with paragraph (b) above but the cost referred to in paragraph (d) above shall be for the account of the Borrower.
- (h) The consent of the Borrower (or any other Transaction Obligor) is not required for an assignment or transfer of rights and/or obligations by the Security Agent.

### **30.14 Confidentiality**

- (a) In acting as Security Agent for the Finance Parties, the Security Agent shall be regarded as acting through its trustee division which shall be treated as a separate entity from any other of its divisions or departments.
- (b) If information is received by a division or department of the Security Agent other than the division or department responsible for complying with the obligations assumed by it under the Finance Documents, that information may be treated as confidential to that division or department, and the Security Agent shall not be deemed to have notice of it nor shall it be obliged to disclose such information to any Party.
- (c) Notwithstanding any other provision of any Finance Document to the contrary, the Security Agent is not 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.

### **30.15 Credit appraisal by the Finance Parties**

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

### **30.16 Security Agent's management time**

- (a) Any amount payable to the Security Agent under Clause 14.5 (*Indemnity to the Security Agent*), Clause 16 (*Costs and Expenses*) and Clause 30.12 (*Lenders' indemnity to the Security Agent*) shall include the cost of utilising the Security Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Security Agent may notify to the Borrower and the other Finance Parties, and is in addition to any fee paid or payable to the 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 Borrower agrees 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 Borrower agreeing that it is otherwise appropriate in the circumstances,
- the Borrower shall pay to the Security Agent any additional remuneration (together with any applicable VAT) that may be agreed between them or determined pursuant to paragraph (c) below.
- (c) If the Security Agent and the Borrower 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 Borrower 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 Borrower) and the determination of any investment bank shall be final and binding upon the Parties.

### **30.17 Reliance and engagement letters**

Each Creditor Party confirms that the Security Agent has authority to accept on its behalf (and ratifies the acceptance on its behalf of any letters or reports already accepted by the Security Agent) the terms of any reliance letter or engagement letters or any reports or letters provided by accountants, auditors or providers of due diligence reports in connection with the Finance Documents or the transactions contemplated in the Finance Documents and to bind it in respect of those, reports or letters and to sign such letters on its behalf and further confirms that it accepts the terms and qualifications set out in such letters.

### **30.18 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 Assets;
- (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 Assets 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.

### **30.19 Insurance by Security Agent**

- (a) The Security Agent shall not be obliged:
  - (i) to insure any of the Security Assets;
  - (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 14 days after receipt of that request.

### **30.20 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.

### **30.21 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 Creditor 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.

### **30.22 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 Creditor Parties; or



(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 Borrower 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.

### **30.23 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 Assets and shall not be liable for or bound to require any Transaction Obligor to remedy any defect in its right or title.

### **30.24 Releases**

Upon a disposal of any of the Security Assets pursuant to the enforcement of the Transaction Security by a Receiver, a Delegate or the Security Agent, the Security Agent is irrevocably authorised (at the cost of the Obligors and without any consent, sanction, authority or further confirmation from any other Creditor Party) to release, without recourse or warranty, that property from the Transaction Security and to execute any release of the Transaction Security or other claim over that asset and to issue any certificates of non-crystallisation of floating charges that may be required or desirable.

### **30.25 Winding up of trust**

If the Security Agent, with the approval of the Facility 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 Creditor 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 30.13 (*Resignation of the Security Agent*) shall release, without recourse or warranty, all of its rights under each Security Document.

### **30.26 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.

### **30.27 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 and the other Finance Documents. Where there are any inconsistencies between (i) the Trustee Acts 1925 and 2000 and (ii) the provisions of this Agreement and any other Finance Document, the provisions of this Agreement and any other Finance Document 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 and any other Finance Document shall constitute a restriction or exclusion for the purposes of the Trustee Act 2000.

### **30.28 Application of receipts upon enforcement**

All amounts from time to time received or recovered by the Security Agent pursuant to the terms of any Finance Document, under Clause 30.2 (*Parallel Debt (Covenant to pay the Security Agent)*) or in connection with the realisation or enforcement of all or any part of the Security Property (for the purposes of this Clause 30 (*The Security Agent*), the "**Recoveries**") shall be held by the Security Agent on trust to apply them at any time as the Security Agent (in its discretion) sees fit, to the extent permitted by applicable law (and subject to the remaining provisions of this Clause 30 (*The Security Agent*)), in the following order of priority:

- (a) in discharging any sums owing to the Security Agent (in its capacity as such) other than pursuant to Clause 30.2 (*Parallel Debt (Covenant to pay the Security Agent)*) or any Receiver or Delegate;
- (b) in payment or distribution to the Facility Agent, on its behalf and on behalf of the other Creditor Parties, for application towards the discharge of all sums due and payable by any Transaction Obligor under any of the Finance Documents in accordance with Clause 33.5 (*Application of receipts; partial payments*);
- (c) if none of the Transaction Obligors is under any further actual or contingent liability under any Finance Document, in payment or distribution to any person to whom the Security Agent is obliged to pay or distribute in priority to any Transaction Obligor; and
- (d) the balance, if any, in payment or distribution to the relevant Transaction Obligor.

### **30.29 Permitted Deductions**

- (a) The Security Agent may, in its discretion:
  - (i) 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
  - (ii) 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 sub-paragraph (i) of paragraph (a) 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.

### **30.30 Prospective liabilities**

Following acceleration, the Security Agent may, in its discretion, or at the request of the Facility 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 (the interest being credited to the relevant account) for later payment to the Facility Agent for application in accordance with Clause 33.5 (*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 Facility Agent, reasonably considers, in each case, might become due or owing at any time in the future.

### **30.31 Investment of proceeds**

Prior to the payment of the proceeds of the Recoveries to the Facility Agent for application in accordance with Clause 33.5 (*Application of receipts; partial payments*) 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 payment from time to time of those moneys in the Security Agent's discretion in accordance with the provisions of this Clause 30.31 (*Investment of proceeds*).

### **30.32 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.

### **30.33 Good discharge**

- (a) Any payment to be made in respect of the Secured Liabilities by the Security Agent may be made to the Facility Agent on behalf of the Creditor 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 Facility Agent under paragraph (a) above in the same currency as that in which the obligations and liabilities owing to the relevant Finance Party are denominated.

### **30.34 Amounts received by Obligors**

If any of the Obligors receives or recovers any amount which, under the terms of any of the Finance Documents, should have been paid to the Security Agent, that Obligor will hold the amount received or recovered on trust for the Security Agent and promptly pay that amount to the Security Agent for application in accordance with the terms of this Agreement.

### **30.35 Application and consideration**

In consideration for the covenants given to the Security Agent by each Obligor in relation to Clause 30.2 (*Parallel Debt (Covenant to pay the Security Agent)*) the Security Agent agrees

with each Obligor to apply all moneys from time to time paid by such Obligor to the Security Agent in accordance with the foregoing provisions of this Clause 30 (*The Security Agent*).

### **30.36 Full freedom to enter into transactions**

Without prejudice to Clause 30.7 (*Business with the Group*) or any other provision of a Finance Document and notwithstanding any rule of law or equity to the contrary, the Security Agent shall be absolutely entitled:

- (a) to enter into and arrange banking, derivative, investment and/or other transactions of every kind with or affecting any Transaction Obligor or any person who is party to, or referred to in, a Finance Document (including, but not limited to, any interest or currency swap or other transaction, whether related to this Agreement or not, and acting as syndicate agent and/or security agent for, and/or participating in, other facilities to such Transaction Obligor or any person who is party to, or referred to in, a Finance Document);
- (b) to deal in and enter into and arrange transactions relating to:
  - (i) any securities issued or to be issued by any Transaction Obligor or any other person; or
  - (ii) any options or other derivatives in connection with such securities; and
- (c) to provide advice or other services to the Borrower or any person who is a party to, or referred to in, a Finance Document,

and, in particular, the Security Agent shall be absolutely entitled, in proposing, evaluating, negotiating, entering into and arranging all such transactions and in connection with all other matters covered by paragraphs (a), (b) and (c) above, to use (subject only to insider dealing legislation) any information or opportunity, howsoever acquired by it, to pursue its own interests exclusively, to refrain from disclosing such dealings, transactions or other matters or any information acquired in connection with them and to retain for its sole benefit all profits and benefits derived from the dealings transactions or other matters.

## **31 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.

## **32 SHARING AMONG THE FINANCE PARTIES**

### **32.1 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 33 (*Payment Mechanics*) (a "**Recovered Amount**") and applies that amount to a payment due to it under the Finance Documents then:

- (a) the Recovering Finance Party shall, within three Business Days, notify details of the receipt or recovery, to the Facility Agent;

- (b) the Facility 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 Facility Agent and distributed in accordance with Clause 33 (*Payment Mechanics*), without taking account of any Tax which would be imposed on the Facility Agent in relation to the receipt, recovery or distribution; and
- (c) the Recovering Finance Party shall, within three Business Days of demand by the Facility Agent, pay to the Facility Agent an amount (the “**Sharing Payment**”) equal to such receipt or recovery less any amount which the Facility Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with Clause 33.5 (*Application of receipts; partial payments*).

### **32.2 Redistribution of payments**

The Facility Agent shall treat the Sharing Payment as if it had been paid by the relevant Transaction Obligor and distribute it among the Finance Parties (other than the Recovering Finance Party) (the “**Sharing Finance Parties**”) in accordance with Clause 33.5 (*Application of receipts; partial payments*) towards the obligations of that Transaction Obligor to the Sharing Finance Parties.

### **32.3 Recovering Finance Party’s rights**

On a distribution by the Facility Agent under Clause 32.2 (*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.

### **32.4 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 Facility Agent, pay to the Facility 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.

### **32.5 Exceptions**

- (a) This Clause 32 (*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.

## ADMINISTRATION

**33 PAYMENT MECHANICS****33.1 Payments to the Facility 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 an amount equal to such payment available to the Facility 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 Facility 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 Facility Agent) and with such bank as the Facility Agent, in each case, specifies.

**33.2 Distributions by the Facility Agent**

Each payment received by the Facility Agent under the Finance Documents for another Party shall, subject to Clause 33.3 (*Distributions to a Transaction Obligor*) and Clause 33.4 (*Clawback and pre-funding*) be made available by the Facility 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 Facility Agent by not less than five Business Days' notice with a bank specified by that Party in the principal financial centre of the country of that currency (or, in relation to euro, in the principal financial centre of a Participating Member State or London), as specified by that Party or, in the case of the Advance, to such account of such person as may be specified by the Borrower in the Drawdown Request.

**33.3 Distributions to a Transaction Obligor**

The Facility Agent may (with the consent of the Transaction Obligor or in accordance with Clause 34 (*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.

**33.4 Clawback and pre-funding**

- (a) Where a sum is to be paid to the Facility Agent under the Finance Documents for another Party, the Facility 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 Facility Agent pays an amount to another Party and it proves to be the case that the Facility 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 Facility Agent shall on demand refund the same to the Facility Agent together with interest on that amount from the date of payment to the date of receipt by the Facility Agent, calculated by the Facility Agent to reflect its cost of funds.
- (c) If the Facility Agent has notified the Lenders that it is willing to make available amounts for the account of the Borrower before receiving funds from the Lenders then if and to the extent that the Facility 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 the Borrower:

- (i) the Facility Agent shall notify the Borrower of that Lender's identity and the Borrower shall on demand refund it to the Facility Agent; and
- (ii) the Lender by whom those funds should have been made available or, if the Lender fails to do so, the Borrower shall on demand pay to the Facility Agent the amount (as certified by the Facility Agent) which will indemnify the Facility Agent against any funding cost incurred by it as a result of paying out that sum before receiving those funds from that Lender.

### **33.5 Application of receipts; partial payments**

- (a) If the Facility Agent or the Security Agent (as applicable) receives a payment that is insufficient to discharge all the amounts then due and payable by a Transaction Obligor under the Finance Documents, the Facility Agent or the Security Agent (as applicable) shall apply that payment towards the obligations of that Transaction Obligor under the Finance Documents in the following order:
  - (i) **first**, in or towards payment pro rata of any unpaid fees, costs and expenses of, and any other amounts owing to, the Facility Agent, the Security Agent, any Receiver or any Delegate under the Finance Documents;
  - (ii) **secondly**, in or towards payment pro rata of any accrued interest and fees due but unpaid to the Lenders under this Agreement;
  - (iii) **thirdly**, in or towards payment pro rata of any principal due but unpaid to the Lenders under this Agreement; and
  - (iv) **fourthly**, in or towards payment pro rata of any other sum due to any Finance Party but unpaid under the Finance Documents.
- (b) The Facility Agent shall, if so directed by the Majority Lenders, vary, or instruct the Security Agent to vary (as applicable), the order set out in sub-paragraphs (ii) to (iv) of paragraph (a) above.
- (c) Paragraphs (a) and (b) above will override any appropriation made by a Transaction Obligor.

### **33.6 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.

### **33.7 Business Days**

- (a) Any payment under the Finance Documents which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (b) During any extension of the due date for payment of any principal or an Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

### **33.8 Currency of account**

- (a) Subject to paragraphs (b) and (c) below, dollars is the currency of account and payment for any sum due from 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 dollars shall be paid in that other currency.

### **33.9 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 Facility Agent (after consultation with the Borrower); 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 Facility Agent (acting reasonably).
- (b) If a change in any currency of a country occurs, this Agreement will, to the extent the Facility Agent (acting reasonably and after consultation with the Borrower) 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.

### **33.10 Currency Conversion**

- (a) For the purpose of, or pending any payment to be made by any Servicing Party under any Finance Document, such Servicing Party may convert any moneys received or recovered by it 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.

### **33.11 Disruption to Payment Systems etc.**

If either the Facility Agent determines (in its discretion) that a Disruption Event has occurred or the Facility Agent is notified by the Borrower that a Disruption Event has occurred:

- (a) the Facility Agent may, and shall if requested to do so by the Borrower, consult with the Borrower with a view to agreeing with the Borrower such changes to the operation or administration of the Facility as the Facility Agent may deem necessary in the circumstances;
- (b) the Facility Agent shall not be obliged to consult with the Borrower in relation to any changes mentioned in paragraph (a) above if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;
- (c) the Facility Agent may consult with the Finance Parties in relation to any changes mentioned in paragraph (a) above but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;
- (d) any such changes agreed upon by the Facility Agent and the Borrower shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties and any Transaction Obligors as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of Clause 42 (*Amendments and Waivers*);
- (e) the Facility 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 Facility Agent) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 33.11 (*Disruption to Payment Systems etc.*); and

- (f) the Facility Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (d) above.

### **34 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.

### **35 BAIL-IN**

Notwithstanding any other term of any Finance Document or any other agreement, arrangement or understanding between the parties to a Finance Document, each Party acknowledges and accepts that any liability of any party to a Finance Document 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.

### **36 NOTICES**

#### **36.1 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 fax or letter.

#### **36.2 Addresses**

The address and fax number (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 are:

- (a) in the case of the Borrower, that specified in Schedule 1 (*The Parties*);
- (b) in the case of each Lender or any other Obligor, that specified in Schedule 1 (*The Parties*) or, if it becomes a Party after the date of this Agreement, that notified in writing to the Facility Agent on or before the date on which it becomes a Party;

(c) in the case of the Facility Agent, that specified in Schedule 1 (*The Parties*); and

(d) in the case of the Security Agent, that specified in Schedule 1 (*The Parties*),

or any substitute address, fax number or department or officer as the Party may notify to the Facility Agent (or the Facility Agent may notify to the other Parties, if a change is made by the Facility Agent) by not less than five Business Days' notice.

### **36.3 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 fax, when received in legible form; or

(ii) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 36.2 (*Addresses*), if addressed to that department or officer.

(b) Any communication or document to be made or delivered to a Servicing Party will be effective only when actually received by that Servicing Party and then only if it is expressly marked for the attention of the department or officer of that Servicing Party specified in Schedule 1 (*The Parties*) (or any substitute department or officer as that Servicing Party shall specify for this purpose).

(c) All notices from or to a Transaction Obligor shall be sent through the Facility Agent unless otherwise specified in any Finance Document.

(d) Any communication or document made or delivered to the Borrower 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 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

### **36.4 Notification of address and fax number**

Promptly upon receipt of notification of an address and fax number or change of address or fax number pursuant to Clause 36.2 (*Addresses*) or changing its own address or fax number, the Facility Agent shall notify the other Parties.

### **36.5 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 transmission 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 Business Days' notice.

- (b) Any such electronic communication as specified in paragraph (a) above to be made between an 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 such 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 Facility Agent or the Security Agent only if it is addressed in such a manner as the Facility Agent or the 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 36.5 (*Electronic communication*).

### **36.6 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 Facility Agent, accompanied by a certified English translation prepared by a translator approved by the Facility Agent and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

## **37 CALCULATIONS AND CERTIFICATES**

### **37.1 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.

### **37.2 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.

### **37.3 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 360 days or, in any case where the practice in the Relevant Interbank Market differs, in accordance with that market practice.

## **38 PARTIAL INVALIDITY**

If, at any time, any provision of a Finance Document is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions under the law of that jurisdiction nor the

legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

## **39 REMEDIES AND WAIVERS**

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

## **40 SETTLEMENT OR DISCHARGE CONDITIONAL**

Any settlement or discharge under any Finance Document between any Finance Party and any Transaction Obligor shall be conditional upon no security or payment to any Finance Party by any Transaction Obligor or any other person being set aside, adjusted or ordered to be repaid, whether under any insolvency law or otherwise.

## **41 IRREVOCABLE PAYMENT**

If the Facility Agent considers that an amount paid or discharged by, or on behalf of, a Transaction Obligor or by any other person in purported payment or discharge of an obligation of that Transaction Obligor to a Creditor Party under the Finance Documents is capable of being avoided or otherwise set aside on the liquidation or administration of that Transaction Obligor or otherwise, then that amount shall not be considered to have been unconditionally and irrevocably paid or discharged for the purposes of the Finance Documents.

## **42 AMENDMENTS AND WAIVERS**

### **42.1 Required consents**

- (a) Subject to Clause 42.2 (*All Lender matters*) and Clause 42.3 (*Other exceptions*) any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and, in the case of an amendment, the Obligors and any such amendment or waiver will be binding on all Parties.
- (b) The Facility Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 42 (*Amendments and Waivers*).
- (c) Without prejudice to the generality of Clause 29.8 (*Rights and discretions*), the Facility 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.

### **42.2 All Lender matters**

Subject to Clause 42.4 (*Replacement of Screen Rate*), an amendment of or waiver or consent 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 to or extension of the date of payment of any amount under the Finance Documents (other than in relation to Clause 7.3 (*Voluntary prepayment of Loan*) in respect of a prepayment made pursuant to Clause 24.2 (*Provision of additional security; prepayment*) or Clause 7.4 (*Manadatory prepayment on sale, arrest or Total Loss of a Borrower Vessel*));

- (c) a reduction in the Margin or 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) this Clause 42 (*Amendments and Waivers*);
- (i) any change to Clause 2 (*The Facility*), Clause 3 (*Purpose*), Clause 5 (*Drawdown*), Clause 6.2 (*Effect of cancellation and prepayment on scheduled repayments*), Clause 8 (*Interest*), paragraph (a) of Clause 24.7 (*Provision of valuations*), Clause 25 (*Accounts and Application of Earnings*), Clause 27 (*Changes to the Lenders*), Clause 32 (*Sharing among the Finance Parties*), Clause 46 (*Governing Law*) or Clause 47 (*Enforcement*);
- (j) any release of, or material variation to, any Transaction Security, guarantee, indemnity or subordination arrangement set out in a Finance Document (except in the case of a release of Transaction Security as it relates to the disposal of an asset which is the subject of the Transaction Security and where such disposal is expressly permitted by the Majority Lenders or otherwise under a Finance Document);
- (k) (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 17 (*Guarantee and Indemnity*);
  - (ii) the Security Assets; or
  - (iii) the manner in which the proceeds of enforcement of the Transaction Security are distributed,
 (except in the case of sub-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);
- (l) the release of the guarantee and indemnity granted under Clause 17 (*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.

#### **42.3 Other exceptions**

- (a) An amendment or waiver which relates to the rights or obligations of a Servicing Party or the Arranger or a Reference Bank (each in their capacity as such) may not be effected without the consent of that Servicing Party, the Arranger or that Reference Bank, as the case may be.
- (b) The Borrower and the Facility Agent, the Arranger or the Security Agent, as applicable, may amend or waive a term of a Fee Letter to which they are party.

#### **42.4 Replacement of Screen Rate**

- (a) Subject to Clause 42.3 (*Other exceptions*), if the Screen Rate is not available for dollars, any amendment or waiver which relates to providing for another benchmark rate to apply in relation to dollars, in place of that Screen Rate (or which relates to aligning any provision of a Finance Document to the use of that benchmark rate) may be made with the consent of the Majority Lenders and the Obligors.
- (b) If any Lender fails to respond to a request for an amendment or waiver described in paragraph (a) above within 2 Business Days (unless the Borrower and the Facility Agent agree to a longer time period in relation to any request) of that request being made:
  - (i) its Commitment shall not be included for the purpose of calculating the Total Commitments when ascertaining whether any relevant percentage of Total Commitments has been obtained to approve that request; and
  - (ii) 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.

#### **42.5 Obligor Intent**

Without prejudice to the generality of Clauses 1.2 (*Construction*) and 17.4 (*Waiver of defences*) each Obligor expressly confirms that it intends that any guarantee contained in this Agreement or any other Finance Document and any Security created by any Finance Document 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.

### **43 CONFIDENTIAL INFORMATION**

#### **43.1 Confidentiality**

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 43.2 (*Disclosure of Confidential Information*) and Clause 43.3 (*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.

#### **43.2 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 Facility 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 including a securitisation 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 sub-paragraph (i) or (ii) of paragraph (b) 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 (b) of Clause 29.15 (*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 sub-paragraph (i) or (ii) of paragraph (b) 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 including any applicable data protection laws;
- (vi) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitrations, 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 27.8 (*Security over Lenders' rights*);
- (viii) who is a Party, a member of the Group or any related entity of a Transaction Obligor;
- (ix) as a result of the registration of any Finance Document as contemplated by any Finance Document or any legal opinion obtained in connection with any Finance Document; or
- (x) with the consent of the Corporate Guarantee;

in each case, such Confidential Information as that Finance Party shall consider appropriate if:

- (A) in relation to sub-paragraphs (i), (ii) and (iii) of paragraph (b) 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;
- (B) in relation to sub-paragraph (iv) of paragraph (b) 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;

(C) in relation to sub-paragraphs (v), (vi) and (vii) of paragraph (b) 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 sub-paragraph (i) or (ii) of paragraph (b) 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 in to 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 Borrower and the relevant Finance Party; and

(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.

Any non-disclosure undertaking contained herein shall not prevent the Corporate Guarantor from disclosing any information required to be disclosed by law, regulation or any governmental or competent regulatory authority (including without limitation, any securities exchange), provided that, to the extent reasonably practicable, the Corporate Guarantor shall inform the Facility Agent on the proposed form, timing, nature and purpose of the disclosure.

### **43.3 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) Clause 46 (*Governing Law*);
- (vi) the names of the Facility Agent and the Arranger;
- (vii) date of each amendment and restatement of this Agreement;
- (viii) amount of Total Commitments;
- (ix) currency of the Facility;



- (x) type of Facility;
- (xi) ranking of Facility;
- (xii) Maturity Date for Facility;
- (xiii) changes to any of the information previously supplied pursuant to sub-paragraphs (i) to (xii) above; and
- (xiv) such other information agreed between such Finance Party and the Borrower,

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 Obligor represents, on behalf of itself and the other Transaction Obligors, that none of the information set out in sub-paragraphs (i) to (xiv) of paragraph (a) above is, nor will at any time be, unpublished price-sensitive information.
- (d) The Facility Agent shall notify the Corporate Guarantor and the other Finance Parties of:
  - (i) the name of any numbering service provider appointed by the Facility 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.

#### **43.4 Entire agreement**

This Clause 43 (*Confidential Information*) 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.

#### **43.5 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.

#### **43.6 Notification of disclosure**

Each of the Finance Parties agrees (to the extent permitted by law and regulation) to inform the Borrower:

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to sub-paragraph (v) of paragraph (b) of Clause 43.2 (*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 43 (*Confidential Information*).

#### **43.7 Continuing obligations**

The obligations in this Clause 43 (*Confidential Information*) are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of 12 months from the earlier of:

- (a) the date on which all amounts payable by the Obligors under or in connection with this Agreement 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.

#### **44 CONFIDENTIALITY OF FUNDING RATES AND REFERENCE BANK QUOTATIONS**

##### **44.1 Confidentiality and disclosure**

- (a) The Facility Agent and each Obligor agree to keep each Funding Rate (and, in the case of the Facility Agent, each Reference Bank Quotation) confidential and not to disclose it to anyone, save to the extent permitted by paragraphs (b), (c) and (d) below.
- (b) The Facility Agent may disclose:
  - (i) any Funding Rate (but not, for the avoidance of doubt, any Reference Bank Quotation) to the Borrower pursuant to Clause 8.5 (*Notification of rates of interest*); and
  - (ii) any Funding Rate or any Reference Bank Quotation to any person appointed by it to provide administration services in respect of one or more of the Finance Documents to the extent necessary to enable such service provider to provide those services if the service provider to whom that information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Facility Agent and the relevant Lender or Reference Bank, as the case may be.
- (c) The Facility Agent may disclose any Funding Rate or any Reference Bank Quotation, and each Obligor may disclose any Funding Rate, to:
  - (i) any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives if any person to whom that Funding Rate or Reference Bank Quotation is to be given pursuant to this sub-paragraph (i) is informed in writing of its confidential nature and that it may be price sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of that Funding Rate or Reference Bank Quotation or is otherwise bound by requirements of confidentiality in relation to it;
  - (ii) any person to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation if the person to whom that Funding Rate or Reference Bank Quotation is to be given is informed in writing of its confidential nature and that it may be price sensitive information except that there shall be no requirement to so inform if, in the opinion of the Facility Agent or the relevant Obligor, as the case may be, it is not practicable to do so in the circumstances;
  - (iii) any person to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations,

proceedings or disputes if the person to whom that Funding Rate or Reference Bank Quotation is to be given is informed in writing of its confidential nature and that it may be price sensitive information except that there shall be no requirement to so inform if, in the opinion of the Facility Agent or the relevant Obligor, as the case may be, it is not practicable to do so in the circumstances; and

(iv) any person with the consent of the relevant Lender or Reference Bank, as the case may be.

(d) The Facility Agent's obligations in this Clause 44 (*Confidentiality of Funding Rates and Reference Bank Quotations*) relating to Reference Bank Quotations are without prejudice to its obligations to make notifications under Clause 8.5 (*Notification of rates of interest*) **Provided that** (other than pursuant to sub-paragraph (i) of paragraph (b) above) the Facility Agent shall not include the details of any individual Reference Bank Quotation as part of any such notification.

#### **44.2 Related obligations**

(a) The Facility Agent and each Obligor acknowledge that each Funding Rate (and, in the case of the Facility Agent, each Reference Bank Quotation) is or may be price sensitive information and that its use may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and the Facility Agent and each Obligor undertake not to use any Funding Rate or, in the case of the Facility Agent, any Reference Bank Quotation for any unlawful purpose.

(b) The Facility Agent and each Obligor agree (to the extent permitted by law and regulation) to inform the relevant Lender or Reference Bank, as the case may be:

(i) of the circumstances of any disclosure made pursuant to sub-paragraph (ii) of paragraph (c) of Clause 44.1 (*Confidentiality and disclosure*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and

(ii) upon becoming aware that any information has been disclosed in breach of this Clause 44 (*Confidentiality of Funding Rates and Reference Bank Quotations*).

#### **44.3 No Event of Default**

No Event of Default will occur under Clause 26.4 (*Other obligations*) by reason only of an Obligor's failure to comply with this Clause 44 (*Confidentiality of Funding Rates and Reference Bank Quotations*).

#### **45 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.

## GOVERNING LAW AND ENFORCEMENT

**46 GOVERNING LAW**

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

**47 ENFORCEMENT****47.1 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 regarding 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 Obligors accept that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Obligor will argue to the contrary.
- (c) This Clause 47 (*Enforcement*) is for the benefit of the Creditor Parties only. As a result, no Creditor Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Creditor Parties may take concurrent proceedings in any number of jurisdictions.

**47.2 Service of process**

- (a) Without prejudice to any other mode of service allowed under any relevant law, each Transaction Obligor (other than an Obligor incorporated in England and Wales):
  - (i) irrevocably appoints HFW Nominees Ltd at its current address at Friary Court, 65 Crutched Friars, London EC3N 2AE, England, as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and
  - (ii) agrees that failure by a process agent to notify the relevant Obligor 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 Borrower (on behalf of all the Obligors) must immediately (and in any event within seven days of such event taking place) appoint another agent on terms acceptable to the Facility Agent. Failing this, the Facility Agent may appoint another agent for this purpose.

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

**BORROWER**

**SIGNED** by /s/ Efstratios Camatsos )  
duly authorised attorney-in-fact )  
for and on behalf of )  
**KLEIMAR NV** )  
in the presence of: )

Witness' signature: /s/ Aikaterina Dimitriou )  
Witness' name: Aikaterina Dimitriou )  
Witness' address: Watson Farley & Williams )  
348 Syngrou Avenue )  
17674 Kallithea )  
Athens, Greece )

**CORPORATE GUARANTOR**

**SIGNED** by /s/ Efstratios Camatsos )  
duly authorised attorney-in-fact )  
for and on behalf of )  
**NAVIOS MARITIME HOLDINGS INC.** )  
in the presence of: )

Witness' signature: /s/ Aikaterina Dimitriou )  
Witness' name: Aikaterina Dimitriou )  
Witness' address: Watson Farley & Williams )  
348 Syngrou Avenue )  
17674 Kallithea )  
Athens, Greece )

**COLLATERAL GUARANTORS**

**SIGNED** by /s/ Efstratios Camatsos )  
duly authorised attorney-in-fact )  
for and on behalf of )  
**TRIANGLE SHIPPING CORPORATION** )  
in the presence of: )

Witness' signature: /s/ Aikaterina Dimitriou  
Witness' name: Aikaterina Dimitriou  
Witness' address: Watson Farley & Williams  
348 Syngrou Avenue  
17674 Kallithea  
Athens, Greece

**SIGNED** by /s/ Efstratios Camatsos )  
duly authorised attorney-in-fact )  
for and on behalf of )  
**ESMERALDA SHIPPING CORPORATION** )  
in the presence of: )

Witness' signature: /s/ Aikaterina Dimitriou  
Witness' name: Aikaterina Dimitriou  
Witness' address: Watson Farley & Williams  
348 Syngrou Avenue  
17674 Kallithea  
Athens, Greece

**LENDERS**

**SIGNED** by /s/ Nadine Aulch )  
duly authorised )  
for and on behalf of )  
**DVB BANK SE** )  
in the presence of: )

Witness' signature: /s/ Aikaterina Dimitriou  
Witness' name: Aikaterina Dimitriou  
Witness' address: Watson Farley & Williams  
348 Syngrou Avenue  
17674 Kallithea  
Athens, Greece

**ARRANGER**

**SIGNED** by /s/ Nadine Aulch )  
duly authorised )  
for and on behalf of )  
**DVB BANK SE** )  
in the presence of: )

Witness' signature: /s/ Aikaterina Dimitriou  
Witness' name: Aikaterina Dimitriou  
Witness' address: Watson Farley & Williams  
348 Syngrou Avenue  
17674 Kallithea  
Athens, Greece

**FACILITY AGENT**

**SIGNED** by /s/ Nadine Aulch )  
duly authorised )  
for and on behalf of )  
**DVB BANK SE** )  
in the presence of: )

Witness' signature: /s/ Aikaterina Dimitriou  
Witness' name: Aikaterina Dimitriou  
Witness' address: Watson Farley & Williams  
348 Syngrou Avenue  
17674 Kallithea  
Athens, Greece )

**SECURITY AGENT**

**SIGNED** by /s/ Nadine Aulch )  
duly authorised )  
for and on behalf of )  
**DVB BANK SE** )  
in the presence of: )

Witness' signature: /s/ Aikaterina Dimitriou  
Witness' name: Aikaterina Dimitriou  
Witness' address: Watson Farley & Williams  
348 Syngrou Avenue  
17674 Kallithea  
Athens, Greece

**ACCOUNT BANK**

**SIGNED** by /s/ Nadine Aulch )  
duly authorised )  
for and on behalf of )  
**DVB BANK SE** )  
in the presence of: )

Witness' signature: /s/ Aikaterina Dimitriou  
Witness' name: Aikaterina Dimitriou  
Witness' address: Watson Farley & Williams  
348 Syngrou Avenue  
17674 Kallithea  
Athens, Greece



**Navios Maritime Holdings Inc. Reports Financial Results for the Third Quarter and Nine Months Ended  
September 30, 2017**

- **\$334.5 million revenue for 9M 2017; \$120.6 million for Q3 2017; \$36.4 million net cash from operating activities for 9M 2017**
- **\$80.1 million Adjusted EBITDA for 9M 2017; \$31.2 million Adjusted EBITDA for Q3 2017**
- **\$119.2 million of cash as of September 30, 2017**
- **Refinanced the Senior Unsecured Notes maturing in 2019 with new callable Senior Secured Notes**
- **Positioned to capture market recovery through 21,506 available days; 19,106 open and index days**

MONACO, Nov. 21, 2017 (GLOBE NEWSWIRE) — Navios Maritime Holdings Inc. (“Navios Holdings” or “the Company”) (NYSE:NM), a global, vertically integrated seaborne shipping and logistics company, today reported financial results for the third quarter and nine months ended September 30, 2017.

Angeliki Frangou, Chairman and Chief Executive Officer, stated, “I am very pleased with our results for the third quarter of 2017, for which we reported revenues of \$120.6 million and adjusted EBITDA of \$31.2 million.”

Angeliki Frangou continued: “On November 14, 2017, we successfully refinanced the 8.125% Senior Unsecured Notes that were maturing in 15 months, with \$305.0 million of 11.25% Senior Secured Notes. The new notes are callable at any time which provides the flexibility to refinance these new notes as the dry bulk market and our financial performance improve.”

## **HIGHLIGHTS – RECENT DEVELOPMENTS**

### **Successfully Refinanced the 2019 Maturity**

On November 14, 2017, Navios Holdings announced the pricing of \$305.0 million 11.25% Senior Secured Notes due 2022 (the “Notes”). The Notes will be secured by a first priority lien on the capital stock owned by certain of the subsidiary guarantors of Navios Holdings in each of Navios Maritime Partners L.P. (“Navios Partners”), Navios GP L.L.C., Navios Maritime Acquisition Corporation (“Navios Acquisition”), Navios South American Logistics Inc. (“Navios Logistics”) and Navios Maritime Containers Inc. The Notes will be guaranteed by all of the Company’s direct and indirect subsidiaries, except for certain subsidiaries designated as unrestricted subsidiaries, including Navios Logistics. The net proceeds of the offering will be used to complete a cash tender offer for any and all of Company’s outstanding 8 1/8% Senior Notes due 2019 and to redeem any and all such notes that are not purchased in the tender offer after all conditions to the tender offer are satisfied or waived, including the payment of related fees and expenses and any redemption premium, with any remaining proceeds to be used for general corporate purposes.

### **Other debt developments**

On November 3, 2017, Navios Holdings prepaid in full the total outstanding amount borrowed under its secured loan facility with Navios Acquisition of up to \$70.0 million entered into in September 2016 with a payment of \$55.1 million and extinguished the secured loan facility. The prepayment amount consisted of the \$50.0 million drawn under the facility and \$5.1 million of accrued interest.

On November 1, 2017, Navios Holdings agreed to extend \$18.3 million outstanding balance under one of its secured credit facilities originally due by September 2018 for three years to September 2021.

### **Navios Logistics**

On November 3, 2017, Navios Logistics completed the borrowing of a new \$100.0 million Term Loan B (the “Term Loan B”). The Term Loan B bears an interest rate of LIBOR plus 475 basis points and has a four year term with 1.0% amortization per annum. The Term Loan B is secured by first priority mortgages covering certain vessels owned by subsidiaries of Navios Logistics, as well as by assignments of certain receivables. Navios Logistics used \$70.0 million of the proceeds of the Term Loan B to finance a cash dividend to its equity holders, of which Navios Holdings received \$44.7 million. Navios Logistics intends to use the remaining proceeds of the Term Loan B: (i) for general corporate purposes and (ii) to pay fees and expenses relating to the Term Loan B.

### **Fleet update**

Navios Holdings controls a fleet of 64 operating vessels totaling 6.6 million dwt, of which 38 are owned and 26 are chartered-in under long-term charters (collectively, the “Core Fleet”). The fleet consists of 21 Capesize, 23 Panamax, 18 Ultra Handymax and two Handysize vessels with an average age of 8.3 years.

As of November 1, 2017, Navios Holdings has chartered-out 66.6% and 11.2% of available days for the remaining three months of 2017 and 2018, respectively (excluding index and profit sharing days). The average contracted daily charter-in rate for the long-term charter-in vessels for the remaining three months of 2017 is \$12,521.

The above figures do not include the fleet of Navios Logistics and vessels servicing contracts of affreightment.

Exhibit II provides certain details of the Core Fleet of Navios Holdings. It does not include the fleet of Navios Logistics.

### Earnings Highlights

EBITDA, Adjusted EBITDA, Adjusted Net Loss and Adjusted Basic Loss per Share are non-U.S. GAAP financial measures and should not be used in isolation or as substitution for Navios Holdings’ results calculated in accordance with U.S. GAAP.

See Exhibit I under the heading, “Disclosure of Non-GAAP Financial Measures,” for a discussion of EBITDA, Adjusted EBITDA, Adjusted Net Loss and Adjusted Basic Loss per Share of Navios Holdings (including Navios Logistics), and EBITDA of Navios Logistics (on a stand-alone basis), and a reconciliation of such measures to the most comparable measures calculated under U.S. GAAP.

### Third Quarter 2017 and 2016 Results (in thousands of U.S. dollars, except per share data and unless otherwise stated):

The third quarter 2017 and 2016 information presented below was derived from the unaudited condensed consolidated financial statements for the respective periods.

	Three Month Period Ended September 30, 2017 (unaudited)	Three Month Period Ended September 30, 2016 (unaudited)
Revenue	\$ 120,555	\$ 113,087
Net Loss	\$ (28,332)	\$ (27,503)
Adjusted Net Loss	\$ (28,332)	\$ (22,420) <sup>(1)</sup>
Net cash (used in)/provided by operating activities	\$ (12,689)	\$ 2,140
EBITDA	\$ 31,192	\$ 46,389
Adjusted EBITDA	\$ 31,192	\$ 38,465 <sup>(1)</sup>
Basic Loss per Share	\$ (0.26)	\$ (0.30) <sup>(1)</sup>
Adjusted Basic Loss per share	\$ (0.26)	\$ (0.25)

- (1) Adjusted EBITDA, Adjusted Net Loss and Adjusted Basic Loss per Share for the three months ended September 30, 2016 exclude (i) a \$16.0 million gain on bond extinguishment and (ii) an \$8.0 million loss relating to our share in Navios Partners’ impairment losses. Adjusted Net Loss and Adjusted Basic Loss per Share for the three months ended September 30, 2016 also exclude a \$13.0 million write-off of intangible assets due to the early redelivery of a charter-in vessel.

Revenue from dry bulk vessel operations for the three months ended September 30, 2017 was \$61.0 million as compared to \$49.7 million for the same period during 2016. The increase in dry bulk revenue was mainly attributable to (i) the increase in the time charter equivalent (“TCE”) per day by 5.2% to \$9,481 per day in the third quarter of 2017, as compared to \$9,010 per day in the same period of 2016; and (ii) an increase in available days of our fleet by 579 days, mainly due to an increase in long-term charter-in fleet available days.

Revenue from the logistics business was \$59.6 million for the three months ended September 30, 2017 as compared to \$63.4 million for the same period in 2016. The decrease was mainly attributable to (i) a \$6.4 million decrease in revenue from the barge business mainly due to the expiration of certain iron ore transportation contracts; and (ii) a \$0.6 million decrease in revenue from the cabotage business mainly due to the less operating days. The overall decrease was partially mitigated by a \$3.2 million increase in revenue from the port terminal business mainly due to the increase in the volume and tariffs in the dry port terminal and to the commencement of operations at the new iron ore terminal.

Net Loss of Navios Holdings was \$28.3 million and \$27.5 million for the three months ended September 30, 2017 and 2016, respectively. Net Loss was affected by the items described in the table above. Excluding these items, Adjusted Net Loss of Navios Holdings for the three months ended September 30, 2017 was \$28.3 million as compared to \$22.4 million for the same period of 2016. The \$5.9 million increase in Adjusted Net Loss was mainly due to (i) a decrease in Adjusted EBITDA by \$7.3 million; (ii) an increase in interest expense and finance cost, net by \$2.0 million; (iii) an increase in share-based compensation expense of \$0.2 million; and (iv) an increase in amortization for deferred drydock and special survey costs of \$0.1 million. This overall decrease of \$9.6 million was partially mitigated by (i) a decrease in depreciation and amortization by \$2.2 million; and (ii) a decrease in income tax expense of \$1.5 million.

Net income of Navios Logistics was \$1.8 million for the three month period ended September 30, 2017 as compared to \$2.8 million for the same period in 2016.

Adjusted EBITDA of Navios Holdings for the three months ended September 30, 2017 decreased by \$7.3 million to \$31.2 million as compared to \$38.5 million for the same period of 2016. The \$7.3 million decrease in Adjusted EBITDA was primarily due to (i) a \$15.0 million increase in time charter, voyage and logistics business expenses; (ii) a \$6.5 million decrease in equity in net earnings from affiliated companies; and (iii) a \$0.3 million increase in general and administrative expenses (excluding share-based compensation expenses). This overall decrease of \$21.8 million was partially mitigated by (i) a \$7.5 million increase in revenue; (ii) a \$4.8 million decrease in direct vessel expenses (excluding the amortization of deferred drydock and special survey costs); (iii) a \$1.9 million decrease in other expense, net; and (iv) a \$0.3 million decrease in net income attributable to noncontrolling interest.

EBITDA of Navios Logistics was \$18.2 million for the three month period ended September 30, 2017, as compared to \$19.1 million for the same period in 2016.

#### **Nine Months Ended September 30, 2017 and 2016 Results (in thousands of U.S. dollars, except per share data and unless otherwise stated):**

The information for the nine month period ended September 30, 2017 and 2016 presented below was derived from the unaudited condensed consolidated financial statements for the respective periods.

	Nine Month Period Ended September 30, 2017 (unaudited)	Nine Month Period Ended September 30, 2016 (unaudited)
Revenue	\$ 334,519	\$ 320,307
Net Loss	\$ (114,309)	\$ (61,384)
Adjusted Net Loss	\$ (95,391) <sup>(1)</sup>	\$ (78,486) <sup>(2)</sup>
Net cash provided by operating activities	\$ 36,414	\$ 42,277
EBITDA	\$ 61,144	\$ 122,867
Adjusted EBITDA	\$ 80,062 <sup>(1)</sup>	\$ 100,072 <sup>(2)</sup>
Basic Loss per Share	\$ (1.04)	\$ (0.69)
Adjusted Basic Loss per share	\$ (0.89) <sup>(1)</sup>	\$ (0.85) <sup>(2)</sup>

- (1) Adjusted EBITDA, Adjusted Net Loss and Adjusted Basic Loss per Share for the nine months ended September 30, 2017 exclude (i) a \$14.2 million impairment loss relating to the sale of Navios Ionian and Navios Horizon; and (ii) \$4.7 million non-cash impairment losses relating to our affiliates. Adjusted Basic Loss per Share for the nine months ended September 30, 2017 also excludes a gain of \$1.1 million following the completion of the Series G and H Exchange Program and the conversion of accrued dividend of private preferred stock to common stock.
- (2) Adjusted EBITDA, Adjusted Net Loss and Adjusted Basic Loss Per Share for the nine months ended September 30, 2016 exclude (i) a \$16.0 million gain on bond extinguishment (ii) a \$14.9 million compensation from the early redelivery of a vessel from its charterer and (iii) an \$8.0 million loss relating to our share in Navios Partners' impairment losses. Adjusted Net Loss and Adjusted Basic Loss per Share for the nine months ended September 30, 2016 exclude also (i) a \$13.0 million write-off of intangible assets due to the early redelivery of a charter-in vessel and (ii) a \$7.3 million income from the write-off of an intangible liability due to the early redelivery of the same vessel.

Revenue from dry bulk vessel operations for the nine months ended September 30, 2017 was \$171.8 million as compared to \$142.9 million for the same period during 2016. The increase in dry bulk revenue was mainly attributable to (i) the increase in TCE per day by 9.1% to \$8,836 per day in the nine month period ended September 30, 2017 as compared to \$8,102 per day in the same period in 2016; and (ii) an increase in available days of our fleet by 1,191 days, mainly due to an increase in long-term charter-in fleet available days.

Revenue from the logistics business was \$162.8 million for the nine months ended September 30, 2017 as compared to \$177.4 million for the same period in 2016. The decrease was mainly attributable to (i) an \$18.0 million decrease in revenue from barge business mainly due to the expiration of certain iron ore transportation contracts; and (ii) a \$5.9 million decrease in revenue from the cabotage business mainly due to a decrease in operating days of the cabotage fleet. The overall decrease was partially mitigated by (i) a \$5.5 million increase in revenue due to an increase in tariffs in the dry port terminal business and the commencement of operations at the new iron ore terminal; and (ii) a \$3.8 million increase in sales of products mainly due to an increase in the Paraguayan liquid port's volume of products sold.

Net Loss of Navios Holdings was \$114.3 million and \$61.4 million for the nine months ended September 30, 2017 and 2016, respectively. Net Loss was affected by the items described in the table above. Excluding these items, Adjusted Net Loss of Navios Holdings for the nine months ended September 30, 2017 was \$95.4 million as compared to \$78.5 million for the same period of 2016. The \$16.9 million increase in Adjusted Net Loss was mainly due to (i) a decrease in Adjusted EBITDA of \$20.0 million; (ii) an increase in interest expense and finance cost, net of \$2.5 million; (iii) an increase of \$0.9 million in amortization for deferred drydock and special survey costs; and (iv) an increase of \$0.7 million in share-based compensation expense. This overall increase of \$24.1 million was partially mitigated by (i) a decrease in depreciation and amortization of \$4.8 million; and (ii) a decrease in income tax expense of \$2.4 million.

Net Income of Navios Logistics was \$3.3 million for the nine month period ended September 30, 2017, as compared to \$15.8 million for the same period in 2016.

Adjusted EBITDA of Navios Holdings for the nine month period ended September 30, 2017 decreased by \$20.0 million to \$80.1 million as compared to \$100.1 million for the same period of 2016. The \$20.0 million decrease in Adjusted EBITDA was primarily due to (i) a \$37.3 million increase in time charter, voyage and logistics business expenses; and (ii) a \$16.7 million decrease in equity in net earnings from affiliated companies. This overall decrease of \$54.0 million was partially mitigated by (i) a \$14.2 million increase in revenue; (ii) a \$8.3 million decrease in direct vessel expenses (excluding the amortization of deferred drydock and special survey costs); (iii) a \$4.5 million decrease in net income attributable to the noncontrolling interest; (iv) a \$3.7 million decrease in other expense, net; (v) a \$1.7 million gain on debt extinguishment; (vi) a \$1.1 million gain on sale of assets; and (vii) a \$0.5 million decrease in general and administrative expenses (excluding share-based compensation expenses).

EBITDA of Navios Logistics was \$47.5 million for the nine month period ended September 30, 2017, as compared to \$60.9 million for the same period in 2016.

## Fleet Summary Data:

The following table reflects certain key indicators indicative of the performance of the Navios Holdings' dry bulk operations (excluding the Navios Logistics fleet) and its fleet performance for the three and nine month periods ended September 30, 2017 and 2016, respectively.

	Three Month Period Ended September 30, 2017 (Unaudited)	Three Month Period Ended September 30, 2016 (Unaudited)	Nine Month Period Ended September 30, 2017 (Unaudited)	Nine Month Period Ended September 30, 2016 (Unaudited)
Available Days (1)	5,794	5,215	17,564	16,373
Operating Days (2)	5,789	5,206	17,534	16,238
Fleet Utilization (3)	99.9%	99.8%	99.8%	99.2%
Equivalent Vessels (4)	63	57	64	60
TCE (5)	\$ 9,481	\$ 9,010	\$ 8,836	\$ 8,102

- (1) Available days for the fleet are total calendar days the vessels were in Navios Holdings' possession for the relevant period after subtracting off-hire days associated with major repairs, drydocking or special surveys. The shipping industry uses available days to measure the number of days in a relevant period during which vessels should be capable of generating revenues.
- (2) Operating days are the number of available days in the relevant period less the aggregate number of days that the vessels are off-hire due to any reason, including unforeseen circumstances. The shipping industry uses operating days to measure the aggregate number of days in a relevant period during which vessels actually generate revenues.
- (3) Fleet utilization is the percentage of time that Navios Holdings' vessels were available for generating revenue, and is determined by dividing the number of operating days during a relevant period by the number of available days during that period. The shipping industry uses fleet utilization to measure a company's efficiency in finding suitable employment for its vessels.
- (4) Equivalent Vessels is defined as the total available days during a relevant period divided by the number of days of this period.
- (5) TCE is defined as voyage and time charter revenues less voyage expenses during a relevant period divided by the number of available days during the period.

## Conference Call:

As previously announced, Navios Holdings will host a conference call today, November 21, 2017, at 8:30 am ET, at which time Navios Holdings' senior management will provide highlights and commentary on earnings results for the third quarter and nine months ended September 30, 2017.

A supplemental slide presentation will be available on the Navios Holdings website at [www.navios.com](http://www.navios.com) under the "Investors" section by 8:00 am ET on the day of the call.

## Conference Call details:

Call Date/Time: Tuesday, November 21, 2017, at 8:30 am ET  
Call Title: Navios Holdings Q3 2017 Financial Results Conference Call  
US Dial In: +1.877.480.3873  
International Dial In: +1.404.665.9927  
Conference ID: 9253 6633

The conference call replay will be available shortly after the live call and remain available for one week at the following numbers:

US Replay Dial In: +1.800.585.8367

International Replay Dial In: +1.404.537.3406

Conference ID: 9253 6633

This call will be simultaneously Webcast. The Webcast will be available on the Navios Holdings website, [www.navios.com](http://www.navios.com), under the “Investors” section. The Webcast will be archived and available at the same Web address for two weeks following the call.

#### **About Navios Maritime Holdings Inc.**

Navios Maritime Holdings Inc. (NYSE:NM) is a global, vertically integrated seaborne shipping and logistics company focused on the transport and transshipment of dry bulk commodities including iron ore, coal and grain. For more information about Navios Holdings please visit our website: [www.navios.com](http://www.navios.com).

#### **About Navios South American Logistics Inc.**

Navios South American Logistics Inc. is one of the largest logistics companies in the Hidrovia region of South America, focusing on the Hidrovia region river system, the main navigable river system in the region, and on cabotage trades along the eastern coast of South America. Navios Logistics serves the storage and marine transportation needs of its petroleum, agricultural and mining customers through its port terminals, river barge and coastal cabotage operations. For more information about Navios Logistics please visit its website: [www.navios-logistics.com](http://www.navios-logistics.com).

#### **About Navios Maritime Partners L.P.**

Navios Maritime Partners L.P. (NYSE:NMM) is a publicly traded master limited partnership which owns and operates container and dry bulk vessels. For more information, please visit its website at [www.navios-mlp.com](http://www.navios-mlp.com).

#### **About Navios Maritime Acquisition Corporation**

Navios Acquisition (NYSE:NNA) is an owner and operator of tanker vessels focusing on the transportation of petroleum products (clean and dirty) and bulk liquid chemicals. For more information about Navios Acquisition, please visit its website: [www.navios-acquisition.com](http://www.navios-acquisition.com).

#### **About Navios Maritime Midstream Partners L.P.**

Navios Maritime Midstream Partners L.P. (NYSE:NAP) is a publicly traded master limited partnership which owns and operates crude oil tankers under long-term employment contracts. For more information, please visit its website at [www.navios-midstream.com](http://www.navios-midstream.com).

#### **About Navios Maritime Containers Inc.**

Navios Maritime Containers Inc. (N-OTC:NMCI) is a growth vehicle dedicated to the container sector of the maritime industry. For more information, please visit its website at [www.navios-containers.com](http://www.navios-containers.com).

#### **Forward Looking Statements - Safe Harbor**

This press release and our earnings call contain and will contain forward-looking statements (as defined in Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended) concerning future events, including cash flow generation for the remainder of 2017 and 2018, future contracted revenues, potential capital gains, our ability to take advantage of dislocation in the market and any market recovery, and Navios Holdings’ growth strategy and measures to implement such strategy; including expected vessel acquisitions and entering into further time charters. Words such as “may,” “expects,” “intends,” “plans,” “believes,” “anticipates,” “hopes,” “estimates,” and variations of such words and similar expressions are intended to identify forward-looking statements. Such statements include comments regarding expected revenue and time charters. These forward-looking statements are based on the information available to, and the expectations and assumptions deemed reasonable by Navios Holdings at the time these statements were made. Although Navios Holdings believes that the expectations reflected in such forward-looking statements are reasonable, no assurance can be given that such expectations will prove to have been correct. These statements involve known and unknown risks and are based upon

a number of assumptions and estimates which are inherently subject to significant uncertainties and contingencies, many of which are beyond the control of Navios Holdings. Actual results may differ materially from those expressed or implied by such forward-looking statements. Factors that could cause actual results to differ materially include, but are not limited to uncertainty relating to global trade, including prices of seaborne commodities and continuing issues related to seaborne volume and ton miles, our continued ability to enter into long-term time charters, our ability to maximize the use of our vessels, expected demand in the dry cargo shipping sector in general and the demand for our Panamax, Capesize and Ultra Handymax vessels in particular, fluctuations in charter rates for dry cargo carriers vessels, the aging of our fleet and resultant increases in operations costs, the loss of any customer or charter or vessel, the financial condition of our customers, changes in the availability and costs of funding due to conditions in the bank market, capital markets and other factors, increases in costs and expenses, including but not limited to: crew wages, insurance, provisions, port expenses, lube oil, bunkers, repairs, maintenance, and general and administrative expenses, the expected cost of, and our ability to comply with, governmental regulations and maritime self-regulatory organization standards, as well as standard regulations imposed by our charterers applicable to our business, general domestic and international political conditions, competitive factors in the market in which Navios Holdings operates, the value of our publicly traded subsidiaries, risks associated with operations outside the United States; Vale's obligations under the Vale port contract; and other factors listed from time to time in Navios Holdings' filings with the Securities and Exchange Commission, including its Forms 20-F and Forms 6-K. Navios Holdings expressly disclaims any obligations or undertaking to release publicly any updates or revisions to any forward-looking statements contained herein to reflect any change in Navios Holdings' expectations with respect thereto or any change in events, conditions or circumstances on which any statement is based. Navios Holdings makes no prediction or statement about the performance of its common stock.

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**NAVIOS MARITIME HOLDINGS INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS**  
(Expressed in thousands of U.S. dollars — except share and per share data)

	Three Month Period Ended September 30, 2017 (unaudited)	Three Month Period Ended September 30, 2016 (unaudited)	Nine Month Period Ended September 30, 2017 (unaudited)	Nine Month Period Ended September 30, 2016 (unaudited)
Revenue	\$ 120,555	\$ 113,087	\$ 334,519	\$ 320,307
Administrative fee revenue from affiliates	6,284	5,472	16,942	16,417
Time charter, voyage and logistics business expenses	(56,824)	(41,846)	(161,628)	(124,322)
Direct vessel expenses <sup>(1)</sup>	(28,739)	(33,269)	(90,566)	(98,028)
General and administrative expenses incurred on behalf of affiliates	(6,284)	(5,472)	(16,942)	(16,417)
General and administrative expenses <sup>(2)</sup>	(6,711)	(6,182)	(19,203)	(19,012)
Depreciation and amortization	(26,179)	(41,432)	(77,893)	(88,391)
Interest expense and finance cost, net	(28,825)	(26,809)	(83,812)	(81,257)
Impairment loss on sale of vessel	—	—	(14,239)	—
Gain on debt/bond extinguishment	—	15,956	1,715	15,956
Other (expense)/income, net	(1,912)	(3,844)	(4,790)	5,290
<b>Loss before equity in net earnings of affiliated companies</b>	<b>(28,635)</b>	<b>(24,339)</b>	<b>(115,897)</b>	<b>(69,457)</b>
Equity in net earnings/(loss) of affiliated companies	901	(735)	2,208	15,641
<b>Loss before taxes</b>	<b>\$ (27,734)</b>	<b>\$ (25,074)</b>	<b>\$ (113,689)</b>	<b>\$ (53,816)</b>
Income tax benefit/(expense)	69	(1,413)	562	(1,837)
<b>Net loss</b>	<b>(27,665)</b>	<b>(26,487)</b>	<b>(113,127)</b>	<b>(55,653)</b>
Less: Net income attributable to the noncontrolling interest	(667)	(1,016)	(1,182)	(5,731)



<b>Net loss attributable to Navios Holdings common stockholders</b>	<b>\$ (28,332)</b>	<b>\$ (27,503)</b>	<b>\$ (114,309)</b>	<b>\$ (61,384)</b>
<b>Loss attributable to Navios Holdings common stockholders, basic and diluted</b>	<b>\$ (30,272)</b>	<b>\$ (31,490)</b>	<b>\$ (121,049)</b>	<b>\$ (73,312)</b>
<b>Basic and diluted net losses per share attributable to Navios Holdings common stockholders</b>	<b>\$ (0.26)</b>	<b>\$ (0.30)</b>	<b>\$ (1.04)</b>	<b>\$ (0.69)</b>
<b>Weighted average number of shares, basic and diluted</b>	<b>117,535,234</b>	<b>106,423,653</b>	<b>116,260,640</b>	<b>106,157,410</b>

1. Includes expenses of Navios Logistics of \$18.4 million and \$21.0 million for the three months ended September 30, 2017 and 2016, respectively and \$55.0 million and \$59.1 million for the nine months ended September 30, 2017 and 2016, respectively.
2. Includes expenses of Navios Logistics of \$4.0 million and \$3.4 million for the three months ended September 30, 2017 and 2016, respectively and \$11.7 million and \$10.3 million for the nine months ended September 30, 2017 and 2016, respectively.

**NAVIOS MARITIME HOLDINGS INC.**  
**Other Financial Data**

	<b>September 30, 2017 (unaudited)</b>	<b>December 31, 2016 (unaudited)</b>
<b>ASSETS</b>		
Cash and cash equivalents, including restricted cash	\$ 119,238	\$ 141,378
Other current assets	113,627	131,762
Deposits for vessels, port terminals and other fixed assets	29,271	136,891
Vessels, port terminal and other fixed assets, net	1,863,673	1,821,101
Other non-current assets	252,867	234,612
Goodwill and other intangibles	281,931	287,151
<b>Total assets</b>	<b>\$ 2,660,607</b>	<b>\$ 2,752,895</b>
<b>LIABILITIES AND EQUITY</b>		
Current liabilities, including current portion of long-term debt, net	228,340	251,783

Senior and ship mortgage notes, net	1,299,479	1,296,537
Long-term debt, net of current portion	310,556	324,731
Other non-current liabilities	129,097	76,291
Total stockholders' equity	693,135	803,553
<b>Total liabilities and stockholders' equity</b>	<b>\$2,660,607</b>	<b>\$2,752,895</b>

### Disclosure of Non-GAAP Financial Measures

EBITDA, Adjusted EBITDA, Adjusted Net Loss and Adjusted Basic Loss per Share are “non-U.S. GAAP financial measures” and should not be used in isolation or considered substitutes for net income/ (loss), cash flow from operating activities and other operations or cash flow statement data prepared in accordance with generally accepted accounting principles in the United States.

EBITDA represents net (loss)/income attributable to Navios Holdings' common stockholders before interest and finance costs, before depreciation and amortization, before income taxes and before stock-based compensation. Adjusted EBITDA represents EBITDA, excluding certain items as described under “Earnings Highlights”. Adjusted Loss and Adjusted Basic Loss per Share represent Net Loss and Basic Loss per Share, excluding certain items as described under “Earnings Highlights”. We use EBITDA and Adjusted EBITDA as liquidity measures and reconcile EBITDA and Adjusted EBITDA to net cash provided by operating activities, the most comparable U.S. GAAP liquidity measure. EBITDA is calculated as follows: net cash provided by operating activities adding back, when applicable and as the case may be, the effect of (i) net increase/(decrease) in operating assets, (ii) net (increase)/decrease in operating liabilities, (iii) net interest cost, (iv) deferred finance charges and gains/(losses) on bond and debt extinguishment, (v) (provision)/recovery for losses on accounts receivable, (vi) equity in affiliates, net of dividends received, (vii) payments for drydock and special survey costs, (viii) noncontrolling interest, (ix) gain/ (loss) on sale of assets/ subsidiaries, (x) unrealized (loss)/gain on derivatives, and (xi) loss on sale and reclassification to earnings of available-for-sale securities and impairment charges. Navios Holdings believes that EBITDA and Adjusted EBITDA are a basis upon which liquidity can be assessed and represents useful information to investors regarding Navios Holdings' ability to service and/or incur indebtedness, pay capital expenditures, meet working capital requirements and pay dividends. Navios Holdings also believes that EBITDA and Adjusted EBITDA are used (i) by prospective and current lessors as well as potential lenders to evaluate potential transactions; (ii) to evaluate and price potential acquisition candidates; and (iii) by securities analysts, investors and other interested parties in the evaluation of companies in our industry.

EBITDA and Adjusted EBITDA are presented to provide additional information with respect to the ability of Navios Holdings to satisfy its respective obligations, including debt service, capital expenditures, working capital requirements and pay dividends. While EBITDA and Adjusted EBITDA are frequently used as measures of operating results and the ability to meet debt service requirements, the definitions of EBITDA and Adjusted EBITDA used here may not be comparable to those used by other companies due to differences in methods of calculation.

EBITDA and Adjusted EBITDA have limitations as an analytical tool, and therefore, should not be considered in isolation or as a substitute for the analysis of Navios Holdings' results as reported under U.S. GAAP. Some of these limitations are: (i) EBITDA and Adjusted EBITDA do not reflect changes in, or cash requirements for, working capital needs; (ii) EBITDA and Adjusted EBITDA do not reflect the amounts necessary to service interest or principal payments on our debt and other financing arrangements; and (iii) although depreciation and amortization are non-cash charges, the assets being depreciated and amortized may have to be replaced in the future. EBITDA and Adjusted EBITDA do not reflect any cash requirements for such capital expenditures. Because of these limitations, among others, EBITDA and Adjusted EBITDA should not be considered as a principal indicator of Navios Holdings' performance. Furthermore, our calculation of EBITDA and Adjusted EBITDA may not be comparable to that reported by other companies due to differences in methods of calculation.

Navios Logistics EBITDA is used to measure its operating performance.

The following tables provide a reconciliation of EBITDA and Adjusted EBITDA of Navios Holdings (including Navios Logistics) and EBITDA of Navios Logistics on a stand-alone basis:

## Navios Holdings Reconciliation of EBITDA and Adjusted EBITDA to Cash from Operations

Three Months Ended (in thousands of U.S. dollars)	September 30, 2017 (unaudited)	September 30, 2016 (unaudited)
Net cash (used in)/provided by operating activities	\$ (12,689)	\$ 2,140
Net increase in operating assets	8,525	8,247
Net decrease/(increase) in operating liabilities	4,916	(3,381)
Net interest cost	28,826	26,809
Deferred finance charges	(1,440)	(1,359)
Recovery/(provision) for losses on accounts receivable	300	(453)
Equity in affiliates, net of dividends received	427	(4,857)
Payments for drydock and special survey costs	2,970	4,303
Noncontrolling interest	(667)	(1,016)
Other gain on assets	24	—
Gain on bond extinguishment	—	15,956
<b>EBITDA</b>	<b>\$ 31,192</b>	<b>\$ 46,389</b>
Gain on bond extinguishment	—	(15,956)
Other items from affiliates	—	8,032
<b>Adjusted EBITDA</b>	<b>\$ 31,192</b>	<b>\$ 38,465</b>
	<b>Three Month Period Ended September 30, 2017 (unaudited)</b>	<b>Three Month Period Ended September 30, 2016 (unaudited)</b>
Net cash (used in)/provided by operating activities	\$ (12,689)	\$ 2,140
Net cash provided by/(used in) investing activities	\$ 2,891	\$ (17,090)
Net cash (used in)/provided by financing activities	\$ (6,212)	\$ 32,976

## Navios Logistics EBITDA Reconciliation to Net Income

Three Months Ended (in thousands of U.S. dollars)	September 30, 2017 (unaudited)	September 30, 2016 (unaudited)
Net income	\$ 1,844	\$ 2,807
Depreciation and amortization	7,156	7,679
Amortization of deferred drydock and special survey costs	1,867	1,680
Interest expense and finance cost, net	7,446	5,638
Income tax (benefit)/expense	(135)	1,341
<b>EBITDA</b>	<b>\$ 18,178</b>	<b>\$ 19,145</b>

## Navios Holdings Reconciliation of EBITDA and Adjusted EBITDA to Cash from Operations

Nine Months Ended (in thousands of U.S. dollars)	September 30, 2017 (unaudited)	September 30, 2016 (unaudited)
Net cash provided by operating activities	\$ 36,414	\$ 42,277
Net (decrease)/increase in operating assets	(33,790)	20,023
Net increase in operating liabilities	(12,103)	(36,537)
Net interest cost	83,812	81,257
Deferred finance charges	(4,294)	(4,054)
Recovery/(provision) for losses on accounts receivable	276	(602)
Equity in affiliates, net of dividends received	(6,564)	3,248
Payments for drydock and special survey costs	10,024	7,375
Noncontrolling interest	(1,182)	(5,731)
Other gain on assets	1,075	—
Gain on debt/bond extinguishment	1,715	15,956
Impairment loss on sale of vessel	(14,239)	—
Loss on sale and reclassification to earnings of available for sale securities	—	(345)
<b>EBITDA</b>	<b>\$ 61,144</b>	<b>\$ 122,867</b>
Impairment loss on sale of vessels	14,239	—
Gain on bond extinguishment	—	(15,956)
Other items from affiliates	4,679	8,032
Compensation from early redelivery of a vessel from its charterer	—	(14,871)
<b>Adjusted EBITDA</b>	<b>\$ 80,062</b>	<b>\$ 100,072</b>
	<b>Nine Month Period Ended September 30, 2017 (unaudited)</b>	<b>Nine Month Period Ended September 30, 2016 (unaudited)</b>
Net cash provided by operating activities	\$ 36,414	\$ 42,277
Net cash used in investing activities	\$ (32,987)	\$ (129,409)
Net cash (used in)/provided by financing activities	\$ (25,221)	\$ 82,275

## Navios Logistics EBITDA Reconciliation to Net Income

Nine Months Ended (in thousands of U.S. dollars)	September 30, 2017 (unaudited)	September 30, 2016 (unaudited)
Net income	\$ 3,267	\$ 15,843
Depreciation and amortization	19,624	20,740
Amortization of deferred drydock and special survey costs	5,874	5,065
Interest expense and finance cost, net	19,522	17,671
Income tax (benefit)/expense	(763)	1,623
<b>EBITDA</b>	<b>\$ 47,524</b>	<b>\$ 60,942</b>

## EXHIBIT II

### Owned Vessels

Vessel Name	Vessel Type	Year Built	Deadweight (in metric tons)
Navios Serenity	Handysize	2011	34,690
Navios Herakles	Ultra Handymax	2001	52,061
Navios Achilles	Ultra Handymax	2001	52,063
Navios Vector	Ultra Handymax	2002	50,296
Navios Meridian	Ultra Handymax	2002	50,316
Navios Mercator	Ultra Handymax	2002	53,553
Navios Arc	Ultra Handymax	2003	53,514
Navios Hios	Ultra Handymax	2003	55,180
Navios Kypros	Ultra Handymax	2003	55,222
Navios Astra	Ultra Handymax	2006	53,468
Navios Ulysses	Ultra Handymax	2007	55,728
Navios Celestial	Ultra Handymax	2009	58,063
Navios Vega	Ultra Handymax	2009	58,792
Navios Magellan	Panamax	2000	74,333
Navios Star	Panamax	2002	76,662
Navios Amitie	Panamax	2005	75,395
Navios Northern Star	Panamax	2005	75,395
Navios Taurus	Panamax	2005	76,596
Navios Asteriks	Panamax	2005	76,801
Navios Galileo	Panamax	2006	76,596
N Amalthia	Panamax	2006	75,318
N Bonanza	Panamax	2006	76,596
Navios Avior	Panamax	2012	81,355
Navios Centaurus	Panamax	2012	81,472
Navios Sphera	Panamax	2016	84,872
Navios Stellar	Capesize	2009	169,001
Navios Bonavis	Capesize	2009	180,022
Navios Happiness	Capesize	2009	180,022
Navios Phoenix	Capesize	2009	180,242

Navios Lumen	Capesize	2009	180,661
Navios Antares	Capesize	2010	169,059
Navios Etoile	Capesize	2010	179,234
Navios Bonheur	Capesize	2010	179,259
Navios Altamira	Capesize	2011	179,165
Navios Azimuth	Capesize	2011	179,169
Navios Ray	Capesize	2012	179,515
Navios Gem	Capesize	2014	181,336
Navios Mars	Capesize	2016	181,259

### Long term Chartered-in Fleet in Operation

Vessel Name	Vessel Type	Year Built	Deadweight (in metric tons)	Purchase Option <sup>(1)</sup>
Navios Lyra	Handysize	2012	34,718	Yes <sup>(2)</sup>
Navios Primavera	Ultra Handymax	2007	53,464	Yes
Mercury Ocean	Ultra Handymax	2008	53,452	No
Kouju Lily	Ultra Handymax	2011	58,872	No
Navios Oriana	Ultra Handymax	2012	61,442	Yes
Navios Mercury	Ultra Handymax	2013	61,393	Yes
Navios Venus	Ultra Handymax	2015	61,339	Yes
Osmarine	Panamax	2006	76,000	No
Navios Aldebaran	Panamax	2008	76,500	Yes
KM Imabari	Panamax	2009	76,619	No
Navios Marco Polo	Panamax	2011	80,647	Yes
Navios Southern Star	Panamax	2013	82,224	Yes
Sea Victory	Panamax	2014	77,095	Yes
Navios Sky	Panamax	2015	82,056	Yes
Navios Amber	Panamax	2015	80,994	Yes
Navios Coral	Panamax	2016	84,904	Yes
Navios Dolphin	Panamax	2017	81,630	Yes
Navios Citrine	Panamax	2017	81,626	Yes
Equator Prosper	Capesize	2000	170,000	No
Pacific Explorer	Capesize	2007	177,000	No
King Ore	Capesize	2010	176,800	Yes
Navios Koyo	Capesize	2011	181,415	Yes
Navios Obeliks	Capesize	2012	181,415	Yes
Dream Coral	Capesize	2015	181,249	Yes
Dream Canary	Capesize	2015	180,528	Yes
Navios Felix	Capesize	2016	181,221	Yes

(1) Generally, Navios Holdings may exercise its purchase option after three to five years of service.

(2) Navios Holdings holds the initial 50% purchase option on the vessel.