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

FORM 6-K

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

DATED: January 13, 2020

Commission File No. 001-33811

NAVIOS MARITIME PARTNERS L.P.

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

Indicate by check mark whether the registrant files or will file annual reports under cover of 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

This Report on Form 6-K is hereby incorporated by reference into the Registration Statement on Form F-3, File No. 333-215529, of Navios Maritime Partners L.P. (the “Company”).

On December 12, 2019, the Company entered into a new credit facility with ABN Amro Bank N.V. (the “ABN Credit Facility”) of up to \$23.5 million in order to finance the purchase of five container vessels. The ABN Credit Facility matures on September 30, 2020 and bears interest at LIBOR plus 400 basis points per annum. As of December 31, 2019, the full available amount has been drawn under the ABN Credit Facility. A copy of the ABN Credit Facility is attached as Exhibit 4.1 to this report and is incorporated by reference herein.

In connection with the acquisition of four bulk carrier vessels, on December 16, 2019, the Company entered into a credit facility with Dory Funding DAC (the “Dory Credit Facility”), of up to \$37.0 million. As of December 31, 2019, the full available amount has been drawn under the Dory Credit Facility. The Dory Credit Facility terminates on the third anniversary of the date of the first draw down under the Dory Credit Facility and initially bears interest at LIBOR plus 475 basis points per annum. A form of the Dory Credit Facility is attached as Exhibit 4.2 to this report and is incorporated by reference herein.

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 PARTNERS L.P.

By: /s/ Angeliki Frangou
Angeliki Frangou
Chief Executive Officer

Date: January 13, 2020

EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Exhibit</u>
4.1	Facility Agreement, dated as of December 12, 2019, by and among Navios Maritime Partners L.P., as borrower, ABN Amro Bank N.V., as agent and security trustee, and the banks and financial institutions listed therein, as lenders.
4.2	Form of Amended and Restated Facility Agreement, dated as of December 16, 2019, by and among Camelia Shipping Inc., Anthos Shipping Inc., Azalea Shipping Inc. and Amaryllis Shipping Inc., as borrowers, Navios Maritime Operating L.L.C. and Navios Maritime Partners L.P., as guarantors, Dory Funding DAC, as agent and security agent, and the financial institutions listed therein, as lenders.

Date 12th December 2019

NAVIOS MARITIME PARTNERS L.P.

as Borrower

- and -

THE BANKS AND FINANCIAL INSTITUTIONS

listed in Schedule 1

as Lenders

- and -

ABN AMRO BANK N.V.

as Agent and as Security Trustee

FACILITY AGREEMENT

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THIS AGREEMENT is made on 12th December 2019

BETWEEN

- (1) **NAVIOS MARITIME PARTNERS L.P.**, as **Borrower**;
- (2) **THE BANKS AND FINANCIAL INSTITUTIONS** listed in Schedule 1, as **Lenders**;
- (3) **ABN AMRO BANK N.V.**, as **Agent**; and
- (4) **ABN AMRO BANK N.V.**, as **Security Trustee**.

BACKGROUND

- (A) The Lenders have agreed to make available to the Borrower a loan in an amount not exceeding the lesser of (i) twenty three million five hundred thousand Dollars (\$23,500,000) and (ii) 50% of the aggregate Fair Market Value of the Ships (determined in accordance with the provisions contained in Schedule 3, Part B (Paragraph 5) and not earlier than 30 days before the Drawdown Date), in a single advance, for the purpose of enabling the Borrower to on-lend the same to the Shareholder to finance the acquisition of all the shares in each Guarantor.
- (B) The Lenders have agreed to share pari passu in the security to be granted to the Security Trustee pursuant to this Agreement.

IT IS AGREED as follows:

1 INTERPRETATION

1.1 Definitions. Subject to Clause 1.5, (*General Interpretation*) in this Agreement (including in the above recitals):

“**Account Bank**” means ABN AMRO Bank N.V. acting through its branch at Gustav Mahlerlaan 10, 1082 PP Amsterdam, The Netherlands, or such other bank as may be designated by the Agent as the Account Bank for the purposes of this Agreement and which is of a rating acceptable to the Lenders, in their sole discretion;

“**Account Security Deed**” means a deed creating security (i) in respect of the Retention Account and (ii) in respect of the Earnings Account of each Guarantor, in the agreed form;

“**Actual Transfer Date**” means, in relation to each Guarantor, the day on which all the shares in each Guarantor are actually transferred by the Seller to the Shareholder pursuant to the terms of the SPA;

“**Affected Lender**” has the meaning given in Clause 5.7 (*Market disruption*);

“**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;

“**Agency and Trust Deed**” means the agency and trust deed dated the same date as this Agreement and made between the same parties;

“**Agent**” means ABN AMRO Bank N.V., duly incorporated under the laws of Netherlands, having its registered office at Gustav Mahlerlaan 10, 1082 PP Amsterdam, The Netherlands, acting for the purposes of this Agreement through its office at Gustav Mahlerlaan 10, 1082 PP Amsterdam, The Netherlands, (or of such other address as may last have been notified to the Borrower) or any successor of it appointed under clause 5 (*Appointment of a new Servicing Bank*) of the Agency and Trust Deed;

“Agreed Form” means, in relation to any document, that document in the form approved in writing by the Agent or as otherwise approved in accordance with any other approved procedure specified in any relevant provision of any Finance Document;

“Approved Broker” means each of (i) H. Clarkson & Co. Ltd. of St Magnus House, 3 Lower Thames Street, London EC3R 6HE, England, (ii) Arrow Sale & Purchase (UK) Limited of Harbour House, Chelsea Harbour, London SW10 0XE, England, (iii) SSY Valuation Services Limited of Lloyds Chambers, 1 Portsoken Street, London E1 8PH, England, (iv) Fearnleys of P.O. Box 1158 Sentrum, 0107 Oslo, Norway, (v) Maersk Broker K/S, Midtermolen 1, 2100 Copenhagen, Denmark, (vi) Braemar Seascope Limited of One Strand, Trafalgar Square, London WC2N 5HR, England, (vii) E.A. Gibson Shipbrokers Ltd., Audrey House, 16-20 Ely Place, London EC1N 6SN, England, (viii) BRS of 11 Boulevard Jean Mermoz, 92200 Neuilly-sur-Seine, France and (ix) Howe Robinson Partners of 3rd Floor, 40 Gracechurch St, London EC3V 0BT, United Kingdom, or such other reputable, independent and first class firm of shipbrokers specialising in the valuation of vessels of the relevant type requested by the Borrower and agreed upon and appointed by the Agent at its sole discretion;

“Approved Flag” means the Republic of Liberia, the Republic of Marshall Islands, the Republic of Cyprus, the Republic of Panama or such other flag as the Agent may, with the authorisation of all the Lenders, in their absolute discretion, approve as the flag on which a Ship may be registered;

“Approved Flag State” means the Republic of Liberia, the Republic of Marshall Islands, the Republic of Cyprus, the Republic of Panama or any other country in which the Agent may with the authorisation of all the Lenders, approve that a Ship be registered;

“Approved Manager” means, in relation to each Ship, Navios Shipmanagement Inc., a corporation incorporated under the laws of the Republic of the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH 96960 or any other company Affiliate of the Approved Manager and/or of Angeliki Frangou which the Agent may, with the authorisation of the Majority Lenders, approve from time to time as the technical and/or commercial manager of a Ship (such approval not to be unreasonably withheld);

“Availability Period” means the period commencing on the date of this Agreement and ending on the earliest of (a) 31 December 2019 and (b) any date on which (i) the aggregate of the Loan is equal to the Total Commitments or (ii) the Total Commitments are reduced to zero; or, in each case, such later date as the Agent may, with the authorisation of all the Lenders, agree with the Borrower;

“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”;

“**Basel IV**” means any amendment, replacement or refinement of Basel III known or to be known as “Basel IV”;

“**Borrower**” means Navios Maritime Partners L.P., a limited partnership formed in the Marshall Islands and having its registered office at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands, MH96960;

“**Business Day**” means a day (other than a Saturday and a Sunday) on which commercial banks are open in Athens, Piraeus, Amsterdam and Rotterdam and, in respect of a day on which:

- (a) LIBOR is to be determined, also in London; and
- (b) a payment is required to be made under a Finance Document in Dollars, also in New York City;

“**Change of Control Event**” means the occurrence after the date of this Agreement of any of the following:

- (a) the Permitted Owners sell any shares in the Borrower which would reduce the proportion of issued shares owned by them in aggregate in the Borrower to below 20%; or
- (b) the Borrower issues further shares which would reduce the proportion of issued shares in the Borrower owned by the Permitted Owners in aggregate to below 20%;

“**Charter Assignment**” means, in relation to any Extended Employment Contract over a Ship, the assignment thereof in the Agreed Form;

“**Code**” means the US Internal Revenue Code of 1986, as amended, and the regulations promulgates and rulings issued thereunder;

“**Commitment**” means in relation to a Lender, the amount set opposite its name in the second column of Schedule 1, or, as the case may require, the amount specified in the relevant Transfer Certificate, as that amount may be reduced, cancelled or terminated in accordance with this Agreement (and “**Total Commitments**” means the aggregate of the Commitments of all the Lenders);

“**Compliance Certificate**” means a certificate in the form set out in Schedule 5 (or in any other form which the Agent, acting with the authorisation of all the Lenders, approves or requires);

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

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

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

- (i) is or becomes public information other than as a direct or indirect result of any breach by that Creditor Party of Clauses 26.16 to 26.23 (inclusive) (*Confidentiality*); or
- (ii) is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers; or

is known by that Creditor Party before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is lawfully obtained by that Creditor Party after that date, from a source which is, as far as that Creditor Party is aware, unconnected with the Group and which, in either case, as far as that Creditor Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality

“**Contractual Currency**” has the meaning given in Clause 21.4 (*Currency indemnity*);

“**Contribution**” means, in relation to a Lender, the part of the Loan which is owing to that Lender;

“**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;

“**CRR**” means Regulations (EU) No. 575/2013 of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending regulation (EU) No. 648/2012

“**Creditor Party**” means the Agent, the Security Trustee, or any Lender, whether as at the date of this Agreement or at any later time;

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

“**Drawdown Date**” means the date requested by the Borrower for the Loan to be made, or (as the context requires) the date on which the Loan is actually made;

“**Drawdown Notice**” means a notice in the form set out in Schedule 2 (or in any other form which the Agent approves or reasonably requires);

“**Earnings**” means, in relation to a Ship, all moneys whatsoever which are now, or later become, payable (actually or contingently) to the Borrower or a Guarantor owning such Ship or the Security Trustee and which arise out of the use or operation of such Ship, including (but not limited to):

- (a) except to the extent that they fall within paragraph (b):
 - (i) all freight, hire and passage moneys;

- (ii) compensation payable to the Borrower or the Guarantor which owns that Ship or a Security Party in the event of requisition of that Ship for hire;
 - (iii) remuneration for salvage and towage services;
 - (iv) demurrage and detention moneys;
 - (v) damages for breach (or payments for variation or termination) of any charterparty or other contract for the employment of that Ship; and
 - (vi) all moneys which are at any time payable under any Insurances relating to that Ship in respect of loss of hire; and
- (b) if and whenever that Ship is employed on terms whereby any moneys falling within paragraphs (i) to (vi) 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 Ship;

“Earnings Account” means, in relation to each Guarantor, an account in the name of such Guarantor with the Account Bank designated “[name of relevant Guarantor] - Earnings Account”, or any other account (with that or another office of the Account Bank or with a bank or financial institution other than the Account Bank) which is designated by the Agent as such account in relation to that Guarantor for the purposes of this Agreement;

“EBITDA” means the aggregate amount of combined pre-tax profits of the Group before extraordinary or exceptional items, interest, depreciation and amortisation as shown, at any relevant time, by the Latest Accounts ;

“Environmental Claim” means:

- (a) any claim by any governmental, judicial or regulatory authority which arises out of an Environmental Incident or an alleged Environmental Incident or which relates to any Environmental Law; or
- (b) any claim by any other person which relates to an Environmental Incident or to an alleged Environmental Incident,

and **“claim”** means a claim for damages, compensation, fines, penalties or any other payment of any kind 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 of Environmentally Sensitive Material from a Ship; or
- (b) any incident in which Environmentally Sensitive Material is released from a vessel other than a Ship and which involves a collision between a Ship and such other vessel or some other incident of navigation or operation, in either case, in connection with which a Ship is actually or potentially liable to be arrested, attached, detained or injuncted and/or a Ship and/or the Borrower and/or a Guarantor and/or the Approved Manager and/or the Third Party Manager or any operator or manager of a Ship 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 otherwise than from a Ship and in connection with which a Ship is actually or potentially liable to be arrested and/or where the Borrower and/or a Guarantor and/or the Approved Manager and/or the Third Party Manager and/or any operator or manager of a Ship is at fault or allegedly at fault or otherwise liable to any legal or administrative action;

“Environmental Law” means any law relating to pollution or protection of the environment, to the carriage of Environmentally Sensitive Material or to actual or threatened releases of Environmentally Sensitive Material;

“Environmentally Sensitive Material” means oil, oil products 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;

“Event of Default” means any of the events or circumstances described in Clause 19.1 (*Events of Default*);

“Existing Indebtedness” means the outstanding Financial Indebtedness of the Seller under the Existing Loan Agreement on the Drawdown Date;

“Existing Loan Agreement” means the loan agreement dated 13 December 2013 (as amended and/or supplemented from time to time) and entered into between (inter alios) (i) the Seller and (ii) the Agent in respect of a loan facility of up to US\$40,000,000 for the purposes therein specified;

“Extended Employment Contract” means, in respect of a Ship, any time charterparty, contract of affreightment or other contract of employment of such Ship (including the entry of a Ship in any pool) which has a tenor exceeding twelve (12) months (including any options to renew or extend such tenor);

“Fair Market Value” means, in relation to a Ship, its market value determined in accordance with Clause 15.3 (*Valuation of Ship*);

“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 “passthru payment” described in section 1471(d)(7) of the Code not falling within paragraph above, the first date from which such payment may become subject to a deduction or withholding required by FATCA;

“FATCA Deduction” means a deduction or withholding from a payment under a Finance Document required by or under FATCA;

“FATCA Exempt Party” means a party to a Finance Document that is entitled to receive payments free from any FATCA Deduction;

“Finance Documents” means collectively:

- (a) this Agreement;
- (b) the Agency and Trust Deed;
- (c) the Guarantees;
- (d) the General Assignments;
- (e) the Mortgages;
- (f) the Account Security Deed;
- (g) any Charter Assignments;
- (h) the Manager’s Undertakings;
- (i) the Shares Pledges;
- (j) the Insurances Assignments; and
- (k) any other document (whether creating a Security Interest or not) which is executed at any time by the Borrower or any other person as security for, or to establish any form of subordination or priorities arrangement in relation to, any amount payable to the Creditor Parties under this Agreement or any of the other documents referred to in this definition including, without limitation, any co-assured assignments of Insurances in respect of a Ship and any further undertakings and assignments of Insurances in respect of a Ship by any manager or sub-manager of a Ship;

(and a **“Finance Document”** means each or, as the context may require, any of them);

“Financial Indebtedness” means, in relation to a person (the **“debtor”**), a liability of the debtor:

- (a) for principal, interest or any other sum payable in respect of any moneys borrowed or raised by the debtor;
- (b) under any loan stock, bond, note or other security issued by the debtor;
- (c) under any acceptance credit, guarantee or letter of credit facility or dematerialised equivalent made available to the debtor;
- (d) under a financial lease, a deferred purchase consideration arrangement or any other agreement having the commercial effect of a borrowing or raising of money by the debtor;
- (e) under any foreign exchange transaction, any interest or currency swap or any other kind of derivative transaction entered into by the debtor or, if the agreement under which any such transaction is entered into requires netting of mutual liabilities, the liability of the debtor for the net amount; or
- (f) under a guarantee, indemnity or similar obligation entered into by the debtor in respect of a liability of another person which would fall within paragraphs (a) to (e) if the references to the debtor referred to the other person

“**Financial Year**” means, each period of 12 months ending on 31 December other than in the case of the first year which may be such shorter period commencing from the date of incorporation of the relevant company or corporation or limited partnership or such other date as the Majority Lenders may agree (such agreement not to be unreasonably withheld);

“**General Assignment**” means, in relation to a Ship, a general assignment of its Earnings, Insurances and Requisition Compensation in the Agreed Form (and “**General Assignments**” means all of them collectively);

“**Group**” means at any relevant time the Borrower and its Subsidiaries;

“**Group Member**” means any member of the Group;

“**Guarantee**” means each guarantee and indemnity to be executed by the relevant Guarantor in favour of the Security Trustee in the Agreed Form (and “**Guarantees**” means all of them collectively);

“**Guarantor**” means each of the following corporations, each of which is incorporated in the Marshall Islands, and has its registered office at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands, MH96960:

- (a) Cronus Shipping Corporation (“**Guarantor A**”)
- (b) Dionysus Shipping Corporation (“**Guarantor B**”)
- (c) Leto Shipping Corporation (“**Guarantor C**”);
- (d) Oceanus Shipping Corporation (“**Guarantor D**”); and
- (e) Prometheus Shipping Corporation (“**Guarantor E**”);

and “**Guarantors**” means all of them;

“**Holding Company**” means, in relation to a company or corporation or limited partnership, any other company or corporation or limited partnership in respect of which it is a Subsidiary;

“**IACS**” means the International Association of Classification Societies;

“**IAPPC**” means, in relation to a Ship, a valid international air pollution prevention certificate for such Ship issued pursuant to the MARPOL Protocol;

“**Indebtedness**” means any obligation howsoever arising (whether present or future, actual or contingent, secured or unsecured as principal, surety or otherwise) for the payment or repayment of money;

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

- (a) all policies and contracts of insurance, including entries of that Ship in any protection and indemnity or war risks association, which are effected in respect of that Ship, its Earnings or otherwise in relation to it; and
- (b) all rights and other assets relating to, or derived from, any of the foregoing, including any rights to a return of a premium;

“**Insurances Assignment**” means, in respect of each of Ship A, Ship C and Ship E, an assignment of its Insurances executed or to be executed by any co-assured (other than the relevant Owner) in favour of the Security Trustee in such form as the Security Trustee may require in its sole discretion, and in the plural means all of them;

“**Interest Expense**” means, for any relevant financial year, the aggregate interest paid or payable by the Group and any member thereof on any Indebtedness during such period;

“**Interest Period**” means a period determined in accordance with Clause 6 (*Interest Periods*);

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

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

“**ISSC**” means a valid and current international ship security certificate issued under the ISPS Code;

“**Latest Accounts**” means, as at the date of calculation or, as the case may be, in respect of an accounting period, the annual audited consolidated financial statements of the Borrower or the quarterly unaudited consolidated financial statements of the Borrower, in each case, which the Borrower is obliged to deliver to the Agent pursuant to Clause 11.6 (*Provisions of financial statements*);

“**Lender**” means, subject to Clause 26.6 (*Lender re-organisation; waiver of Transfer Certificate*):

- (a) a bank or financial institution listed in Schedule 1 and acting through its branch indicated in Schedule 1 (or through another branch notified to the Agent under Clause 26.14 (*Change of lending or booking office*)) unless it has delivered a Transfer Certificate or Certificates covering the entire amounts of its Commitment and its Contribution; and
- (b) the holder for the time being of a Transfer Certificate;

“**LIBOR**” means, in relation to any period for which an interest rate is to be determined under any provision of a Finance Document:

- (a) the applicable Screen Rate; or
- (b) if no Screen Rate is available for that period, the rate per annum determined by the Agent to be the arithmetic mean (rounded upwards to 4 decimal places) of the rates as supplied to the Agent at its request, quoted by each Reference Bank to leading banks in the London Interbank Market;

as of 11:00 am London time on the Quotation Day for dollars and for a period comparable to the Interest Period of the Loan, that part of the Loan or that Unpaid Sum and if any such rate is less than zero LIBOR shall be deemed to be zero;

“**Liquidity**” means:

- (a) cash in hand legally and beneficially owned by any Group Member; and

- (b) cash deposits legally and beneficially owned by any Group Member and which are deposited with (A) the Account Bank or (B) any other bank or financial institution,

which in each case is at the free and unrestricted disposal of the relevant Group Member by which it is owned including any funds held with any bank from time to time to satisfy minimum liquidity requirements;

“**Loan**” means the principal amount which has been advanced under this Agreement and which is outstanding for the time being;

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

“**Majority Lenders**” means:

- (a) before the Loan has been made, Lenders whose Commitments total 66.67 per cent. or more of the Total Commitments; and
(b) after the Loan has been made, Lenders whose Contributions total 66.67 per cent. or more of the Loan;

“**Management Agreement**” means, in respect of each Ship, the management agreement dated 16 November 2007 (as amended and/or otherwise up-dated from time to time) made between the Borrower (on behalf of each Owner) and the Approved Manager in such form and substance acceptable to the Agent acting with the authorisation of the Majority Lenders;

“**Manager’s Undertaking**” means a letter of undertaking in respect of each Ship from the Approved Manager and, in respect of each of Ship A, Ship C and Ship E, the Third Party Manager, each in the Agreed Form (and “**Managers Undertakings**” means all of them collectively);

“**Margin**” means 4.00 per cent. (4%) per annum;

“**MARPOL Protocol**” means Annex VI (Regulations for the Prevention of Air Pollution from Ships) to the International Convention for the Prevention of Pollution from Ships 1973 (as amended in 1978 and 1997);

“**Maturity Date**” means 30 September 2020;

“**Maximum Loan Amount**” means the lesser of (i) twenty three million five hundred thousand Dollars (\$23,500,000) and (ii) 50% of the aggregate Fair Market Value of the Ships evidenced by the valuations received by the Borrower under Clause 9.1 (*Documents, fees and no default*);

“**Minimum Liquidity**” means, at any relevant time, the aggregate amounts required under clause 12.77 of this Agreement to be standing to the credit of the Earnings Accounts and/or the Retention Account;

“**Mortgage**” means, in relation to a Ship, the first preferred mortgage on the Ship under the relevant Approved Flag including, if appropriate, any deed of covenant collateral thereto, in the Agreed Form (and “**Mortgages**” means all of them collectively);

“**Negotiation Period**” has the meaning given in Clause 5.10 (*Negotiation of alternative rate of interest*);

“**Net Debt**” means, as at the date of calculation or, as the case may be, for any accounting period, the total debt of the Group less cash (which shall have the meaning given thereto under US GAAP meaning both restricted and freely available cash) as at that date or for that period as shown in the Latest Accounts;

“**Net Worth**” means, at any relevant time, the Total Assets less Total Liabilities;

“**Notifying Lender**” has the meaning given in Clause 23.1 (*Illegality*) or 24.1 (*Increased Costs*) as the context requires;

“**Owner**” means, in respect of each Ship, the Guarantor which is at any relevant time the owner thereof;

“**Payment Currency**” has the meaning given in Clause 21.4 (*Currency indemnity*);

“**Permitted Owners**” means any one or more of Navios Maritime Holdings Inc., Navios Maritime Partners L.P., Mrs Angeliki Frangou and their respective Affiliates;

“**Permitted Security Interests**” means:

- (a) Security Interests created by the Finance Documents;
- (b) liens for unpaid master’s and crew’s wages in accordance with usual maritime practice;
- (c) liens for salvage;
- (d) liens arising by operation of law for not more than 2 months’ prepaid hire under any charter in relation to a Ship not prohibited by this Agreement;
- (e) liens for master’s disbursements incurred in the ordinary course of trading and any other lien arising by operation of law or otherwise in the ordinary course of the operation, repair or maintenance of a Ship, provided such liens do not secure amounts more than 60 days overdue (unless the overdue amount is being contested by the relevant Owner in good faith by appropriate steps) and subject, in the case of liens for repair or maintenance, to Clauses 14.13(h) (*Restrictions on chartering, appointments of managers etc.*);
- (f) any Security Interest created in favour of a plaintiff or defendant in any proceedings or arbitration as security for costs and expenses while the relevant Owner is actively prosecuting or defending such proceedings or arbitration in good faith by appropriate steps;
- (g) Security Interests arising by operation of law in respect of taxes which are not overdue for payment or in respect of taxes being contested in good faith by appropriate steps and in respect of which appropriate reserves have been made; and
- (h) any right of pledge and/or set off created pursuant to the general banking conditions (*algemene bankvoorwaarden*) of ABN AMRO Bank NV;

“**Pertinent Document**” means:

- (a) any Finance Document;
- (b) any policy or contract of insurance contemplated by or referred to in Clause 13 (*Insurance*) or any other provision of this Agreement or another Finance Document;

- (c) any other document contemplated by or referred to in any Finance Document; and
- (d) any document which has been or is at any time sent by or to the Agent or the Security Trustee in contemplation of or in connection with any Finance Document or any policy, contract or document falling within paragraphs (b) or (c);

“**Pertinent Jurisdiction**”, in relation to a company, means:

- (a) England and Wales;
- (b) the country under the laws of which the company is incorporated or formed;
- (c) a country in which the company has the centre of its main interests or in which the company’s central management and control is or has recently been exercised;
- (d) a country in which the overall net income of the company is subject to corporation tax, income tax or any similar tax;
- (e) a country in which assets of the company (other than securities issued by, or loans to, related companies) having a substantial value are situated, in which the company maintains a permanent place of business, or in which a Security Interest created by the company must or should be registered in order to ensure its validity or priority; and
- (f) a country the courts of which have jurisdiction to make a winding up, administration or similar order in relation to the company or which would have such jurisdiction if their assistance were requested by the courts of a country referred to in paragraphs (b) or (c);

“**Pertinent Matter**” means:

- (a) any transaction or matter contemplated by, arising out of, or in connection with a Pertinent Document; or
- (b) any statement relating to a Pertinent Document or to a transaction or matter falling within paragraph (a);

and covers any such transaction, matter or statement, whether entered into, arising or made at any time before the signing of this Agreement or on or at any time after that signing;

“**Potential Event of Default**” means an event or circumstance which, with the giving of any notice, the lapse of time, a determination of the Majority Lenders and/or the satisfaction of any other condition, would constitute an Event of Default;

“**Quotation Date**” means, in relation to any Interest Period (or any other period for which an interest rate is to be determined under any provision of a Finance Document), the day on which quotations would ordinarily be given by leading banks in the London Interbank Market for deposits in the currency in relation to which such rate is to be determined for delivery on the first day of that Interest Period or other period;

“**Reference Banks**” means the branch of ABN AMRO Bank N.V. at Gustav Mahlerlaan 10, 1082 PP Amsterdam, The Netherlands and the London branch of ABN AMRO Bank N.V. or such other banks as may be appointed by the Agent in consultation with the Borrower;

“**Relevant Person**” has the meaning given in Clause 19.9 (*Relevant Persons*);

“**Repayment Date**” means a date on which a repayment of the Loan is required to be made under Clause 8.1 (*Repayment of Loan*);

“**Requisition Compensation**” includes all compensation or other moneys payable by reason of any act or event such as is referred to in paragraph (b) of the definition of “**Total Loss**”;

“**Restricted Countries**” means any country or region subject to Sanctions at the relevant time, as notified from time to time to the Borrower by the Agent, which, as of the date of this Agreement, are Cuba, Iran, North Korea, Sudan, Syria, the region of Crimea;

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

- (a) listed on, or owned or controlled by a person listed on any Sanctions List;
- (b) located in, incorporated under the laws of, or owned or controlled by, or acting on behalf of, a person located in or organised under the laws of a country or territory that is the target of country-wide Sanctions;
- (c) located, domiciled, resident or incorporated in a Restricted Country; or
- (d) otherwise a target of Sanctions;

“**Retention Account**” means an account in the name of the Borrower with the Account Bank designated “*Navios Maritime Partners LP - Retention Account*”, which is designated by the Agent as such account for the purposes of this Agreement;

“**Sanctions**” means any economic or trade sanctions laws, regulations, embargoes or restrictive measures administered, enacted or enforced by:

- (a) the United States government;
- (b) the United Nations;
- (c) the European Union or any of its Member States including, without limitation, the Netherlands;
- (d) the United Kingdom;
- (e) any country to which any Security Party or any other member of the Group or any of their Affiliates is bound; or
- (f) the respective governmental institutions and agencies of any of the foregoing, including without limitation, the Office of Foreign Assets Control of the US Department of Treasury (“**OFAC**”), the United States Department of State, and Her Majesty’s Treasury (“**HMT**”) (together “**Sanctions Authorities**” and each, “Sanctions Authority”);

“**Sanctions List**” means the “Specially Designated Nationals and Blocked Persons” list issued by OFAC, the “Consolidated List of Financial Sanctions Targets and Investment Ban List” issued by HMT, or any similar list issued or maintained or made public by any of the Sanctions Authorities;

“**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 pages LIBOR01 or LIBOR02 of the Reuters screen (or any replacement 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 Reuters. If such page or service ceases to be available, the Agent may specify another page or service displaying the appropriate rate after consultation with the Borrower;

“Secured Liabilities” means all liabilities which the Borrower, the Security Parties or any of them have, at the date of this Agreement or at any later time or times, under or in connection with any Finance Document or any judgment relating to any Finance Document; and for this purpose, there shall be disregarded any total or partial discharge of these liabilities, or variation of their terms, which is effected by, or in connection with, any bankruptcy, liquidation, arrangement or other procedure under the insolvency laws of any country;

“Security Interest” means:

- (a) a mortgage, charge (whether fixed or floating) or pledge, any maritime or other lien or any other security interest of any kind;
- (b) the security rights of a plaintiff under an action *in rem*; and
- (c) any arrangement entered into by a person (A) the effect of which is to place another person (B) in a position which is similar, in economic terms, to the position in which B would have been had he held a security interest over an asset of A; but this paragraph (c) does not apply to a right of set off or combination of accounts conferred by the standard terms of business of a bank or financial institution;

“Security Party” means the Borrower, the Guarantors, the Shareholder and any other person (except a Creditor Party) who, as a surety or mortgagor, as a party to any subordination or priorities arrangement, or in any similar capacity, executes a document falling within the last paragraph of the definition of **“Finance Documents”** (other than the Third Party Manager);

“Security Period” means the period commencing on the date of this Agreement and ending on the date on which the Agent notifies the Borrower, the Security Parties and the Lenders that:

- (a) all amounts which have become due for payment by the Borrower or any Security Party under the Finance Documents have been paid;
- (b) no amount is owing or has accrued (without yet having become due for payment) under any Finance Document;
- (c) neither the Borrower or any Security Party has any future or contingent liability under Clause 20 (*Expenses*), 21 (*Indemnities*) or 22 (*No set-off or tax deduction*) or any other provision of this Agreement or another Finance Document;

“Security Trustee” means ABN AMRO Bank N.V., duly incorporated under the laws of Netherlands, having its registered office at Gustav Mahlerlaan 10, 1082 PP Amsterdam, The Netherlands (or of such other address as may last have been notified to the Borrower) or any successor of it appointed under clause 5 (*Appointment of a new Servicing Bank*) of the Agency and Trust Deed;

“Seller” means Navios Europe Inc., a corporation incorporated in the Marshall Islands and having its registered office at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands, MH96960;

“Shareholder” means, Navios Maritime Operating L.L.C. a company formed in the Marshall Islands and having its registered office at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands, MH96960;

“Shares Pledge” means, in relation to each Guarantor, a deed creating security in respect of the issued share capital of that Guarantor executed or to be executed by the Shareholder in favour of the Security Trustee in the Agreed Form and **“Shares Pledges”** means all of them;

“**Ship**” means each of Ship A, Ship B, Ship C, Ship D and Ship E and “**Ships**” means all of them;

“**SMC**” means a safety management certificate issued in respect of a Ship in accordance with Rule 13 of the ISM Code;

“**SPA**” means the Share Purchase Agreement dated 26 November 2019 pursuant to which all the issued and outstanding shares in each Guarantor (the “**Shares**”) will be transferred by the Seller as seller of the Shares to the Shareholder as buyer of the Shares;

“**Subsidiary**” has the meaning given in Clause 1.4 (*Meaning of “Subsidiary”*);

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

- (a) actual, constructive, compromised, agreed or arranged total loss of such Ship;
- (b) requisition for title or other compulsory acquisition including, if that ship is not released therefrom within the Relevant Period, capture, appropriation, forfeiture, seizure, detention, deprivation or confiscation howsoever for any reason (but excluding requisition for use or hire) by or on behalf of any government entity or other competent authority or by pirates, hijackers, terrorists or similar persons;
“**Relevant Period**” means for the purposes of this definition either (i) ninety (90) days or, (ii) if relevant underwriters confirm in writing (in terms satisfactory to the Agent) prior to the end of such ninety (90) day period that such capture, seizure, detention or confiscation will be fully covered (subject to any applicable deductible) by the relevant Owner’s war risks insurance if continuing for a further period exceeding ten (10) calendar months, the shorter of twelve (12) months and such period at the end of which cover is confirmed to attach; and
- (c) any arrest, capture, seizure or detention of such Ship (including any hijacking or theft) unless it is within 90 days redelivered to the full control of the Owner owning such Ship;

“**Total Assets**” means, as at the date of calculation or, as the case may be, for any accounting period, the total assets (based on book values) (which shall have the meaning given thereto under US GAAP) of the Borrower as at that date or for that period as shown in the Latest Accounts.

“**Total Liabilities**” means, as at the date of calculation or, as the case may be, for any accounting period, the total liabilities (which shall have the meaning given thereto under US GAAP) of the Borrower as at that date or for that period as shown in the Latest Accounts;

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

- (a) in the case of an actual loss of such Ship, the date on which it occurred or, if that is unknown, the date when such Ship was last heard of;
- (b) in the case of a constructive, compromised, agreed or arranged total loss of such Ship, the earliest of:
 - (i) the date on which a notice of abandonment is given to the insurers; and
 - (ii) the date of any compromise, arrangement or agreement made by or on behalf of the Borrower owning such Ship with such Ship’s insurers in which the insurers agree to treat such Ship as a total loss; and

(c) in the case of any other type of total loss, on the date (or the most likely date) on which it appears to the Agent that the event constituting the total loss occurred;

“**Transfer Certificate**” has the meaning given in Clause 26.2 (*Transfer by a Lender*); and

“**Trust Property**” has the meaning given in clause 3.1 (*Definition of “Trust Property”*) of the Agency and Trust Deed; and

“**US GAAP**” means the generally accepted accounting principles applied from time to time in the United States of America.

Words and expressions defined in Schedule 6 (*Ship and Third Party Manager Details*) when used in this Agreement shall have the meanings given to them in Schedule 6 (*Ship and Third Party Manager Details*) as if the same were set out in full in this clause 1.1 (*Definitions*).

1.2 Construction of certain terms. In this Agreement:

“**administration notice**” means a notice appointing an administrator, a notice of intended appointment and any other notice which is required by law (generally or in the case concerned) to be filed with the court or given to a person prior to, or in connection with the appointment of an administrator;

“**approved**” means, for the purposes of Clause 13 (*Insurance*), approved in writing by the Agent;

“**asset**” includes every kind of property, asset, interest or right, including any present, future or contingent right to any revenues or other payment;

“**company**” includes any partnership, joint venture and unincorporated association;

“**consent**” includes an authorisation, consent, approval, resolution, licence, exemption, filing, registration, notarisation and legalisation;

“**contingent liability**” means a liability which is not certain to arise and/or the amount of which remains unascertained;

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;

“**document**” includes a deed; also a letter or fax;

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

“**expense**” means any kind of cost, charge or expense (including all legal costs, out-of-pocket expenses, charges and expenses) and any applicable value added or other tax;

“**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;

“**legal or administrative action**” means any legal proceeding or arbitration and any administrative or regulatory action or investigation;

“**liability**” includes every kind of debt or liability (present or future, certain or contingent), whether incurred as principal or surety or otherwise;

“**months**” shall be construed in accordance with Clause 1.3 (*Meaning of “month”*);

“**obligatory insurances**” means, in relation to a Ship, all insurances effected or which the relevant Owner is obliged to effect in respect of each Ship, under Clause 13 (*Insurance*) or any other provision of this Agreement or another Finance Document;

“**parent company**” has the meaning given in Clause 1.4 (*Meaning of “Subsidiary”*);

“**person**” includes any company; any state, political sub-division of a state and local or municipal authority; and any international organisation;

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

“**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 (01/11/02 or 01/11/03), clause 8 of the Institute Time Clauses (Hulls) (1/11/1995 or 1/10/83) or the Institute Amended Running Down Clause (1/10/71) or any equivalent provision;

“**regulation**” includes any present or future regulation, rule, directive, requirement, request or guideline (whether or not having the force of law) of any government entity, central bank or any self-regulatory or other supra-national authority (including, without limitation any present or future regulation, rule, directive, requirement, request or guideline (whether or not having the force of law) of any government entity, central bank or any self-regulatory or other supra-national authority (including, without limitation, any regulation implementing or complying with (1) the “International Convergence of Capital Measurement and Capital Standards, a Revised Framework” published by the Basel Committee on Banking Supervision in June 2004, in the form existing on the date of this Agreement (“Basel II”) and/or (2) Basel III and/or (3) Basel IV and/or (4) any other law or regulation which, at any time and from time to time, implements and/or amends and/or supplements and/or re-enacts and/or supersedes, whether in whole or in part, Basel II and/or Basel III and/or Basel IV (including CRD IV and CRR), and whether such implementation, application or compliance is by any government entity, a lender or any company affiliated to it);

“**tax**” includes any present or future tax, duty, impost, levy or charge of any kind which is imposed by any state, any political sub-division of a state or any local or municipal authority (including any such imposed in connection with exchange controls), and any connected penalty, interest or fine; and

“**war risks**” includes the risk of mines and all risks excluded by clause 29 of the International Hull Clauses (1/11/02) or clause 24 of the Institute Time Clauses (Hulls) (1/11/1995) or clause 23 of the Institute Time Clause (Hulls) (1/10/83).

1.3 Meaning of “month”. A period of one or more “**months**” ends on the day in the relevant calendar month numerically corresponding to the day of the calendar month on which the period started (“**the numerically corresponding day**”), but:

- (a) on the Business Day following the numerically corresponding day if the numerically corresponding day is not a Business Day or, if there is no later Business Day in the same calendar month, on the Business Day preceding the numerically corresponding day; or
- (b) on the last Business Day in the relevant calendar month, if the period started on the last Business Day in a calendar month or if the last calendar month of the period has no numerically corresponding day;

and “month” and “monthly” shall be construed accordingly.

1.4 Meaning of “Subsidiary”. “Subsidiary” of a person means any company or entity directly or indirectly controlled by such person, and for this purpose “control” means the ownership of more than fifty per cent (50%) of the voting share capital (or equivalent rights of ownership) of such company or entity.

1.5 General Interpretation. In this Agreement:

- (a) references to, or to a provision of, a Finance Document or any other document are references to it as amended or supplemented, whether before the date of this Agreement or otherwise;
- (b) references to, or to a provision of, any law include any amendment, extension, re-enactment or replacement, whether made before the date of this Agreement or otherwise;
- (c) words denoting the singular number shall include the plural and vice versa; and
- (d) Clauses 1.1 to 1.5 apply unless the contrary intention appears.

1.6 Headings.

In interpreting a Finance Document or any provision of a Finance Document, all clause, sub-clause and other headings in that and any other Finance Document shall be entirely disregarded.

1.7 Bail-in

Notwithstanding any other term of any Finance Document or any other agreement, arrangement or understanding between the Parties, each Party acknowledges and accepts that any liability of any Party to any other Party under or in connection with the Finance Documents may be subject to Bail-In Action by the relevant Resolution Authority and acknowledges and accepts to be bound by the effect of:

- (a) any Bail-In Action in relation to any such liability, including (without limitation):
 - (i) a reduction, in full or in part, in the principal amount, or outstanding amount due (including any accrued but unpaid interest) in respect of any such liability;
 - (ii) a conversion of all, or part of any such liability into shares or other instruments of ownership that may be issued to, or conferred on, it; and
 - (iii) a cancellation of any such liability; and
- (b) a variation of any term of any Finance Document to the extent necessary to give effect to any Bail-In Action in relation to any such liability.

In this clause:

“**Article 55 BRRD**” means Article 55 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms;

“**Bail-In Action**” means the exercise of any Write-down and Conversion Powers;

“Bail-In Legislation” means:

- (a) in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 BRRD, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time; and
- (b) in relation to any state other than such an EEA Member Country or (to the extent that the United Kingdom is not such an EEA Member Country) the United Kingdom, any analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation;

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

“EU Bail-In Legislation Schedule” means the document described as such and published by the Loan Market Association (or any successor person) from time to time.

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

“UK Bail-In Legislation” means (to the extent that the United Kingdom is not an EEA Member Country which has implemented, or implements, Article 55 BRRD) Part I of the United Kingdom Banking Act 2009 and any other law or regulation applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (otherwise than through liquidation, administration or other insolvency proceedings); and

“Write-down and Conversion Powers” means:

- (a) in relation to any Bail-In Legislation described in the EU Bail-In Legislation Schedule from time to time, the powers described as such in relation to that Bail-In Legislation in the EU Bail-In Legislation Schedule;
- (b) in relation to any other applicable Bail-In Legislation:
 - (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;
 - (ii) any similar or analogous powers under that Bail-In Legislation; and
- (c) in relation to any UK Bail-In Legislation:
 - (i) any powers under that UK Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that UK Bail-In Legislation that are related to or ancillary to any of those powers; and
 - (ii) any similar or analogous powers under that UK Bail-In Legislation.

2 FACILITY

- 2.1 **Amount of facility.** Subject to the other provisions of this Agreement, the Lenders shall make available to the Borrower a loan facility in an aggregate amount not exceeding the Maximum Loan Amount for the purpose of enabling the Borrower to on-lend the same to the Shareholder to finance the acquisition of all the shares in each Guarantor.
- 2.2 **Lenders' participations in Loan.** Subject to the other provisions of this Agreement, each Lender shall participate in the Loan in the proportion which, as at the Drawdown Date, its Commitment bears to the Total Commitments.
- 2.3 **Purpose of Loan.** The Borrower undertakes with each Creditor Party to use the Loan only for the purpose stated in the preamble to this Agreement.

3 POSITION OF THE LENDERS

- 3.1 **Interests several.** The rights of the Lenders under this Agreement are several.
- 3.2 **Individual right of action.** Each Lender shall be entitled to sue for any amount which has become due and payable by the Borrower to it under this Agreement without joining the Agent, the Security Trustee or any other Lender as additional parties in the proceedings.
- 3.3 **Proceedings requiring Majority Lender consent.** Except as provided in Clause 3.2 (*Individual right of action*), no Lender may commence proceedings against the Borrower or any Security Party in connection with a Finance Document without the prior consent of the Majority Lenders.
- 3.4 **Obligations several.** The obligations of the Lenders under this Agreement are several; and a failure of a Lender to perform its obligations under this Agreement shall not result in:
- (a) the obligations of the other Lenders being increased; nor
 - (b) the Borrower, any Security Party, any other Lender being discharged (in whole or in part) from its obligations under any Finance Document;

and in no circumstances shall a Lender have any responsibility for a failure of another Lender to perform its obligations under this Agreement.

4 DRAWDOWN

- 4.1 **Request for Loan.** Subject to the following conditions, the Borrower may request the Loan to be made by ensuring that the Agent receives a completed Drawdown Notice not later than 11.00 a.m. (Rotterdam time) 3 Business Days prior to the intended Drawdown Date.
- 4.2 **Availability.** The conditions referred to in Clause 4.1 (*Request for Loan*) are that:
- (a) the Drawdown Date has to be a Business Day during the Availability Period;

- (b) the amount of the Loan shall not exceed the amount set out in Clause 2.1 (*Amount of facility*); and
 - (c) all applicable conditions precedent set out in Clause 9.1 (*Documents, fees and no default*) shall have been fulfilled.
- 4.3 Notification to Lenders of receipt of the Drawdown Notice.** The Agent shall promptly notify the Lenders that it has received the Drawdown Notice and shall inform each Lender of:
- (a) the amount of the Loan and the Drawdown Date;
 - (b) the amount of that Lender's participation in the Loan; and
 - (c) the duration of the Interest Period.
- 4.4 Drawdown Notice irrevocable.** The Drawdown Notice must be signed by a director or an authorised signatory of the Borrower; and once served, the Drawdown Notice cannot be revoked without the prior consent of the Agent, acting on the authority of the Majority Lenders.
- 4.5 Lenders to make available Contributions.** Subject to the provisions of this Agreement, each Lender shall, on and with value on the Drawdown Date, make available to the Agent the amount due from that Lender under Clause 2.2 (*Lender's participation in Loan*).
- 4.6 Disbursement of Loan.** Subject to the provisions of this Agreement, the Agent shall on the Drawdown Date pay to the Borrower for on-payment to the Shareholder the amounts which the Agent receives from the Lenders under Clause 4.5 above; and that payment to the Borrower shall be made:
- (a) to the account which the Borrower specifies in the Drawdown Notice; and
 - (b) in the like funds as the Agent received the payments from the Lenders.
- 4.7 Disbursement of Loan to third party.** A payment by the Agent under Clause 4.6 (*Disbursement of Loan*) above shall constitute the making of the Loan and the Borrower shall thereupon become indebted, as principal and direct Security Party, to each Lender in an amount equal to that Lender's Contribution.
- 4.8 Use of proceeds**
- (a) the Creditor Parties shall have no responsibility for the Borrower's use of the proceeds of the Loan.
 - (b) the Borrower shall not, and shall procure that no Security Party or other Group Member or any affiliate of any of them shall, permit or authorise any other person to, directly or indirectly, use, lend, make payments of, contribute or otherwise make available, all or any part of the proceeds of the Loan or other transactions contemplated by this Agreement to fund or facilitate trade, business or other activities:
 - (i) involving or for the benefit of any Restricted Person; or
 - (ii) in any other manner that could result in the Borrower, any other Security Party or a Creditor Party being in breach of any Sanctions or becoming a Restricted Person.
- 4.9 Cancellation.** If any part of the Commitment has not been drawn down under this Agreement at the end of the Availability Period, such undrawn portion shall, on the day following the last day of the applicable Availability Period, be permanently and irrevocably cancelled; it is hereby agreed that any undrawn portion of any part of the Total Commitments at the end of the Availability Period shall, on the day following the last day of the Availability Period, be permanently and irrevocably cancelled.

5 INTEREST

- 5.1 Payment of normal interest.** Subject to the provisions of this Agreement, interest on the Loan shall be paid by the Borrower on the last day of the Interest Period.
- 5.2 Normal rate of interest.** Subject to the provisions of this Agreement, the rate of interest on the Loan in respect of an Interest Period shall be the aggregate of (a) the Margin and (b) LIBOR for that Interest Period.
- 5.3 Payment of accrued interest.** In the case of an Interest Period of longer than 3 months, accrued interest shall be paid every 3 months during that Interest Period and on the last day of that Interest Period.
- 5.4 Notification of Interest Periods and rates of normal interest.** The Agent shall notify the Borrower and each Lender of:
- (a) each rate of interest; and
 - (b) the duration of each Interest Period;
- as soon as reasonably practicable after each is determined.
- 5.5 Obligation of Reference Banks to quote.** A Reference Bank which is a Lender shall use all reasonable efforts to supply any quotation required of it for the purposes of fixing a rate of interest under this Agreement.
- 5.6 Absence of quotations by Reference Banks.** If any Reference Bank fails to supply a quotation when it is required to do so, the Agent shall determine the relevant LIBOR on the basis of the quotations supplied by the other Reference Bank or Banks; but if 2 or more of the Reference Banks fail to provide a quotation, the relevant rate of interest shall be determined by the Agent.
- 5.7 Market disruption.** The following provisions of this Clause 5 (*Interest*) apply if:
- (a) no Screen Rate is available for an Interest Period and 2 or more of the Reference Banks do not before 1.00 p.m. (London time) on the Quotation Date provide quotations to the Agent in order to fix LIBOR; or
 - (b) at least 1 Business Day before the start of an Interest Period, Lenders having Contributions together amounting to more than 50 per cent. of the Loan (or, if no part of the Loan has been drawn, Lenders having Commitments amounting to more than 50 per cent. of the aggregate of the Total Commitments) notify the Agent that by reason of changes affecting the London Interbank Market, adequate and fair means do not exist for determining the rate of interest on the Loan (or part of it) for that Interest Period at or about 1.00 p.m. (London time) on the Quotation Date for the Interest Period; or
 - (c) at least 1 Business Day before the start of an Interest Period, the Agent is notified by a Lender (the “**Affected Lender**”) that for any reason it is unable to obtain Dollars in the London Interbank Market in order to fund its Contribution, as the case may be (or any part of it) during that Interest Period.
- 5.8 Notification of market disruption.** The Agent shall promptly notify the Borrower and each of the Lenders stating the circumstances falling within Clause 5.7 (*Market Disruption*) which have caused its notice to be given.

- 5.9 Suspension of drawdown.** If the Agent's notice under Clause 5.8 (*Notification of market disruption*) above is served before the Loan is to be made:
- (a) in a case falling within Clauses 5.7(a) or (b) (*Market disruption*), the Lenders' obligations to make the Loan;
 - (b) in a case falling within Clause 5.7(c) (*Market disruption*), the Affected Lender's obligation to participate in the Loan,
- (i) in the case of Clause 5.9(a), shall be made on the basis of an alternative interest rate and interest period which the Lenders or (as the case may be) the Affected Lender may select as cost of funding of the Lenders or (as the case may be) the Affected Lender, in Dollars or in any available currency of their or its Contribution plus the Margin and Clauses 5.10 (*Negotiation of alternative rate of interest*), 5.11 (*Application of agreed alternative rate of interest*), 5.12 (*Alternative rate of interest in absence of agreement*) and 5.13 (*Notice of prepayment*) shall apply; and (ii) in the case of Clause 5.9(b), shall be suspended while the circumstances referred to in the Agent's notice continue and thereafter Clauses 5.10 (*Negotiation of alternative rate of interest*), 5.11 (*Application of agreed alternative rate of interest*), 5.12 (*Alternative rate of interest in absence of agreement*) and 5.13 (*Notice of prepayment*) shall apply.
- 5.10 Negotiation of alternative rate of interest.** If the Agent serves a notice under Clause 5.8, the Borrower, the Agent and the Lenders or (as the case may be) the Affected Lender shall use reasonable endeavours to agree, within the 30 days after the date on which the Agent serves its notice under Clause 5.8 (*Notification of market disruption*) (the "**Negotiation Period**"), an alternative interest rate or (as the case may be) an alternative basis for the Lenders or (as the case may be) the Affected Lender to fund or continue to fund their or its Contribution during the Interest Period concerned.
- 5.11 Application of agreed alternative rate of interest.** Any alternative interest rate or an alternative basis which is agreed during the Negotiation Period shall take effect in accordance with the terms agreed.
- 5.12 Alternative rate of interest in absence of agreement.** If an alternative interest rate or alternative basis is not agreed within the Negotiation Period, and the relevant circumstances are continuing at the end of the Negotiation Period, then the Agent shall, with the agreement of each Lender or (as the case may be) the Affected Lender, set an interest period and interest rate representing the cost of funding of the Lenders or (as the case may be) the Affected Lender in Dollars or in any available currency of their or its Contribution plus the Margin; and the procedure provided for by this Clause 5.12 shall be repeated if the relevant circumstances are continuing at the end of the interest period so set by the Agent.
- 5.13 Notice of prepayment.** If the Borrower does not agree with an interest rate set by the Agent under Clause 5.12 (*Alternative rate of interest in absence of agreement*), the Borrower may give the Agent not less than 15 Business Days' notice of their intention to prepay at the end of the interest period set by the Agent (in the case where a notice has been served under Clause 5.8 (*Notification of market disruption*) after the Loan has been made available) or the Borrower may notify the Agent of their intention not to proceed with the relevant drawdown (in the case where a notice has been served under Clause 5.8 (*Notification of market disruption*) prior to making the Loan).
- 5.14 Prepayment; termination of Commitments.** A notice under Clause 5.13 (*Notice of prepayment*) above shall be irrevocable; the Agent shall promptly notify the Lenders or (as the case may require) the Affected Lender of the Borrower's notice of intended prepayment; and:
- (a) on the date on which the Agent serves that notice, the Total Commitments or (as the case may require) the Commitment of the Affected Lender so far as they relate to the Loan shall be cancelled; and

- (b) on the last Business Day of the interest period set by the Agent, the Borrower shall prepay (without premium or penalty) the Loan or, as the case may be, the Affected Lender's Contribution, together with accrued interest thereon at the applicable rate plus the Margin.

5.15 **Application of prepayment.** The provisions of Clause 8 (*Repayment and prepayment*) shall apply in relation to the prepayment.

6 INTEREST PERIODS

6.1 **Interest Periods.** The first Interest Period shall commence on the Drawdown Date and shall terminate simultaneously with the then current Interest Period and thereafter each subsequent Interest Period shall commence on the expiry of the preceding Interest Period and each Interest Period shall be:

- (a) 3 months; or
- (b) such other period as the Agent may, with the authorisation of all the Lenders, agree with the Borrower;

provided that in respect of an amount due to be repaid under Clause 8.1 (*Repayment of Loan*) on a particular Repayment Date, an Interest Period relating to the Loan shall end on that Repayment Date.

6.2 **Non-availability of matching deposits for Interest Period selected.** If, after the Borrower has selected and the Lenders have agreed an Interest Period longer than 3 months, any Lender notifies the Agent by 11.00 a.m. (Rotterdam time) on the third Business Day before the commencement of that Interest Period that it is not satisfied that deposits in Dollars for a period equal to that Interest Period will be available to it in the London Interbank Market when that Interest Period commences, that Interest Period shall be of 3 months.

7 DEFAULT INTEREST

7.1 **Payment of default interest on overdue amounts.** The Borrower shall pay interest in accordance with the following provisions of this Clause 7 on any amount payable by the Borrower under any Finance Document which the Agent, the Security Trustee or the other designated payee does not receive on or before the relevant date, that is:

- (a) the date on which the Finance Documents provide that such amount is due for payment; or
- (b) if a Finance Document provides that such amount is payable on demand, the date on which the demand is served; or
- (c) if such amount has become immediately due and payable under Clause 19.4 (*Acceleration of liabilities*), the date on which it became immediately due and payable.

7.2 **Default rate of interest.** Interest shall accrue on an overdue amount from (and including) the relevant date until the date of actual payment (as well after as before judgment) at the rate per annum determined by the Agent to be 2 per cent. above:

- (a) in the case of an overdue amount of principal, the higher of the rates set out at Clauses 7.3(a) and (b); or

- (b) in the case of any other overdue amount, the rate set out at Clause 7.3(b) (*Calculation of default rate of interest*).
- 7.3 Calculation of default rate of interest.** The rates referred to in Clause 7.2 (*Default rate of interest*) above are:
- (a) the rate applicable to the overdue principal amount immediately prior to the relevant date (but only for any unexpired part of any then current Interest Period applicable to it);
- (b) the Margin plus, in respect of successive periods of any duration (including at call) up to 3 months which the Agent may select from time to time:
- (i) LIBOR; or
- (ii) if the Agent determines that Dollar deposits for any such period are not being made available to any Reference Bank by leading banks in the London Interbank Market in the ordinary course of business, a rate from time to time determined by the Agent by reference to the cost of funds to the relevant Lenders from such other sources as the Agent (after consultation with the Reference Bank) may from time to time determine.
- 7.4 Notification of interest periods and default rates.** The Agent shall promptly notify the Lenders and the Borrower of each interest rate determined by the Agent under Clause 7.3 (*Calculation of default rate of interest*) above and of each period selected by the Agent for the purposes of paragraph (b) of that Clause; but this shall not be taken to imply that the Borrower is liable to pay such interest only with effect from the date of the Agent's notification.
- 7.5 Payment of accrued default interest.** Subject to the other provisions of this Agreement, any interest due under this Clause shall be paid on the last day of the period by reference to which it was determined; and the payment shall be made to the Agent for the account of the Creditor Party to which the overdue amount is due.
- 7.6 Compounding of default interest.** Any such interest which is not paid at the end of the period by reference to which it was determined shall thereupon be compounded.
- 7.7 Replacement of Screen Rate.**
- (a) An amendment or waiver which relates to the rights or obligations of the Agent, the Security Agent or a Reference Bank (each in their capacity as such) may not be effected without the consent of the Agent, the Security Agent or that Reference Bank.
- (b) Subject to (a) above, if a Screen Rate Replacement Event has occurred in relation to any Screen Rate for a currency which can be selected for the Loan, any amendment or waiver which relates to:
- (i) providing for the use of a Replacement Benchmark in relation to that currency in place of (or in addition to) the affected Screen Rate; and
- (ii)
- (A) aligning any provision of any Finance Document to the use of that Replacement Benchmark;
- (B) enabling that Replacement Benchmark to be used for the calculation of interest under this Agreement (including, without limitation, any consequential changes required to enable that Replacement Benchmark to be used for the purposes of this Agreement);

- (C) implementing market conventions applicable to that Replacement Benchmark;
- (D) providing for appropriate fallback (and market disruption) provisions for that Replacement Benchmark; or
- (E) adjusting the pricing to reduce or eliminate, to the extent reasonably practicable, any transfer of economic value from one party to another as a result of the application of that Replacement Benchmark (and if any adjustment or method for calculating any adjustment has been formally designated, nominated or recommended by the Relevant Nominating Body, the adjustment shall be determined on the basis of that designation, nomination or recommendation),

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

In this Clause 7.7 (*Replacement of Screen Rate*):

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

“Replacement Benchmark” means a benchmark rate which is:

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

“Screen Rate Replacement Event” means, in relation to a Screen Rate:

- (a) the methodology, formula or other means of determining that Screen Rate has, in the opinion of the Majority Lenders materially changed;
- (b)
 - (iii)

- (A) the administrator of that Screen Rate or its supervisor publicly announces that such administrator is insolvent; or
- (B) information is published in any order, decree, notice, petition or filing, however described, of or filed with a court, tribunal, exchange, regulatory authority or similar administrative, regulatory or judicial body which reasonably confirms that the administrator of that Screen Rate is insolvent,

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

- (iv) the administrator of that Screen Rate publicly announces that it has ceased or will cease, to provide that Screen Rate permanently or indefinitely and, at that time, there is no successor administrator to continue to provide that Screen Rate;
 - (v) the supervisor of the administrator of that Screen Rate publicly announces that such Screen Rate has been or will be permanently or indefinitely discontinued; or
 - (vi) the administrator of that Screen Rate or its supervisor announces that that Screen Rate may no longer be used; or
- (c) in the opinion of the Majority Lenders and the Agent, that Screen Rate is otherwise no longer appropriate for the purposes of calculating interest under this Agreement.

8 REPAYMENT AND PREPAYMENT

8.1 Repayment of Loan. The Borrower shall repay the Loan by:

- (a) three (3) consecutive three-monthly instalments, each in an amount equal to \$1,000,000; and
- (b) a balloon instalment in an amount equal to \$20,500,000.

8.2 Repayment Dates. The first instalment shall be repaid on the earlier of (a) 30 March 2020 and (b) three (3) months following the Drawdown Date and the third instalment and the balloon instalment shall be repaid on the Maturity Date.

8.3 Final Repayment Date. On the final Repayment Date, the Borrower shall additionally pay to the Agent for the account of the Creditor Parties all other sums then accrued or owing under any Finance Document.

8.4 Voluntary prepayment. Subject to the following conditions, the Borrower may prepay the whole or any part of the Loan on the last day of an Interest Period.

8.5 Conditions for voluntary prepayment. The conditions referred to in Clause 8.4 are that:

- (a) a partial prepayment shall be in an amount of \$500,000 or a higher integral multiple of \$500,000;
- (b) the Agent has received from the Borrower at least 10 Business Days' prior written notice specifying the date on which the prepayment is to be made;

- (c) the Borrower has provided evidence satisfactory to the Agent that any consent required by the Borrower or any Security Party in connection with the prepayment has been obtained and remains in force, and that any requirement relevant to this Agreement which affects the Borrower or any Security Party has been complied with; and
 - (d) the amount of the instalment by which the Loan shall be prepaid, including the balloon instalment, under Clause 8.1 (*Repayment of Loan*) on any such scheduled repayment dates (as reduced by any earlier operation of this Clause 8.5, Clause 8.13 (*Conditions of cancellation of Commitments*) and Clause 8.16 (*Adjustments of scheduled repayments*)) shall be reduced in inverse order of maturity, in order of maturity or pro rata at the Borrower's option.
- 8.6 Effect of notice of prepayment.** A prepayment notice may not be withdrawn or amended without the consent of the Agent, given with the authorisation of the Majority Lenders, and the amount specified in the prepayment notice shall become due and payable by the Borrower on the date for prepayment specified in the prepayment notice.
- 8.7 Notification of notice of prepayment.** The Agent shall notify the Lenders promptly upon receiving a prepayment notice, and shall provide any Lender which so requests with a copy of any document delivered by the Borrower under Clause 8.5(c) (*Conditions for voluntary prepayment*).
- 8.8 Mandatory prepayment.** The Borrower shall be obliged to prepay the portion of the Loan specified in Clause 8.9 (*Amounts of mandatory prepayments*):
- (a) if a Ship is sold or refinanced by any bank or financial institution, on or before the date on which the sale is completed by delivery of such Ship to the relevant buyer or the funds under the refinancing arrangement are drawn down respectively; or
 - (b) if, after delivery (if applicable), a Ship becomes a Total Loss, on the earlier of the date falling 120 days (or such longer period as the Agent, acting on the instructions of the Majority Lenders, may agree (such consent not to be unreasonably withheld)) after the Total Loss Date and the date of receipt by the Security Trustee of the proceeds of insurance relating to such Total Loss.
- 8.9 Amounts of mandatory prepayments.** The amount of the Loan to be prepaid in the circumstances contemplated in Clause 8.8 (*Mandatory prepayment*) above is the greatest of:
- (a) the amount of the sale or Total Loss proceeds payable in respect of such sale or Total Loss or the amount which is being prepaid due to the refinancing of any part of the Loan by any bank or financial institution;
 - (b) an amount that, if the ratio set out in Clause 15.1 (*Minimum required security cover*) were applied immediately following the making of such prepayment, the Borrower would not be obliged to provide additional security or prepay part of the Loan under that Clause; and
 - (c) an amount so that if the ratio of (i) the aggregate of the Fair Market Value (determined as provided in Clause 15.3 (*Valuation of a Ship*)) of the Ships plus the net realisable value of any additional security previously provided under Clause 15 (*Security cover*) to (ii) the Loan is the same after such prepayment is made as it was before such prepayment is made.
- 8.10 Mandatory prepayment – Loan.** The Borrower shall be obliged to prepay the whole Loan, and any undrawn part of the Total Commitment shall be cancelled upon:
- (a) the circumstances referred to in Clause 23 (*Illegality etc*) arising, and in accordance with that Clause; or
 - (b) there occurs any Change of Control Event.

- 8.11 Amounts payable on prepayment.** A prepayment shall be made together with accrued interest (and any other amount payable under Clause 21 (*Indemnities*) or otherwise) in respect of the amount prepaid and, if the prepayment is not made on the last day of an Interest Period applicable thereto, together with any sums payable under Clause 21.1(c) (*Indemnities*) but without premium or penalty.
- 8.12 Voluntary cancellation of Commitments.** Subject to the following conditions, the Borrower may cancel the whole or any part of the Total Commitment.
- 8.13 Conditions for cancellation of Commitments.** The conditions referred to in Clause 8.12 (*Voluntary cancellation of Commitments*) above are that:
- (a) a partial cancellation shall be \$500,000 or a higher integral multiple of \$500,000;
 - (b) the Agent has received from the Borrower at least 10 Business Days' prior written notice specifying the amount of the Total Commitments to be cancelled and the date on which the cancellation is to take effect; and
 - (c) the amount of the instalments by which the Loan shall be repaid, including the balloon instalment, under Clause 8.1 (*Repayment of Loan*) on any such scheduled repayment dates (as reduced by any earlier operation of this Clause 8.13, Clause 8.5 (*Conditions for voluntary prepayment*) and Clause 8.16 (*Adjustments of scheduled repayments*)) shall be reduced pro rata.
- 8.14 Effect of notice of cancellation.** The service of a cancellation notice given under Clause 8.13(b) (*Conditions for cancellation of Commitments*) shall cause the amount of the Total Commitments specified in the notice to be permanently cancelled, following which the Commitment of each Lender shall be reduced pro rata.
- 8.15 No re-borrowing.** No amount prepaid or cancelled under Clauses 8.4 (*Voluntary prepayment*), 8.8 (*Mandatory prepayment*) and 8.12 (*Voluntary cancellation of Commitments*) may be re-borrowed.
- 8.16 Adjustment of scheduled repayments.** If the Total Commitment has been partially reduced or cancelled under this Agreement and/or any part of the Loan is prepaid (other than under Clause 8.1 (*Repayment of Loan*), Clause 8.4 (*Voluntary prepayment*) and Clause 8.12 (*Voluntary cancellation of Commitments*)) before any scheduled repayment date and/or the aggregate amount advanced to the Borrower is less than the Maximum Loan Amount, the amount of the instalment by which the Loan shall be repaid, including the balloon instalment, under Clause 8.1 (*Repayment of Loan*) on any such scheduled repayment dates (as reduced by any earlier operation of this Clause 8.16) shall be reduced pro rata unless the Agent agrees otherwise in writing.

9 CONDITIONS PRECEDENT

- 9.1 Documents, fees and no default.** Each Lender's obligation to contribute to the Loan is subject to the following conditions precedent:
- (a) that on or before the date of execution of this Agreement, the Agent receives the documents described in Part A of Schedule 3 in form and substance satisfactory to the Agent and its lawyers;
 - (b) that, on or before the Drawdown Date in respect of the Loan to be made available hereunder, but prior to the making of the Loan, the Agent receives the documents described in Part B of Schedule 3 in form and substance satisfactory to it and its lawyers;

- (c) that, on or before the Drawdown Date, the Agent receives any fees and expenses that are due and payable under Clause 20 (*Expenses*);
- (d) that both at the date of the Drawdown Notice and the Drawdown Date:
 - (i) no Event of Default or Potential Event of Default has occurred and is continuing or would result from the borrowing of the Loan;

the representations and warranties in Clause 10 (*Representations and Warranties*) and those of the Borrower or any Security Party which are set out in the other Finance Documents would be true and not misleading if repeated on each of those dates with reference to the circumstances then existing; and

none of the circumstances contemplated by Clause 5.7 (*Market disruption*) has occurred and is continuing;

- (e) that, if the ratio set out in Clause 15.1 (*Minimum required security cover*) were applied immediately following the making of the Loan, the Borrower would not be obliged to provide additional security or prepay part of the Loan under that Clause; and
- (f) that the Agent has received, and found to be acceptable to it, any further opinions, consents, agreements and documents in connection with the Finance Documents which the Agent may, with the authorisation of the Majority Lenders, request by notice to the Borrower prior to the Drawdown Date.

9.2 Waiver of conditions precedent. If the Majority Lenders, at their discretion, permit the Loan to be borrowed before certain of the conditions referred to in Clause 9.1 (*Documents, fees and no default*) are satisfied, the Borrower undertakes to ensure that such conditions are satisfied within such period and on such terms as the Agent may specify in writing.

9.3 Conditions Subsequent. The Borrower undertakes to deliver or to cause to be delivered to the Agent on, or as soon as practicable after, the Drawdown Date the additional documents and other evidence listed in Part C (*Conditions Subsequent*) of Schedule 3.

10 REPRESENTATIONS AND WARRANTIES

10.1 General. The Borrower represents and warrants to each Creditor Party as follows.

10.2 Status.

- (a) The Borrower is duly formed and validly existing under the laws of the Republic of Marshall Islands as a limited partnership; and
- (b) each Guarantor is duly incorporated and validly existing under the laws of the Republic of the Marshall Islands.

10.3 Share capital and ownership. The legal title and ownership of all the issued shares in each Guarantor is held by the Shareholder and the ultimate beneficial ownership of all the issued shares in each Guarantor is held by the Borrower, free of any Security Interest or other claim other than any Permitted Security Interests.

- 10.4 Corporate power.** The Borrower and each Security Party has the corporate capacity, and has taken all corporate action and obtained all consents necessary for it:
- (a) to execute the Finance Documents to which the Borrower and/or the relevant Security Party is a party; and
 - (b) in the case of the Borrower, to make all the payments contemplated by, and to comply with, the Finance Documents to which it is a party.
- 10.5 Consents in force.** All the consents referred to in Clause 10.4 (*Corporate power*) above remain in force and nothing has occurred which makes any of them liable to revocation.
- 10.6 Legal validity; effective Security Interests.** The Finance Documents to which the Borrower or a Security Party is a party, do now or, as the case may be, will, upon execution and delivery (and, where applicable, registration as provided for in the Finance Documents):
- (a) constitute that Borrower's or that Security Party's legal, valid and binding obligations enforceable against that Borrower or that Security Party in accordance with their respective terms; and
 - (b) create legal, valid and binding Security Interests enforceable in accordance with their respective terms over all the assets to which they, by their terms, relate;
- subject to any relevant insolvency laws affecting creditors' rights generally.
- 10.7 No third party Security Interests.** Without limiting the generality of Clause 10.6 (*Legal validity; effective Security Interests*), at the time of the execution and delivery of each Finance Document:
- (a) the Borrower or the relevant Security Party which is party to that Finance Document will have the right to create all the Security Interests which that Finance Document purports to create; and
 - (b) no third party will have any Security Interest (except for Permitted Security Interests) or any other interest, right or claim over, in or in relation to any asset to which any such Security Interest, by its terms, relates.
- 10.8 No conflicts.** The execution by the Borrower and each Security Party of each Finance Document to which it is a party and (in the case of the Borrower, the Approved Manager and the Third Party Manager) the Management Agreement, and the borrowing by the Borrower of the Loan and each Security Party's compliance with each Finance Document to which it is a party will not involve or lead to a contravention of:
- (a) any law or regulation; or
 - (b) the constitutional documents of the Borrower or any Security Party; or
 - (c) any contractual or other obligation or restriction which is binding on the Borrower or any of the assets of the Borrower and the Security Parties.
- 10.9 No withholding taxes.** All payments which the Borrower or any Security Party is liable to make under the Finance Documents to which it is a party may be made without deduction or withholding for or on account of any tax payable under any law of any Pertinent Jurisdiction.
- 10.10 No default.** No Event of Default or Potential Event of Default has occurred and is continuing.

- 10.11 Information.** All information which has been provided in writing by or on behalf of the Borrower or any Security Party to any Creditor Party in connection with any Finance Document satisfied the requirements of Clause 11.5 (*Information provided to be accurate*); all audited and unaudited accounts which have been so provided satisfied the requirements of Clause 11.7 (*Form of financial statements*); and there has been no material adverse change in the financial position or state of affairs of the Borrower or any Security Party from that disclosed in the latest of those accounts.
- 10.12 No litigation.** No legal or administrative action involving the Borrower or any Security Party (including action relating to any alleged or actual breach of the ISM Code, the ISPS Code or the MARPOL Protocol) has been commenced or taken or, to the Borrower's knowledge, is likely to be commenced or taken which, in either case, would be likely to have a material adverse effect on that Borrower's or that Security Party's financial position or profitability.
- 10.13 Validity and completeness of documents.** The Management Agreement constitutes valid, binding and enforceable obligations of the relevant Owner, the Borrower, the Approved Manager and the Third Party Manager in accordance with its terms and:
- (a) the copy of the Management Agreement and the SPA delivered to the Agent before the date of this Agreement is a true and complete copy; and
 - (b) no amendments or additions to the Management Agreement or the SPA have been agreed nor has the relevant Owner, the Borrower, the Approved Manager or the Third Party Manager waived any of their respective rights under the Management Agreement.
- 10.14 Compliance with certain undertakings.** At the date of this Agreement, the Borrower and each of the Security Parties are in compliance with Clauses 11.2 (*Title; negative pledge*), 11.4 (*No other liabilities or obligations to be incurred*), 11.5 (*Information provided to be accurate*), 11.9 (*Consents*), 11.13 (*Principal place of business*), 11.14 (*Confirmation of no default*) and 11.15 (*Notification of Default*).
- 10.15 Taxes paid.** The Borrower and each Security Party have paid all taxes applicable to, or imposed on or in relation to that Borrower, that Security Party, its business or the Ships.
- 10.16 Compliance.** All requirements of the ISM Code, the ISPS Code and the MARPOL Protocol as they relate to the Borrower, the Approved Manager, the Third Party Manager and each other Security Party and the Ships have been complied with.
- 10.17 No money laundering.** Without prejudice to the generality of Clause 2.3 (*Purpose of Loan*), in relation to the borrowing by the Borrower of the Loan, the performance and discharge of its obligations and liabilities under the Finance Documents, and the transactions and other arrangements effected or contemplated by the Finance Documents to which the Borrower is a party, the Borrower confirms (i) that it is acting for its own account, (ii) that it will use the proceeds of the Loan for its own benefit, under its full responsibility and exclusively for the purposes specified in this Agreement and (iii) that the foregoing will not involve or lead to contravention of any law, official requirement or other regulatory measure or procedure implemented to combat "money laundering" (as defined in Article 1 of the Directive 2015/849/EC of the Council of the European Communities).
- 10.18 No immunity.** No Borrower or Security Party benefits from any immunity from suit.
- 10.19 Disclosure of material facts.** The Borrower is not aware of any material facts or circumstances which have not already been disclosed to the Agent and which might, if disclosed to the Agent, adversely affect the decision of the Lenders to make the Loan available to the Borrower.
- 10.20 Pari Passu.** The obligations of the Borrower under the Finance Documents to which it is a party rank at least pari passu with all other unsecured indebtedness of the Borrower, other than indebtedness mandatorily preferred by law.

- 10.21 Governing law and enforcement.** The choice of law as the governing law of any Finance Document will be recognised and enforced in the jurisdiction of incorporation of the Borrower and each relevant Security Party, and any judgment obtained in England in relation to any such Finance Document will be recognised and enforced in the jurisdiction of incorporation of the Borrower and each relevant Security Party.
- 10.22 No filing or stamp tax.** Under the laws of all Pertinent Jurisdiction relating to the Borrower and each relevant Security Party it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction (save for the Mortgages which are to be recorded in accordance with the requirements of the relevant Approved Flag State registry) or that any stamp, registration or similar tax be paid on or in relation the Finance Documents or the transactions contemplated by the Finance Documents.
- 10.23 Sanctions.** No Security Party nor other Group Member nor any director, officer, agent, employee of any Security Party or other Group Member or any person acting on behalf of any Security Party or other Group Member, is a Restricted Person nor acts directly or indirectly on behalf of a Restricted Person.
- 10.24 Repetition.** Each representation and warranty in this Clause 10 (*Representations and Warranties*) (other than this Clause 10.24) is deemed to be repeated by the Borrower by reference to the facts and circumstances then existing on each date during the Security Period.

11 GENERAL UNDERTAKINGS

- 11.1 General.** The Borrower undertakes with each Creditor Party to comply and shall procure that each Guarantor shall also comply (as applicable), with the following provisions of this Clause 11 at all times during the Security Period, except as the Agent may, with the authorisation of the Majority Lenders, otherwise permit.
- 11.2 Title; negative pledge.** The Borrower shall procure that each Guarantor will:
- (a) hold the legal title to and the entire beneficial interest in the Ship owned by it, such Ship's Insurances and Earnings, free from all Security Interests and other interests and rights of every kind, except for those created by the Finance Documents and the effect of assignments contained in the Finance Documents and except for Permitted Security Interests;
 - (b) not create or permit to arise any Security Interest (except for Permitted Security Interests) over any asset which is the subject matter of a Finance Document or over any of its shares;
 - (c) not create or permit to arise, any Security Interest (except for Permitted Security Interests) over any other asset, present or future; and
 - (d) procure that its liabilities under the Finance Documents to which it is a party do and will rank at least pari passu with all its other present and future unsecured liabilities, except for liabilities which are mandatorily preferred by law.
- 11.3 No disposal of assets.** The Borrower shall procure that no Guarantor shall transfer, lease or otherwise dispose of:
- (a) all or a substantial part of its respective assets, whether by one transaction or a number of transactions, whether related or not; or

- (b) any debt payable to it or any other right (present, future or contingent right) to receive a payment, including any right to damages or compensation,
but paragraph (a) does not apply to any charter of a Ship to which Clause 14.3 (*Repair and classification*) applies.
- 11.4 No other liabilities or obligations to be incurred.** The Borrower shall procure that no Guarantor shall incur any liability or obligation except liabilities and obligations:
- (a) under the Finance Documents to which it is a party;
- (b) reasonably incurred in the ordinary course of the Borrower's business of owning, operating, managing and/or chartering of ships and other ship-related business; and
- (c) incurred in relation to or in connection with, the financing of ships owned or to be acquired by, members of the Group.
- 11.5 Information provided to be accurate.** All financial and other information which is provided in writing by or on behalf of the Borrower under or in connection with any Finance Document will be true and not misleading and will not omit any material fact or consideration.
- 11.6 Provision of financial statements.** The Borrower will provide the Agent or shall procure that the Agent is provided with:
- (a) as soon as possible, but in no event later than 180 days after the end of each of its Financial Years, annual audited (prepared in accordance with US GAAP by a firm of accountants acceptable to the Agent) consolidated balance sheet and profit and loss accounts of the Borrower (commencing with the Financial Year ending 31 December 2019), together with updated details (in a form acceptable to the Agent) of all off-balance sheet and time-charter hire commitments of each of the Ships and any other ship from time to time (whether before or after the date of this Agreement) owned, managed or crewed by, or chartered to, any Group Member;
- (b) as soon as possible, but in no event later than 90 days after the end of each three month accounting period, commencing with the first financial quarter ending 31 March 2020, the Borrower's unaudited consolidated balance sheet and profit and loss accounts for that 3 month period certified as to their correctness by its chief financial officer; and
- (c) such further financial information about the Borrower, the Guarantors, the Ships (including, but not limited to, present and future revenues, charter arrangements, Financial Indebtedness, employment details, operating expenses and projected capital expenditure) as the Agent may require.
- 11.7 Form of financial statements.** All accounts (audited and unaudited) delivered under Clause 11.6 (*Provision of financial statements*) above will:
- (a) be prepared in accordance with all applicable laws and US GAAP;
- (b) fairly represent the state of affairs of the Group at the date of those financial statements and of its profit for the period to which those financial statements relate; and
- (c) fully disclose or provide for all significant liabilities of the Group.

- 11.8 Shareholder notices.** The Borrower will send to the Agent, at the same time as they are despatched, copies of all communications which are despatched to the Borrower's shareholders or any class of them related to matters which could be considered material in the context of this Agreement and the other Finance Documents, unless publicly announced or filed with a securities exchange.
- 11.9 Consents.** The Borrower will, and shall procure that each Security Party will, maintain in force and promptly obtain or renew, and will promptly send certified copies to the Agent of, all consents required:
- (a) for the Borrower and each Security Party to perform its obligations under any Finance Document to which it is a party;
 - (b) for the Approved Manager to perform its obligations under the Management Agreement;
 - (c) for the validity or enforceability of any Finance Document to which it is a party;
 - (d) for the Shareholder, with effect from the Actual Transfer Date relating to the shares in respect of each Guarantor, to acquire, register in its name and own the shares in the Guarantor to be owned by it under the terms of the SPA; and
 - (e) for the Borrower and the Approved Manager each to perform its obligations under the Management Agreement,
- and the Borrower will, and shall procure that the Security Parties shall, comply with the terms of all such consents.
- 11.10 Maintenance of Security Interests.** The Borrower will:
- (a) at its own cost, do all that it reasonably can to ensure that each Finance Document validly creates the obligations and the Security Interests which it purports to create; and
 - (b) without limiting the generality of paragraph (a), at its own cost, promptly register, file, record or enrol any Finance Document with any court or authority in all Pertinent Jurisdictions, pay any stamp, registration or similar tax in all Pertinent Jurisdictions in respect of any Finance Document and give any notice or take any other step which to the best of its knowledge is or has become, or which, in the opinion of the Majority Lenders, is or has become necessary or desirable for any Finance Document to be valid, enforceable or admissible in evidence or to ensure or protect the priority of any Security Interest which any Finance Document creates.
- 11.11 Notification of litigation.** The Borrower will provide the Agent with details of any legal or administrative action involving the Borrower, the Approved Manager and any other Security Party (to the best of its knowledge), the SPA, any Ship, the Management Agreement, the Earnings or the Insurances as soon as such action is instituted or it becomes apparent to the Borrower that it is likely to be instituted, unless it is clear that the legal or administrative action cannot be considered material in the context of any Finance Document.
- 11.12 Amendments to Management Agreement.** The Borrower will ensure that neither the relevant Owner nor the Borrower or the Approved Manager or the Third Party Manager will, without the prior written consent of the Agent acting on the instructions of the Majority Lenders (such consent not to be unreasonably withheld), agree to any material amendment or supplement to, or waive any breach in relation to, the Management Agreement.
- 11.13 Principal place of business.** The Borrower will maintain its place of business, and keep its corporate documents and records at the address stated in the definitions to this Agreement; and it will not establish, or do anything as a result of which it would be deemed to have, a place of business in any country other than the Republic of Marshall Islands.

- 11.14 Confirmation of no default.** The Borrower will, within 2 Business Days after service by the Agent of a written request, serve on the Agent a notice which is signed by a duly authorised director of the Borrower and which states that no Event of Default or Potential Event of Default has occurred.
- The Agent may serve requests under this Clause 11.14 from time to time but only if asked to do so by a Lender or Lenders having Commitments exceeding 10 per cent of the Total Commitments; and this Clause 11.14 does not affect the Borrower's obligations under Clause 11.15 (*Notification of default*).
- 11.15 Notification of default.** The Borrower will notify the Agent as soon as it becomes aware of the occurrence of an Event of Default or a Potential Event of Default and will keep the Agent fully up-to-date with all developments.
- 11.16 Provision of further information.** The Borrower will, as soon as practicable after receiving the request, provide the Agent with any additional financial or other information relating:
- (a) to it, the Security Parties, the Ships, the Earnings or the Insurances; or
 - (b) to any other matter relevant to, or to any provision of, a Finance Document or a Management Agreement;
- which may be requested by the Agent, the Security Trustee or any Lender at any time.
- 11.17 Provision of copies and translation of documents.** The Borrower will supply the Agent with a sufficient number of copies of the documents referred to above to provide a copy for each Creditor Party and, if the Agent so requires in respect of any of those documents, it will provide a certified English translation prepared by a translator approved by the Agent.
- 11.18 Sanctions.** Promptly upon becoming aware of them, provide to the Agent the details of any inquiry, claim, action, suit, proceeding or investigation pursuant to Sanctions by any Sanctions Authority against a Security Party, any of the direct or indirect owners of a Security Party, any Affiliate of a Security Party, any of their joint ventures or any of their respective directors, officers, employees, agents or representatives, as well as information on what steps are being taken with regards to answer or oppose the same.
- 11.19 Money laundering.** Promptly upon the Agent's request, the Borrower will supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent in order for each Creditor Party to carry out and be satisfied with the results of all necessary "know your client" or other checks which it is required to carry out in relation to the transactions contemplated by the Finance Documents and to the identity of any parties to the Finance Documents (other than Creditor Parties) and their directors and officers.
- 11.20 "Know your customer" checks.** If:
- (a) 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;
 - (b) any change in the status of the Borrower or any Security Party after the date of this Agreement; or
 - (c) a proposed assignment or transfer by a Lender of any of its rights and obligations under this Agreement; or

(d) any anti-money laundering or anti-terrorism financing laws and regulations applicable to the Agent or any Lender obliges the Agent or any Lender (or, in the case of paragraph (c), any prospective new Lender) to comply with “know your customer” or similar identification procedures in circumstances where the necessary information is not already available to it, the Borrower shall promptly upon the request of the Agent or the Lender concerned supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or the Lender concerned (for itself or, in the case of the event described in paragraph (c), on behalf of any new prospective new Lender) in order for the Agent, the Lender concerned or, in the case of the event described in paragraph (c), 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.

11.21 Class records

The Borrower shall arrange for the Agent to have access electronically to the class records of each Ship by either (i) arranging for the relevant classification society to give the Agent direct access to such class records or (ii) designating the Agent as a user or administrator of the Borrower’s electronic accounts with the relevant classification society.

11.22 Insurance opinion

The Borrower shall provide the Agent on request, at the Borrower’s cost, with an opinion from insurance consultants on the insurances effected or to be effected in respect of each Ship, confirming that each Ship is insured on terms approved by the Agent or, if such insurance opinion has been obtained by the Agent, shall reimburse the Agent for the cost of such opinion.

11.23 Sanctions

The Borrower shall:

- (a) not be, and shall procure that each other Group Member and each Affiliate of any of them and any director, officer, agent, employee or person acting on behalf of the foregoing is not, a Restricted Person and does not act directly or indirectly on behalf of a Restricted Person;
- (b) not, and shall procure that no other Group Member or any Affiliate of any of them shall, use any revenue or benefit derived from any activity or dealing with a Restricted Person in discharging any obligation due or owing to the Creditor Parties;
- (c) procure that no proceeds from any activity or dealing with a Restricted Person are credited to any bank account held with any Creditor Party in its name or in the name of any other member of the Group or any Affiliate of any of them;
- (d) and shall procure that each other Group Member and any Affiliate of any of them will, to the extent permitted by law, promptly upon becoming aware of them, supply to the Creditor Parties details of any claim, action, suit, proceedings or investigation against it with respect to Sanctions by any Sanctions Authority; and
- (e) not, and shall procure that no other member of the Group or any Affiliate of any of them will, directly or indirectly, make available any proceeds of the Loan to fund or facilitate trade, business or other activities (i) involving or for the benefit of any Restricted Person or (ii) in any other manner that could result in either Borrower or a Creditor Party being in breach of any Sanctions or becoming a Restricted Person, or permit or authorise any other person to do either of (i) or (ii) above.

11.24 Anti-bribery

The Borrower shall ensure that neither they nor any of their respective Affiliates, officers, directors, employees or agents acting on its behalf will offer, give, insist on, receive or solicit any illegal payment or improper advantage to influence the action of any person in connection with any of its business.

11.25 Money Laundering

The Borrower shall:

- (a) provide the Agent with information, certificates and any documents required by the Agent to ensure compliance with any law, official requirement or other regulatory measure or procedure implemented to combat money laundering; and
- (b) notify the Agent as soon as it becomes aware of any matters evidencing that a breach of any law, official requirement or other regulatory measure or procedure implemented to combat money laundering may or is about to occur or that the person(s) who have or will receive the commercial benefit of this Agreement have changed after the date of this Agreement.

12 CORPORATE UNDERTAKINGS

12.1 General. The Borrower also undertakes with each Creditor Party to comply and shall procure that each Guarantor will also comply (as applicable) with the following provisions of this Clause 12 at all times during the Security Period except as the Agent may, with the authorisation of the Majority Lenders, otherwise consent.

12.2 Maintenance of status. The Borrower will maintain and shall procure that each Guarantor will also maintain its separate corporate existence under the laws of the Republic of Marshall Islands.

12.3 Negative undertakings. The Borrower shall procure that no Guarantor will, and in respect of (b) to (d) below, the Borrower will not:

- (a) carry on any business other than the owning, operating, managing and/or chartering of ships and other ship-related business;
- (b) pay any dividend or make any other form of distribution or effect any form of redemption, purchase or return of share capital **unless:**
 - (i) the Borrower is not in breach of any of their respective obligations under this Agreement and the other Finance Documents and no Event of Default or Potential Event of Default has occurred; and
 - (ii) the Borrower is in compliance with Clause 12.4 and will, following any such payment of dividend or other form of distribution or redemption, purchase or return of share capital, be in compliance with Clause 12.4;
- (c) provide any form of credit or financial assistance to:
 - (i) a person who is directly or indirectly interested in the Borrower's share or loan capital; or
 - (ii) any company in or with which such a person is directly or indirectly interested or connected;

or enter into any transaction with or involving such a person or company 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;

- (d) without the prior written consent of the Agent, acting on the instructions of the Majority Lenders (such consent not to be unreasonably withheld), enter into any form of amalgamation, merger or de-merger, name change or any form of reconstruction or reorganisation, which would (in the case of the Borrower) give rise to a Change of Control Event; and
- (e) in relation to the Earnings of the Ship owned by it, open or maintain any account with any bank or financial institution except accounts with the Account Bank, the Agent or the Security Trustee for the purposes of the Finance Documents.

12.4 Financial covenants of the Borrower. At all times during the Security Period, by reference to the Latest Accounts, the Borrower ensure that:

- (a) at no time shall the Liquidity of the Group be less than \$500,000 multiplied by the number of vessels owned by any member of the Group;
- (b) the Net Debt divided by the Total Assets (adjusted for market values of vessels calculated in accordance with Clause 15.3 (*Valuation of Ship*)) less cash (which shall have the meaning given thereto under US GAAP meaning both restricted and freely available cash) shall be at all times less than 75%;
- (c) the ratio of EBITDA to Interest Expense shall at all times be at least 2 to 1; and
- (d) the Net Worth shall at all times be equal to or more than USD135,000,000.

12.5 Compliance Check. Compliance with the undertakings contained in Clause 12.4 (*Financial covenants*) shall be determined by reference to (i) the unaudited consolidated accounts for each consecutive quarter period in each Financial Year of the Borrower and commencing with the first financial quarter of ending 31 March, 2020 and (ii) the audited consolidated accounts for each Financial Year of the Borrower and commencing with the Financial Year ending 31 December 2019, each delivered to the Agent pursuant to Clause 11.6 (*Provision of financial statements*) of this Agreement. Unless and until the Agent (acting with the authorisation of the Majority Lenders) otherwise agrees in writing, at the same time as it delivers those consolidated accounts (audited and unaudited) for each consecutive quarter and Financial Year, the Borrower shall deliver to the Agent a Compliance Certificate, signed by the chief financial officer of the Borrower, evidencing calculations and compliance with the financial covenants.

12.6 Change in accounting expressions and policies. If, by reason of change in format or US GAAP or other relevant accounting policies, the expressions appearing in any accounts and financial statements referred to in Clause 11.6 (*Provision of financial statements*) alter from those in the accounts and financial statements for the Group for the Financial Year ended 31 December 2019, the relevant definitions contained in Clause 1.1 (*Definitions*) and the provisions of Clause 12.4 (*Financial covenants*) shall be deemed modified in such manner as the Agent, acting with the authorisation of the Majority Lenders, shall require to take account of such different expressions but otherwise to maintain in all respects the substance of those provisions.

12.7 Minimum Liquidity. The Borrower shall ensure and procure that the Guarantors ensure, that the aggregate balance standing to the credit of the Earnings Accounts shall at all times be no less than \$3,750,000.

13 INSURANCE

13.1 General. The Borrower also undertakes with each Creditor Party to comply with the following provisions of this Clause 13, and ensure that the Guarantors comply with the same, at all times until the last day of the Security Period except as the Agent may, with the authority of the Majority Lenders, otherwise permit.

13.2 Maintenance of obligatory insurances. The Borrower shall procure that each Guarantor shall ensure that the Ship owned by it is insured at its expense against:

- (a) fire and such other risks as are usually contained within a standard marine insurance policy and/or increased value and disbursements policy covering the hull and machinery of such Ship;
- (b) war risks;
- (c) protection and indemnity risks; and
- (d) any other risks against which the Security Trustee considers, having regard to practices and other circumstances prevailing at the relevant time, it would in the opinion of the Security Trustee be reasonable for the Guarantor to insure and which are specified by the Security Trustee by notice to the Borrower and the relevant Guarantor.

13.3 Terms of obligatory insurances. The Borrower shall procure that each Guarantor shall effect such insurances in respect of its Ship:

- (a) in Dollars and/or such currencies as agreed with the Security Trustee;
- (b) in the case as specified in Clause 13.2 (*Maintenance of obligatory insurances*), cover is to be on an agreed value basis in an amount at least the greater of (i) such amount as when added to the insured value of the other Ships is 120 per cent. of the Loan and (ii) the Fair Market Value of that Ship;
- (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 a standard protection and indemnity entry with an international group protection and indemnity club (currently \$1,000,000,000 in relation to any one event);
- (d) in relation to protection and indemnity risks in respect of each Ship's gross tonnage;
- (e) on approved terms; and
- (f) 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.

13.4 Further protections for the Creditor Parties. In addition to the terms set out in Clause 13.3 (*Terms of obligatory insurances*), the Borrower shall procure that the obligatory insurances shall:

- (a) whenever the Security Trustee requires, name (or be amended to name) the Security Trustee as an additional named assured for its rights and interests, warranted no operational interest and with full waiver of rights of subrogation against the Security Trustee, but without the Security Trustee thereby being liable to pay (but having the right to pay) premiums, calls or other assessments in respect of such insurance;
- (b) name the Security Trustee as loss payee with such directions for payment as the Security Trustee may specify;

- (c) provide that all payments by or on behalf of the insurers under the obligatory insurances to the Security Trustee shall be made without set-off, counterclaim or deductions or condition whatsoever;
- (d) provide that such obligatory insurances shall be primary without right of contribution from other insurances which may be carried by the Security Trustee or any other Creditor Party; and
- (e) provide that the Security Trustee may make proof of loss if the Borrower or the Guarantor fails to do so.

13.5 Renewal of obligatory insurances. The Borrower shall procure that each Guarantor shall:

- (a) before the expiry of any obligatory insurance effected by it:
 - (i) notify the Security Trustee of the brokers (or other insurers) and any protection and indemnity or war risks association through or with whom that Security Party proposes to renew that obligatory insurance and of the proposed terms of renewal; and
 - (ii) obtain the Security Trustee's approval to the matters referred to in paragraph (i);
- (b) as soon as practicable but in any event before the expiry of any obligatory insurance effected by it, renew that obligatory insurance in accordance with the Security Trustee's approval pursuant to paragraph (a); and
- (c) procure that the approved brokers and/or the war risks and protection and indemnity associations with which such a renewal is effected shall promptly after the renewal notify the Security Trustee in writing of the terms and conditions of the renewal.

13.6 Copies of policies; letters of undertaking. The Borrower shall procure that each Guarantor shall ensure that all approved brokers provide the Security Trustee as soon as practicable with pro forma copies of all policies relating to the obligatory insurances which have been effected or renewed and of a letter or letters or undertaking in a form required by the Security Trustee and that:

- (a) 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 13.4 (*Further protections for the Creditor Parties*);
- (b) they will hold such policies, and the benefit of such insurances, to the order of the Security Trustee in accordance with the said loss payable clause;
- (c) they will advise the Security Trustee immediately of any material change to the terms of the obligatory insurances;
- (d) they will notify the Security Trustee, before the expiry of the obligatory insurances, in the event of their not having received notice of renewal instructions from the relevant Guarantor or its agents and, in the event of their receiving instructions to renew, they will promptly notify the Security Trustee of the terms of the instructions; and
- (e) they will not set off against any sum recoverable in respect of a claim relating to the Ship owned by the relevant Guarantor under such obligatory insurances any premiums or other amounts due to them or any other person whether in respect of any of the Ships or otherwise, they waive any lien on the policies, or any sums received under them, which they might have in respect of such premiums or other amounts, and they will not cancel such obligatory insurances by reason of non-payment of such premiums or other amounts, and will arrange for a separate policy to be issued in respect of the Ships forthwith upon being so requested by the Security Trustee.

- 13.7 Copies of certificates of entry.** The Borrower shall procure that each Guarantor shall ensure that for any protection and indemnity and/or war risks associations in which a Ship is entered the Security Trustee will be provided with:
- (a) a certified copy of the certificate of entry for that Ship;
 - (b) a letter or letters of undertaking in such form as may be required by the Security Trustee;
 - (c) where required to be issued under the terms of insurance/indemnity provided by the relevant Guarantor's protection and indemnity association, a certified copy of each United States of America voyage quarterly declaration (or similar document or documents) made by the relevant Guarantor in relation to the Ship owned by it in accordance with the requirements of such protection and indemnity association; and
 - (d) a certified copy of each certificate of financial responsibility for pollution by oil or other Environmentally Sensitive Material issued by the relevant certifying authority in relation to the relevant Ship.
- 13.8 Deposit of original policies.** The Borrower shall procure that each Guarantor shall ensure that all policies issued and relating to obligatory insurances are deposited by the relevant Guarantor with the approved intermediaries or other approved parties through which the insurances are effected or renewed.
- 13.9 Payment of premiums.** The Borrower shall procure that each Guarantor shall punctually pay all premiums or other sums payable in respect of the obligatory insurances terms and conditions, and produce all relevant receipts when so required by the Security Trustee.
- 13.10 Guarantees.** The Borrower shall procure that each Guarantor 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.
- 13.11 Compliance with terms of insurances.** The Borrower shall procure that each Guarantor shall not do or omit to do (or permit to be done or not to be done) any act or thing which would or might render any obligatory insurance invalid, void, voidable or unenforceable or render any sum payable under an obligatory insurance repayable in whole or in part; and, in particular:
- (a) the relevant Guarantor shall take all necessary action and comply with all requirements which may from time to time be applicable to the obligatory insurances, and (without limiting the obligation contained in Clause 13.6(c) (*Copies of policies; letters of undertaking*)) ensure that the obligatory insurances are not made subject to any exclusions or qualifications to which the Security Trustee has not given its prior approval;
 - (b) a Guarantor shall not make any changes relating to the classification or classification society or manager or operator of the Ship owned by it approved by the underwriters of the obligatory insurances;
 - (c) the relevant Guarantor shall, make (and promptly supply copies to the Agent of) all quarterly or other voyage declarations which may be required by the protection and indemnity risks association in which its Ship 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
 - (d) a Guarantor shall not employ its Ship, nor allow such Ship 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.

- 13.12 Alteration to terms of insurances.** The Borrower shall procure that each Guarantor shall not make or agree to any alteration to the terms of any obligatory insurance nor waive any right relating to any obligatory insurance.
- 13.13 Settlement of claims.** The Borrower shall procure that no Guarantor shall settle, compromise or abandon any claim under any obligatory insurance for Total Loss or for a Major Casualty, and shall do all things necessary and provide all documents, evidence and information to enable the Security Trustee to collect or recover any moneys which at any time become payable in respect of the obligatory insurances.
- 13.14 Provision of copies of communications.** The Borrower shall and shall procure that each Guarantor shall, promptly upon request by the Agent provide the Security Trustee, copies of all written communications which are material in the context of the Borrower's and the Guarantor's obligations under the Finance Documents between it and:
- (a) the approved brokers or insurers; and
 - (b) the approved protection and indemnity and/or war risks associations; and
 - (c) the approved insurance companies and/or underwriters, which relate directly or indirectly to:
 - (i) the relevant Guarantor'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 the relevant Guarantor and any of the persons referred to in paragraphs (a) or (b) relating wholly or partly to the effecting or maintenance of the obligatory insurances.
- 13.15 Provision of information.** In addition, the Borrower shall and shall procure that each Guarantor shall, promptly provide the Security Trustee (or any persons which it may designate) with any information which the Security Trustee (or any such designated person) requests for the purpose of:
- (a) obtaining or preparing any report from an independent marine insurance broker or consultant 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 13.16 (*Mortgagee's interest insurance*) or dealing with or considering any matters relating to any such insurances;
- and the Borrower shall, forthwith upon demand, indemnify the Security Trustee in respect of all fees and other expenses incurred by or for the account of the Security Trustee in connection with any such report as is referred to in paragraph (a) above.
- 13.16 Mortgagee's interest insurance.** The Security Trustee (acting on behalf of all the Lenders) shall be entitled, at the Borrower's cost, from time to time to effect, maintain and renew a mortgagee's interest and pollution risks insurance policy (including additional perils (pollution) cover) in an amount equal to at least 120% of the Loan such terms, through such insurers and generally in such manner as the Security Trustee may from time to time consider appropriate.

- 13.17 Review of insurance requirements.** The Majority Lenders shall be entitled to review the requirements of this Clause 13 (*Insurance*) from time to time in order to take account of any changes in circumstances after the date of this Agreement which are, in the opinion of the Majority Lenders, significant and capable of affecting the Borrower or an Owner or any Ship and its or their insurance (including, without limitation, changes in the availability or the cost of insurance coverage or the risks to which an Owner may be subject), and may appoint insurance consultants in relation to this review at the cost of the Borrower.
- 13.18 Modification of insurance requirements.** The Security Trustee shall notify the Borrower and the relevant Owner of any proposed modification under Clause 13.17 (*Review of insurance requirements*) to the requirements of this Clause 13 which the Majority Lenders reasonably consider appropriate in the circumstances, and such modification shall take effect on and from the date it is notified in writing to the Borrower as an amendment to this Clause 13 and shall bind the Borrower and the relevant Owner accordingly.
- 13.19 Compliance with mortgagee's instructions.** The Security Trustee shall be entitled (without prejudice to or limitation of any other rights which it may have or acquire under any Finance Document) to require a Ship to remain at any safe port or to proceed to and remain at any safe port designated by the Security Trustee until the relevant Guarantor implements any amendments to the terms of the obligatory insurances and any operational changes required as a result of a notice served under Clause 13.18 (*Modification of insurance requirements*).
- 13.20 Assured and Co-Assured.** If persons other than the relevant Guarantor and/or Security Trustee are named as assureds or co-assureds in the insurance policy of the relevant Ship, the Borrower shall procure that these persons assign their insurances to the Security Trustee upon such terms and conditions as the Security Trustee may require.

14 SHIP'S COVENANTS

- 14.1 General.** The Borrower also undertakes with each Creditor Party to procure that each Guarantor comply in relation to its Ship, with, the following provisions of this Clause 14 at all times until the last day of the Security Period except as the Agent, with the authority of the Majority Lenders, may otherwise permit (such permission not to be unreasonably withheld in the case of Clause 14.13(b) (*Restriction on chartering, appointment of managers etc.*)).
- 14.2 Ship's name and registration.** The Borrower shall procure that each Guarantor shall keep the Ship owned by it registered in its name under an Approved Flag free of any Security Interest other than a Permitted Security Interest; and shall not do, omit to do or allow to be done anything as a result of which such registration might be cancelled or imperilled; and shall not, without the prior written consent of the Security Trustee change the name or port of registry of the Ship owned by it.
- 14.3 Repair and classification.** The Borrower shall procure that each Guarantor shall keep the Ship owned by it in a good and safe condition and state of repair:
- (a) consistent with first-class ship ownership and management practice;
 - (b) so as to maintain that Ship's class with Lloyds Register of Shipping or Germanischer Lloyd AG (or such other first-class classification society which is a member of IACS acceptable to the Agent, such acceptance not to be unreasonably withheld or delayed) free of overdue recommendations and conditions affecting that Ship's class that have not been complied with in accordance with their terms; and

- (c) so as to comply with all laws and regulations applicable to vessels registered at ports in the relevant Approved Flag State or to vessels trading to any jurisdiction to which that Ship may trade from time to time, including but not limited to the ISM Code, the ISPS Code and the MARPOL Protocol.
- 14.4 Classification society undertaking.** The Borrower shall procure that each Guarantor shall instruct the classification society referred to in Clause 14.3(b) (*Repair and classification*) (and procure that the classification society undertakes with the Security Trustee):
- (a) to send to the Security Trustee, following receipt of a written request from the Security Trustee, certified true copies of all original class records held by the classification society in relation to the Ship owned by the relevant Guarantor;
 - (b) to allow the Security Trustee (or its agents), at any time and from time to time, to inspect the original class and related records of that Guarantor and its Ship at the offices of the classification society and to take copies of them;
 - (c) to notify the Security Trustee immediately in writing if the classification society:
 - (i) receives notification from the relevant Guarantor or any person that the Ship's classification society is to be changed; or
 - (ii) becomes aware of any facts or matters which may result in or have resulted in a change, suspension, discontinuance, withdrawal or expiry of the Ship's class under the rules or terms and conditions of the relevant Guarantor's or its Ship's membership of the classification society;
 - (d) following receipt of a written request from the Security Trustee:
 - (i) to confirm that the relevant Guarantor is not in default of any of its contractual obligations or liabilities to the classification society and, without limiting the foregoing, that it has paid in full all fees or other charges due and payable to the classification society; or
 - (ii) if the relevant Guarantor is in default of any of its contractual obligations or liabilities to the classification society, to specify to the Security Trustee in reasonable detail the facts and circumstances of such default, the consequences thereof, and any remedy period agreed or allowed by the classification society.
- 14.5 Modification.** The Borrower shall procure that no Guarantor shall make any modification or repairs to, or replacement of, the Ship owned by it or equipment installed on its Ship which would or might materially alter the structure, type or performance characteristics of that Ship or materially reduce its value.
- 14.6 Removal of parts.** The Borrower shall procure that no Guarantor shall remove any material part of the Ship owned by it, or any item of equipment installed on, the Ship unless the part or item so removed is forthwith replaced by a suitable part or item which is in the same condition as or better condition than the part or item removed, is free from any Security Interest or any right in favour of any person other than the Security Trustee and becomes on installation on the Ship the property of that Guarantor and subject to the security constituted by the Mortgage, relative to the Ship **Provided that** a Guarantor may install equipment owned by a third party if the equipment can be removed without any material risk of damage to the Ship.
- 14.7 Surveys.** The Borrower shall procure that each Guarantor shall submit the Ship owned by it regularly to all periodical or other surveys which may be required for classification purposes and, if so required by the Security Trustee, provide the Security Trustee, with copies of all survey reports.

14.8 Inspection. The Borrower shall procure that each Guarantor shall permit and facilitate the Security Trustee (by surveyors or other persons appointed by it for that purpose) to board the Ship owned by it at all reasonable times to inspect its condition or to satisfy themselves about proposed or executed repairs (at the Borrower's or the relevant Guarantor's cost) and shall afford all proper facilities for such inspections, at the cost of the Borrower or the Guarantor for one such inspection per Ship in each calendar year and otherwise at the Agent's cost.

14.9 Prevention of and release from arrest. The Borrower shall procure that each Guarantor shall promptly discharge:

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

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

14.10 Compliance with laws etc. The Borrower shall procure that each Guarantor shall:

- (a) comply, or procure compliance with the ISM Code, the ISPS code, the MARPOL Protocol and Environmental Laws and all other laws or regulations relating to the Ship owned by it, its ownership, operation and management or to the business that Guarantor;
- (b) comply, and will use best endeavours to procure that each Security Party and each other Group Member will, comply in all respect with all Sanctions;
- (c) not employ the Ship owned by it nor allow its employment in any manner contrary to any law or regulation in any relevant jurisdiction including but not limited to the ISM Code, the ISPS code and the MARPOL Protocol; and
- (d) in the event of hostilities in any part of the world (whether war is declared or not), not cause or permit its Ship to enter or trade to any zone which is declared a war zone by any government or by its Ship's war risks insurers unless the prior written consent of the Security Trustee has been given and the relevant Guarantor has (at its expense) effected any special, additional or modified insurance cover which the Security Trustee may require.

14.11 Provision of information. The Borrower shall procure that each Guarantor shall promptly provide the Security Trustee with any information which it requests regarding:

- (a) the Ship owned by it, its employment, position and engagements;
- (b) the Earnings and payments and amounts due to its Ship's master and crew;
- (c) any expenses incurred, or likely to be incurred, in connection with the operation, maintenance or repair of its Ship and any payments made in respect of that Ship;
- (d) any towages and salvages;

- (e) that Guarantor's, the Approved Manager's, the Third Party Manager's (if applicable) or its Ship's compliance with the ISM Code, the ISPS Code and the MARPOL Protocol;

and, upon the Security Trustee's request, provide copies of any current charter relating to any Ship, of any current charter guarantee and copies of the relevant Guarantor's or the Approved Manager's or the Third Party's Manager Document of Compliance.

14.12 Notification of certain events. The Borrower shall procure that each Guarantor shall immediately notify the Security Trustee by fax, confirmed forthwith by letter, of:

- (a) any casualty which is or is likely to be or to become a Major Casualty;
- (b) any occurrence as a result of which the Ship has become or is, by the passing of time or otherwise, likely to become a Total Loss;
- (c) any requirement or recommendation made by any insurer or classification society or by any competent authority which is not complied with within the relevant specified time limit or, in the absence of such time limit, promptly;
- (d) any arrest or detention of a Ship, any exercise or purported exercise of any lien on a Ship or its Earnings or any requisition of that Ship for hire;
- (e) any Environmental Claim made against a Guarantor or the Approved Manager or in connection with any Ship or any Environmental Incident;
- (f) any claim for breach of the ISM Code, the ISPS Code or the MARPOL Protocol being made against an Owner or the Approved Manager or the Third Party Manager or otherwise in connection with any Ship; or
- (g) any other matter, event or incident, actual or threatened, the effect of which will or could lead to the ISM Code, the ISPS Code or the MARPOL Protocol not being complied with;

and the Borrower shall and shall procure that each Guarantor shall keep the Security Trustee advised in writing on a regular basis and in such detail as the Security Trustee shall require of the Borrower's, the relevant Owner's, the Approved Manager's, the Third Party Manager's or any other person's response to any of those events or matters.

14.13 Restrictions on chartering, appointment of managers etc. The Borrower shall procure that no relevant Guarantor shall:

- (a) let the Ship owned by it on demise charter for any period;
- (b) enter into any time or consecutive voyage charter in respect of the Ship owned by it for a term which exceeds, or which by virtue of any optional extensions may exceed, 12 months;
- (c) enter into any charter in relation to its Ship under which more than 2 months' hire (or the equivalent) is payable in advance;
- (d) charter its Ship otherwise than on bona fide arm's length terms at the time when that Ship is fixed;

- (e) appoint a manager of its Ship other than the entities advised to the Agent at the date of this Agreement as the Approved Manager or Third Party Manager of each Ship, provided that the Creditor Parties consent to the change of management of each ship to either entity being the Approved Manager and the Third Party Manager in respect of each Ship at the date of this Agreement on the condition that such Approved Manager or Third Party Manager deliver to the Agent, to the Agent's satisfaction (i) a certified true copy of the Management Agreement, (ii) a Manager's Undertaking in the Agreed Form and (iii) in relation to such Approved Manager or Third Party Manager, items 1, 2, 3, 4, 6, 7, 8 and 9 included in Schedule 3, Part A of this Agreement and items 2(f) and 3(b) included in Schedule 3, Part B of this Agreement;
 - (f) agree to any alteration to the material terms of the Management Agreement relating to its Ship or to any other terms of the Approved Manager's and the Third Party Manager's appointment;
 - (g) de-activate or lay up its Ship for more than 30 days; or
 - (h) put its Ship into the possession of any person for the purpose of work being done upon it in an amount exceeding or likely to exceed \$500,000 (or the equivalent in any other currency), which amount shall exclude dry-docking costs, unless the Agent (acting with authorisation of the Majority Lenders) has given prior approval in writing.
- 14.14 Notice of Mortgage.** The Borrower shall procure that each Guarantor shall keep the relevant Mortgage registered against the Ship owned by it as a valid first priority mortgage, carry on board that Ship a certified copy of the relevant Mortgage and place and maintain in a conspicuous place in the navigation room and the Master's cabin of that Ship a framed printed notice stating that that Ship is mortgaged by the relevant Guarantor to the Security Trustee; and
- 14.15 Sharing of Earnings.** The Borrower shall not, and shall procure that no Owner shall, enter into any agreement or arrangement for the sharing of any Earnings other than any time or voyage charters with profit sharing clauses.
- 14.16 ISPS Code.** The Borrower shall procure that each Guarantor shall comply with the ISPS Code and in particular, without limitation, shall:
- (a) procure that its Ship and the company responsible for such Ship's compliance with the ISPS Code comply with the ISPS Code; and
 - (b) maintain for its Ship an ISSC; and
 - (c) notify the Agent immediately in writing of any actual or threatened withdrawal, suspension, cancellation or modification of the ISSC.
- 14.17 Charters etc.** The Borrower shall (i) deliver to the Agent a certified copy of each Extended Employment Contract upon its execution, (ii) forthwith on the Agent's request procure that the relevant Guarantor executes (a) a Charter Assignment in respect thereof and (b) any notice of assignment required in connection therewith and use reasonable commercial efforts to procure the acknowledgement of any such notice of assignment by the relevant charterer (provided that any failure to procure the same shall not constitute an Event of Default) and (iii) pay all legal and other costs incurred by the Agent in connection with any such Charter Assignments forthwith following the Agent's demand.
- 14.18 Inventory of Hazardous Material.** The Borrower shall procure that (if not already in place) immediately following completion of its next dry-docking but in no event later than the date required by the applicable regulation, each Ship shall hold at all times during the Facility Period an Inventory of Hazardous Material or equivalent document,
- where "**Inventory of Hazardous Material**" means a statement of compliance issued by the relevant classification society which includes a list of any and all materials known to be potentially hazardous utilised in the construction of a Ship also referred to as "List of Hazardous Materials".

14.19 Sustainable Vessel dismantling. The Borrower confirms that as long as it is in a lending relationship with ABN AMRO BANK N.V. it will ensure that any Ship controlled by it or sold to an intermediary with the intention of being scrapped, is recycled at a recycling yard which conducts its recycling business in a socially and environmentally responsible manner, in accordance with the provisions of The Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009 and/or the EU Ship Recycling Regulation, where “**EU Ship Recycling Regulation**” means Regulation (EU) No 1257/2013 of the European Parliament and of the Council of 20 November 2013 on ship recycling and amending Regulation (EC) No 1013/2006 and Directive 2009/16/EC (Text with EEA relevance).

14.20 Inspection Reports. The Borrower shall provide to the Agent, upon the Agent’s request from time to time, an inspection report in respect of each Ship which is subject to a Mortgage, in a form and substance, and from a marine surveyor, acceptable to the Agent.

15 SECURITY COVER

15.1 Minimum required security cover. Clause 15.2 (*Provision of additional security; prepayment*) applies if the Agent notifies the Borrower that:

- (a) the aggregate of the Fair Market Values (determined as provided in Clause 15.3 (*Valuation of Ship*)) of the Ships subject to a Mortgage; plus
- (b) the net realisable value of any additional security previously provided under this Clause 15;

is below 140% of the Loan.

15.2 Provision of additional security; prepayment. If the Agent serves a notice on the Borrower under Clause 15.1 (*Minimum required security cover*), the Borrower shall, within 1 month after the date on which the Agent’s notice is served, either:

- (a) provide, or ensure that a third party provides, additional security which, in the opinion of the Majority Lenders, has a net realisable value at least equal to the shortfall and is documented in such terms as the Agent may, with the authorisation of the Majority Lenders, approve or require; or
- (b) prepay and/or cancel, in accordance with Clause 8 (*Repayment and Prepayment*), such part (at least) of the Loan as will eliminate the shortfall.

15.3 Valuation of Ship. The Fair Market Value of a Ship at any date is that shown as the average of valuations prepared by two Approved Brokers selected and appointed by the Agent:

- (a) as at a date not more than 30 days previously;
- (b) with or without physical inspection of that Ship (as the Agent may require); and
- (c) 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 existing charter or other contract of employment.

Valuations shall be obtained by the Borrower and addressed to the Agent:

- (a) prior to (but dated no more than 30 days prior to) the Drawdown Date;
- (b) at six-monthly intervals commencing on 31 March 2020; and
- (c) (in addition to (a) and (b) above) at any other time as the Agent shall require (in its absolute discretion).

15.4 Value of additional vessel security. The net realisable value of any additional security which is provided under Clause 15.2 (*Provision of additional security; prepayment*) and which consists of a Security Interest over a vessel shall be that shown by a valuation complying with the requirements of Clause 15.3 (*Valuation of Ship*).

15.5 Valuations binding. Any valuation under Clause 15.2 (*Provision of additional security; prepayment*), 15.3 (*Valuation of Ship*) or 15.4 (*Value of additional vessel security*) shall be binding and conclusive as regards the Borrower, as shall be any valuation which the Majority Lenders make of any additional security which does not consist of or include a Security Interest.

15.6 Provision of information. The Borrower shall promptly provide the Agent and any Approved Broker or expert acting under Clause 15.3 (*Valuation of Ship*) or 15.4 (*Value of additional vessel security*) with any information which the Agent or the Approved Broker or expert may request for the purposes of the valuation; and, if the Borrower fails to provide the information by the date specified in the request, the valuation may be made on any basis and assumptions which the Approved Broker or the Majority Lenders (or the expert appointed by them) consider prudent.

15.7 Payment of valuation expenses. Without prejudice to the generality of the Borrower's obligations under Clauses 20 (*Expenses*) and 21 (*Indemnities*), the Borrower shall, on demand, pay the Agent the amount of the fees and expenses of any Approved Broker instructed under this Clause 15.

16 PAYMENTS AND CALCULATIONS

16.1 Currency and method of payments. All payments to be made by the Lenders or by the Borrower under a Finance Document shall be made to the Agent or to the Security Trustee, in the case of an amount payable to it:

- (a) by not later than 11.00 a.m. (New York City time) on the due date;
- (b) in same day Dollar funds settled through the New York Clearing House Interbank Payments System (or in such other Dollar funds and/or settled in such other manner as the Agent shall specify as being customary at the time for the settlement of international transactions of the type contemplated by this Agreement);
- (c) in the case of an amount payable by a Lender to the Agent or by the Borrower to the Agent or any Lender, to such account as the Agent may from time to time notify to the Borrower and the other Creditor Parties for this purpose; and
- (d) in the case of an amount payable to the Security Trustee, to such account as it may from time to time notify to the Borrower and the other Creditor Parties.

16.2 Payment on non-Business Day. If any payment by the Borrower or a Security Party under a Finance Document would otherwise fall due on a day which is not a Business Day:

- (a) the due date shall be extended to the next succeeding Business Day; or
- (b) if the next succeeding Business Day falls in the next calendar month, the due date shall be brought forward to the immediately preceding Business Day;

- (c) and interest shall be payable during any extension under paragraph (a) at the rate payable on the original due date.
- 16.3 Basis for calculation of periodic payments.** All interest and commitment fee and guarantee fee and any other payments under any Finance Document which are of an annual or periodic nature shall accrue from day to day and shall be calculated on the basis of the actual number of days elapsed and a 360 day year.
- 16.4 Distribution of payments to Creditor Parties.** Subject to Clauses 16.5 (*Permitted deductions by Agent*), 16.6 (*Agent only obliged to pay when monies received*) and 16.7 (*Refund to Agent of monies not received*):
- (a) any amount received by the Agent under a Finance Document for distribution or remittance to a Creditor Party shall be made available by the Agent to that Creditor Party by payment, with funds having the same value as the funds received, to such account as the Creditor Party may have notified to the Agent not less than 3 Business Days previously; and
- (b) amounts to be applied in satisfying amounts of a particular category which are due to the Lenders generally shall be distributed by the Agent to each Lender pro rata to the amount in that category which is due to it.
- 16.5 Permitted deductions by Agent.** Notwithstanding any other provision of this Agreement or any other Finance Document, the Agent may, before making an amount available to a Lender, deduct and withhold from that amount any sum which is then due and payable to the Agent from that Lender under any Finance Document or any sum which the Agent is then entitled under any Finance Document to require that Lender to pay on demand.
- 16.6 Agent only obliged to pay when monies received.** Notwithstanding any other provision of this Agreement or any other Finance Document, the Agent shall not be obliged to make available to the Borrower, any Lender any sum which the Agent is expecting to receive for remittance or distribution to that Borrower, to that Lender until the Agent has satisfied itself that it has received that sum.
- 16.7 Refund to Agent of monies not received.** If and to the extent that the Agent makes available a sum to the Borrower or a Lender, without first having received that sum, the Borrower or (as the case may be) the Lender concerned shall, on demand:
- (a) refund the sum in full to the Agent; and
- (b) pay to the Agent the amount (as certified by the Agent) which will indemnify the Agent against any funding or other loss, liability or expense incurred by the Agent as a result of making the sum available before receiving it.
- 16.8 Agent may assume receipt.** Clause 16.7 (*Refund to Agent of monies not received*) shall not affect any claim which the Agent has under the law of restitution, and applies irrespective of whether the Agent had any form of notice that it had not received the sum which it made available.
- 16.9 Creditor Party accounts.** Each Creditor Party shall maintain accounts showing the amounts owing to it by the Borrower and each Security Party under the Finance Documents and all payments in respect of those amounts made by the Borrower and any Security Party.
- 16.10 Agent's memorandum account.** The Agent shall maintain a memorandum account showing the amounts advanced by the Lenders and all other sums owing to each Creditor Party from the Borrower and each Security Party under the Finance Documents and all payments in respect of those amounts made by the Borrower and any Security Party.

16.11 Accounts prima facie evidence. If any accounts maintained under Clauses 16.9 (*Creditor Party Accounts*) and 16.10 (*Agent's memorandum account*) show an amount to be owing by the Borrower or a Security Party to a Creditor Party, those accounts shall be prima facie evidence that that amount is owing to that Creditor Party in the absence of manifest error.

16.12 FATCA Information

- (a) Subject to subclause (c) below, each party to a Finance Document shall, within ten Business Days of a reasonable request by another party to the Finance Documents:
 - (i) confirm to that other party whether it is a FATCA Exempt Party or is not a FATCA Exempt Party;
 - (ii) supply to the requesting party such forms, documentation and other information relating to its status under FATCA as the requesting party reasonably requests for the purposes of such requesting party's compliance with FATCA; and
 - (iii) supply to the requesting party such forms, documentation and other information relating to its status as the requesting party reasonably requests for the purposes of the requesting party's compliance with any other law, regulation, or exchange of information regime.
- (b) If a party to any Finance Document confirms to another party pursuant to subclause (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 and the Agent reasonably promptly.
- (c) Subclause (a) above shall not oblige any Creditor Party to do anything, and Subclause (a) (iii) above shall not oblige any other party to a Finance Document to do anything, which would or might in its reasonable opinion constitute a breach of any law or regulation, any policy of that Creditor Party, any fiduciary duty or any duty of confidentiality.
- (d) If a party to any Finance Document fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with subclause (a)(i) or (ii) above (including, 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.

16.13 FATCA Deduction

- (a) A party to any Finance Document 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 to any Finance Document 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) A party to any Finance Document shall promptly, upon becoming aware that it must make a FATCA Deduction (or that there is any change in the rate or the basis of such FATCA Deduction) notify the party to whom it is making the payment and, in addition, shall notify the Borrower, the Agent and the other Creditor Parties.

17 APPLICATION OF RECEIPTS

- 17.1 Normal order of application.** Except as any Finance Document may otherwise provide, any sums which are received or recovered by any Creditor Party under or by virtue of any Finance Document shall be applied:
- (a) **FIRST:** in or towards payment pro rata of any unpaid fees, costs and expenses of the Agent and the Security Trustee and the other Creditor Parties under the Finance Documents;
 - (b) **SECONDLY:** in or towards payment pro rata of any accrued interest due but unpaid under this Agreement;
 - (c) **THIRDLY:** in or towards payment pro rata of any principal due but unpaid under this Agreement;
 - (d) **FOURTHLY:** in or towards payment pro rata of any other amounts due but unpaid under any Finance Document;
 - (e) **FIFTHLY:** in retention of an amount equal to any amount not then due and payable under any Finance Document but which the Lender, by notice to the Borrower and the Security Parties, states in its opinion will or may become due and payable in the future and, upon those amounts becoming due and payable, in or towards satisfaction of them in accordance with the provisions of Clause 17.1 (*Normal order of application*) (a), (b), (c) and (d); and
 - (f) **SIXTHLY:** any surplus shall be paid to the Borrower or to any other person entitled to it.
- 17.2 Variation of order of application.** The Agent may, with the authorisation of the Lenders, by notice to the Borrower, the Security Parties and the other Creditor Parties provide for a different manner of application from that set out in Clause 17.1 (*Normal order of application*) either as regards a specified sum or sums or as regards sums in a specified category or categories.
- 17.3 Notice of variation of order of application.** The Agent may give notices under Clause 17.2 (*Variation of order of application*) from time to time; and such a notice may be stated to apply not only to sums which may be received or recovered in the future, but also to any sum which has been received or recovered on or after the third Business Day before the date on which the notice is served.
- 17.4 Appropriation rights overridden.** This Clause 17 and any notice which the Agent gives under Clause 17.2 (*Variation of order of application*) shall override any right of appropriation possessed, and any appropriation made, by the Borrower or any Security Party.
- ## 18 APPLICATION OF EARNINGS, LOCATION OF ACCOUNTS
- 18.1 Payment of Earnings.** The Borrower undertakes with each Creditor Party to ensure that, throughout the Security Period (subject only to the provisions of the Mortgages and the General Assignments), all the Earnings in respect of a Ship are paid to the Earnings Account applicable to the Guarantor which is the owner of such Ship;
- 18.2 Application of Earnings.** The Borrower undertakes with each Creditor Party that money from time to time credited to, or for the time being standing to the credit of, an Earnings Account shall, unless and until an Event of Default or Potential Event of Default shall have occurred (whereupon the provisions of Clause 17.1 (*Normal order of application*) shall be and become applicable), be available for application in the following manner:
- (a) **FIRSTLY:** in or towards meeting the costs, fees and expenses payable by the Borrower under the Finance Documents;

- (b) SECONDLY: in or towards making the transfers to the Retention Account pursuant to Clause 18.3 (*Monthly retentions*); and
- (c) THIRDLY: in or towards meeting the costs and expenses from time to time incurred by or on behalf of the Borrower or the Guarantors in connection with the operation of the Ships.

18.3 Monthly retentions. The Borrower undertakes with each Creditor Party to ensure that, throughout the Security Period on the same day in each month, there is transferred to the Retention Account:

- (a) one-third of the repayment instalment in respect of the Loan falling due under Clause 8.1 (*Payment of Earnings*) on the next Repayment Date; and
- (b) the relevant fraction of the aggregate amount of interest on the Loan which is payable on the next due date for payment of interest.

Where:

“**relevant fraction**” is a fraction of which the numerator is 1 and the denominator the number of months comprised in the then current Interest Period (or, if current Interest Period ends after the next date for payment of interest under this Agreement, the number of months from the later of the commencement of the current Interest Period or the last due date for payment of interest to the next date for payment of interest under this Agreement).

18.4 Shortfall in Earnings. If the aggregate Earnings received in the Earnings Accounts are insufficient in any month for the required amount to be transferred to any Retention Account under Clause 18.3 (*Monthly retentions*), the Borrower shall make up the amount of the insufficiency by payment in Dollars to the Retention Account.

18.5 Application of retentions. Until an Event of Default or a Potential Event of Default occurs, the Account Bank shall on each Repayment Date and on each due date for the payment of interest under this Agreement pay to the Agent, for the Agent to distribute to the Lenders in accordance with Clause 16.4 so much of the then balance on the Retention Account as equals:

- (a) the repayment instalment due on that Repayment Date; or, as the case may be,
- (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.

18.6 Location of accounts. The Borrower shall promptly:

- (a) comply, and procure that the Guarantors s comply, with any requirement of the Agent as to the location or re-location of the Earnings Accounts, the Retention Account or any of them, provided that those accounts must at all times be with the Account Bank; and
- (b) execute, and procure that the Guarantors execute, any documents which the Agent specifies to create or maintain in favour of the Security Trustee a Security Interest over the Earnings Accounts and the Retention Account.

18.7 Borrower’s obligations unaffected. The provisions of this Clause 18 do not affect:

- (a) the liability of the Borrower to make payments of principal and interest on the due dates; or
- (b) any other liability or obligation of the Borrower or any Security Party under any Finance Document.

19 EVENTS OF DEFAULT

19.1 Events of Default. An Event of Default occurs if:

- (a) any Security Party fails to pay any sum payable by it under any of the Finance Documents at the time, in the currency and in the manner stipulated in the Finance Documents (and so that, for this purpose, sums payable (i) under clauses 5.1 and 8.1 shall be treated as having been paid at the stipulated time if (aa) received by the Agent within two (2) days of the dates therein referred to and (bb) such delay in receipt is caused by administrative or other delays or errors within the banking system and (ii) on demand shall be treated as having been paid at the stipulated time if paid within three (3) Business Days of demand); or
- (b) any breach occurs of Clause 9.3 (*Conditions Subsequent*), 11.2 (*Title; negative pledge*), 11.3 (*No disposal of assets*), 11.24 (*Sanctions*), 12.2 (*Maintenance of status*), 12.3 (*Negative Undertakings*), 12.4 (*Financial covenants*) or 15.2 (*Provision of additional security; prepayment*) of this Agreement; or
- (c) any breach by the Borrower or any Security Party occurs of any provision of a Finance Document (other than a breach covered by paragraphs (a) or (b)) which, in the reasonable opinion of the Majority Lenders, is capable of remedy, and such default continues unremedied 15 days after written notice from the Agent requesting action to remedy the same; or
- (d) (subject to any applicable grace period specified in any Finance Document) any breach by the Borrower or any Security Party occurs of any provision of a Finance Document (other than a breach falling within paragraphs (a), (b) or (c)); or
- (e) any representation, warranty or statement made or repeated by, or by an officer of, the Borrower or a Security Party in a Finance Document or in the Drawdown Notice or any other notice or document relating to a Finance Document is untrue or misleading in a material respect when it is made or repeated; or
- (f) any of the following occurs in relation to any Financial Indebtedness (exceeding \$10,000,000 in respect of the Borrower and \$1,000,000 for all other Relevant Persons) of a Relevant Person:
 - (i) any Financial Indebtedness of a Relevant Person is not paid when due; or
 - (ii) any Financial Indebtedness of a Relevant Person becomes due and payable prior capable of being declared due and payable prior to its stated maturity date as a consequence of any event of default; or
 - (iii) any overdraft, loan, note issuance, acceptance credit, letter of credit, guarantee, foreign exchange or other facility, or any swap or other derivative contract or transaction, relating to any Financial Indebtedness of a Relevant Person ceases to be available or becomes capable of being terminated as a result of any event of default, or cash cover is required, or becomes capable of being required, in respect of such a facility as a result of any event of default; or
 - (iv) an event of default howsoever described (or any event which with the giving of notice, lapse of time, determination of materiality or fulfillment of any other applicable condition or any combination of the foregoing would constitute such an event of default) occurs under any document relating to Financial Indebtedness of a Relevant Person; or

- (v) any Security Interest securing any Financial Indebtedness of a Relevant Person becomes enforceable; or
- (g) any of the following occurs in relation to a Relevant Person:
- (i) a Relevant Person becomes, in the reasonable opinion of the Majority Lenders, unable to pay its debts as they fall due; or
 - (ii) any assets of a Relevant Person are subject to any form of execution, attachment, arrest, sequestration or distress, or any form of freezing order, in respect of a sum of, or sums aggregating, \$10,000,000 or more in respect of the Borrower and \$1,000,000 or more for all other Relevant Persons or the equivalent in another currency and, in respect of a Relevant Person other than a Security Party, the same is not lifted within 30 days; or
 - (iii) any administrative or other receiver is appointed over any asset of a Relevant Person; or
 - (iv) an administrator is appointed (whether by the court or otherwise) in respect of a Relevant Person; or
 - (v) any formal declaration of bankruptcy or any formal statement to the effect that a Relevant Person is insolvent or likely to become insolvent is made by a Relevant Person or by the directors of a Relevant Person or, in any proceedings, by a lawyer acting for a Relevant Person; or
 - (vi) a provisional liquidator is appointed in respect of a Relevant Person, a winding up order is made in relation to a Relevant Person or a winding up resolution is passed by a Relevant Person; or
 - (vii) a resolution is passed, and administration notice is given or filed, an application or petition to a court is made or presented or any other step is taken by (a) a Relevant Person, (b) the members or directors of a Relevant Person, (c) a holder of Security Interests which together relate to all or substantially all of the assets of a Relevant Person, or (d) a government minister or public or regulatory authority of a Pertinent Jurisdiction for or with a view to the winding up of that or another Relevant Person or the appointment of a provisional liquidator or administrator in respect of that or another Relevant Person, or that or another Relevant Person ceasing or suspending business operations or payments to creditors, save that this paragraph does not apply to a fully solvent winding up of a Relevant Person other than the Borrower or a Guarantor which is, or is to be, effected for the purposes of an amalgamation or reconstruction previously approved by the Agent and effected not later than three months after the commencement of the winding up; or
 - (viii) an administration notice is given or filed, an application or petition to a court is made or presented or any other step is taken by a creditor of a Relevant Person (other than a holder of Security Interests which together relate to all or substantially all of the assets of a Relevant Person) for the winding up of a Relevant Person or the appointment of a provisional liquidator or administrator in respect of a Relevant Person in any Pertinent Jurisdiction, unless the proposed winding up, appointment of a provisional liquidator or administrator is being contested in good faith, on substantial grounds and not with a view to some other insolvency law procedure being implemented instead and either (a) the application or petition is dismissed

or withdrawn within 30 days of being made or presented, or (b) within 30 days of the administration notice being given or filed, or the other relevant steps being taken, other action is taken which will ensure that there be no administration and (in both cases (a) or (b)) the Relevant Person will continue to carry on business in the ordinary way and without being the subject of any actual, interim or pending insolvency law procedure; or

- (ix) a Relevant Person or its directors take any steps (whether by making or presenting an application or petition to a court, or submitting or presenting a document setting out a proposal or proposed terms, or otherwise) with a view to obtaining, in relation to that or another Relevant Person, any form of moratorium, suspension or deferral of payments, reorganisation of debt (or certain debt or arrangement with all or a substantial proportion (by number or value) of creditors or of any class of them or any such moratorium, suspension or deferral of payments, reorganisation or arrangement is effected by court order, by the filing of documents with a court, by means of a contract or in any other way at all; or
- (x) any meeting of the members or directors, or of any committee of the board or senior management, of a Relevant Person is held or summoned for the purpose of considering a resolution or proposal to authorise or take any action of a type described in paragraphs (iv) to (ix) or a step preparatory to such action, or (with or without such a meeting) the members, directors or such a committee resolve or agree that such an action or step should be taken or should be taken if certain conditions materialise or fail to materialise; or
- (xi) in a Pertinent Jurisdiction other than England, any event occurs, any proceedings are opened or commenced or any step is taken which, in the opinion of the Agent is similar to any of the foregoing; or
- (h) any Security Party is in breach of or fails to observe any law, requirement, measure or procedure implemented to combat “money laundering” as defined in Article 1 of the Directive 2015/849/EC of the Council of the European Communities; or
- (i) the Borrower or any Security Party ceases or suspends carrying on its business or a part of its business which, in the opinion of the Majority Lenders, is material in the context of this Agreement or the other Finance Documents; or
- (j) it becomes unlawful or impossible:
 - (i) for the Borrower or any Security Party to discharge any liability under a Finance Document or to comply with any other obligation which the Majority Lenders consider material under a Finance Document; or
 - (ii) for the Agent, the Security Trustee or the Lenders to exercise or enforce any right under, or to enforce any Security Interest created by, a Finance Document; or
- (k) any consent necessary to enable a Guarantor to own, operate or charter its Ship or to enable the Borrower or any Security Party to comply with any provision which the Majority Lenders consider material of a Finance Document, the SPA or the Management Agreement (as applicable) is not granted, expires without being renewed, is revoked or becomes liable to revocation or any condition of such a consent is not fulfilled; or
- (l) it appears to the Majority Lenders that, after the date of this Agreement and without their prior consent a change has occurred in the legal or beneficial ownership of any of the shares in a Guarantor; or

- (m) any provision which the Majority Lenders acting reasonably consider material of a Finance Document proves to have been or becomes invalid or unenforceable, or a Security Interest created by a Finance Document proves to have been or becomes invalid or unenforceable or such a Security Interest proves to have ranked after, or loses its priority to, another Security Interest or any other third party claim; or
- (n) the security constituted by a Finance Document is in any way imperilled or in jeopardy and if, in the opinion of the Majority Lenders, capable of remedy, such event or circumstance continues unremedied 14 days after written notice from the Agent to the Borrower or relevant Security Party requesting action to remedy the same; or
- (o) any other event occurs or any other circumstances arise or develop including, without limitation:
 - (i) a change in the financial position, state of affairs or prospects of any Relevant Person; or
 - (ii) any accident or other event involving any Ship or another vessel owned, chartered or operated by a Relevant Person; or
 - (iii) any litigation or proceedings are commenced or threatened against a Relevant Person,

in the light of which the Majority Lenders reasonably consider that:

- (iv) there is a significant risk that the Borrower or any Security Party is, or will later become, unable to discharge its liabilities under the Finance Documents as they fall due; or
- (v) such event represents a material adverse change to the business of the Borrower or such Security Party.

19.2 Actions following an Event of Default.

On, or at any time after, the occurrence of an Event of Default:

- (a) the Agent may, and if so instructed by the Majority Lenders, the Agent shall:
 - (i) serve on the Borrower a notice stating that all or part of the Commitments and of the other obligations of each Lender to the Borrower under this Agreement are cancelled; and/or
 - (ii) serve on the Borrower a notice stating that all or part of the Loan together with accrued interest and all other amounts accrued or owing under this Agreement are immediately due and payable or are due and payable on demand; and/or
 - (iii) take any other action which, as a result of the Event of Default or any notice served under paragraph (i) or (ii), the Agent and/or the Lenders are entitled to take under any Finance Document or any applicable law; and/or
- (b) the Security Trustee may, by notice to the Borrower, exercise any or all of its rights, remedies, powers or discretions under the Finance Documents.

- 19.3 Termination of Commitments.** On the service of a notice under Clause 19.2(a)(i) (*Actions following an Event of Default*), the Commitments and all other obligations of each Lender to the Borrower under this Agreement shall be cancelled.
- 19.4 Acceleration of liabilities.** On the service of a notice under Clause 19.2(a)(ii) (*Actions following an Event of Default*), the Loan, all accrued interest and all other amounts accrued or owing from the Borrower or any Security Party under this Agreement and every other Finance Document shall become immediately due and payable or, as the case may be, payable on demand.
- 19.5 Multiple notices; action without notice.** The Agent may serve notices under Clause 19.2(a)(i) (*Actions following an Event of Default*), or 19.2(a)(ii) simultaneously or on different dates and it and/or the Security Trustee may take any action referred to in Clause 19.2 (*Actions following an Event of Default*), if no such notice is served or simultaneously with or at any time after the service of both or either of such notices.
- 19.6 Notification of Creditor Parties and Security Parties.** The Agent shall send to each Creditor Party and each Security Party a copy or the text of any notice which the Agent serves on the Borrower under Clause 19.2 (*Actions following an Event of Default*); but the notice shall become effective when it is served on the Borrower, and no failure or delay by the Agent to send a copy or the text of the notice to any other person shall invalidate the notice or provide the Borrower or any Security Party with any form of claim or defence.
- 19.7 Lenders' rights unimpaired.** Nothing in this Clause shall be taken to impair or restrict the exercise of any right given to individual Lenders under a Finance Document or the general law; and, in particular, this Clause is without prejudice to Clause 3.1 (*Interests several*).
- 19.8 Exclusion of Creditor Party liability.** No Creditor Party, and no receiver or manager appointed by the Security Trustee, shall have any liability to the Borrower or a Security Party:
- (a) for any loss caused by an exercise of rights under, or enforcement of a Security Interest created by, a Finance Document or by any failure or delay to exercise such a right or to enforce such a Security Interest; or
 - (b) as mortgagee in possession or otherwise, for any income or principal amount which might have been produced by or realised from any asset comprised in such a Security Interest or for any reduction (however caused) in the value of such an asset;
- except that this does not exempt a Creditor Party or a receiver or manager from liability for losses shown to have been directly and mainly caused by the dishonesty or the wilful misconduct of such Creditor Party's own officers and employees or (as the case may be) such receiver's or manager's own partners or employees.
- 19.9 Relevant Persons.** In this Clause 19 a "**Relevant Person**" means the Borrower, a Guarantor and any other Security Party (other than an Approved Manager that is not a Subsidiary of the Borrower) and any of their Subsidiaries.
- 19.10 Interpretation.** In Clause 19.1(f) (*Events of Default*) references to an event of default or a termination event include any event, howsoever described, which is similar to an event of default in a facility agreement or a termination event in a finance lease; and in Clause 19.1(g) (*Events of Default*) "**petition**" includes an application.

20 EXPENSES

- 20.1 Upfront fee.** The Borrower shall pay to the Agent for the account of the Lenders pro rata in accordance with their Commitments, on the Drawdown Date, a non-refundable upfront fee of \$100,000.

20.2 Costs of negotiation, preparation etc. The Borrower shall pay to the Agent on its demand the amount of all expenses incurred by the Agent or the Security Trustee in connection with the negotiation, preparation, execution or registration of any Finance Document or any related document or with any transaction contemplated by a Finance Document or a related document (including without limitation, any travel expenses).

20.3 Costs of variations, amendments, enforcement etc. The Borrower shall pay to the Agent, on the Agent's demand, for the account of the Creditor Party concerned the amount of all expenses incurred by a Creditor Party in connection with:

- (a) any amendment or supplement to a Finance Document, or any proposal for such an amendment to be made;
- (b) any consent or waiver by the Lenders, the Majority Lenders or the Creditor Party concerned under or in connection with a Finance Document, or any request for such a consent or waiver;
- (c) the valuation of any security provided or offered under Clause 15 (*Security Cover*) or any other matter relating to such security; or
- (d) any step taken by the Creditor Party concerned with a view to the protection, exercise or enforcement of any right or Security Interest created by a Finance Document or for any similar purpose (including without limitation any litigation cost).

There shall be recoverable under paragraph (d) the full amount of all legal expenses, whether or not such as would be allowed under rules of court or any taxation or other procedure carried out under such rules.

20.4 Documentary taxes. The Borrower shall promptly pay any tax payable on or by reference to any Finance Document, and shall, on the Agent's demand, fully indemnify each Creditor Party against any claims, expenses, liabilities and losses resulting from any failure or delay by the Borrower to pay such a tax.

20.5 Certification of amounts. A notice which is signed by 2 officers of a Creditor Party, which states that a specified amount, or aggregate amount, is due to that Creditor Party under this Clause 20 and which indicates (without necessarily specifying a detailed breakdown) the matters in respect of which the amount, or aggregate amount, is due shall be prima facie evidence that the amount, or aggregate amount, is due.

21 INDEMNITIES

21.1 Indemnities regarding borrowing and repayment of Loan. The Borrower shall fully indemnify each Creditor Party on the Agent's demand and the Security Trustee on its demand in respect of all claims, expenses, liabilities and losses which are made or brought against or incurred by that Creditor Party, or which that Creditor Party reasonably and with due diligence estimates that it will incur, as a result of or in connection with:

- (a) the Loan not being borrowed on the date specified in the Drawdown Notice for any reason other than a default by the Lender claiming the indemnity;
- (b) the receipt or recovery of all or any part of the Loan or an overdue sum otherwise than on the last day of an Interest Period or other relevant period;
- (c) any failure (for whatever reason) by the Borrower to make payment of any amount due under a Finance Document on the due date or, if so payable, on demand (after giving credit for any default interest paid by the Borrower on the amount concerned under Clause 7 (*Default Interest*));

- (d) the occurrence and/or continuance of an Event of Default or a Potential Event of Default and/or the acceleration of repayment of the Loan or any part of it under Clause 19 (*Events of Default*); and
- (e) any tax (other than tax on its overall net income) for which a Creditor Party is liable in connection with any amount paid or payable to that Creditor Party (whether for its own account or otherwise) under any Finance Document.

21.2 Breakage costs. Without limiting its generality, Clause 21.1 (*Indemnities regarding borrowing and repayment of Loan*) covers any claim, expense, liability or loss, including a loss of a prospective profit, incurred by a Lender:

- (a) in liquidating or employing deposits from third parties acquired or arranged to fund or maintain all or any part of its Contribution and/or any overdue amount (or an aggregate amount which includes its Contribution or any overdue amount); and
- (b) 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 arising under this Agreement or that part which the Lender concerned determines is fairly attributable to this Agreement of the amount of the liabilities, expenses or losses (including losses of prospective profits) incurred by it in terminating, or otherwise in connection with, a number of transactions of which this Agreement is one.

21.3 Miscellaneous indemnities. The Borrower shall fully indemnify each Creditor Party severally on their respective demands in respect of all claims, expenses, liabilities and losses which may be made or brought against or incurred by a Creditor Party, in any country, as a result of or in connection with:

- (a) any action taken, or omitted or neglected to be taken, under or in connection with any Finance Document by the Agent, the Security Trustee or any other Creditor Party or by any receiver appointed under a Finance Document; or
- (b) any other Pertinent Matter;

other than claims, expenses, liabilities and losses which are shown to have been directly and mainly caused by the dishonesty or wilful misconduct of the officers or employees of the Creditor Party concerned.

Without prejudice to its generality, this Clause 21.3 covers any claims, expenses, liabilities and losses which arise, or are asserted, under or in connection with any law relating to safety at sea, the ISM Code, the ISPS Code, the MARPOL Protocol or any Environmental Law.

21.4 Currency indemnity. If any sum due from the Borrower or any Security Party to a Creditor Party under a Finance Document or under any order or judgment relating to a Finance Document has to be converted from the currency in which the Finance Document provided for the sum to be paid (the “**Contractual Currency**”) into another currency (the “**Payment Currency**”) for the purpose of:

- (a) making or lodging any claim or proof against the Borrower or any Security Party, whether in its liquidation, any arrangement involving it or otherwise; or
- (b) obtaining an order or judgment from any court or other tribunal; or

(c) enforcing any such order or judgment;

the Borrower shall indemnify the Creditor Party concerned against the loss arising when the amount of the payment actually received by that Creditor Party is converted at the available rate of exchange into the Contractual Currency.

In this Clause 21.4 the “**available rate of exchange**” means the rate at which the Creditor Party concerned is able at the opening of business (Rotterdam time) on the Business Day after it receives the sum concerned to purchase the Contractual Currency with the Payment Currency.

This Clause 21.4 creates a separate liability of the Borrower which is distinct from their other liabilities under the Finance Documents and which shall not be merged in any judgment or order relating to those other liabilities.

21.5 Certification of amounts. A notice which is signed by 2 officers of a Creditor Party, which states that a specified amount, or aggregate amount, is due to that Creditor Party under this Clause 21 and which indicates (without necessarily specifying a detailed breakdown) the matters in respect of which the amount, or aggregate amount, is due shall be prima facie evidence that the amount, or aggregate amount, is due.

21.6 Sums deemed due to a Lender. For the purposes of this Clause 21, a sum payable by the Borrower to the Agent or the Security Trustee for distribution to a Lender shall be treated as a sum due to that Lender.

22 NO SET-OFF OR TAX DEDUCTION

22.1 No deductions. All amounts due from the Borrower under a Finance Document shall be paid:

- (a) without any form of set-off, cross-claim or condition; and
- (b) free and clear of any tax deduction except a tax deduction which the Borrower is required by law to make.

22.2 Grossing-up for taxes. If the Borrower is required by law to make a tax deduction from any payment (other than a FATCA Deduction):

- (a) the Borrower shall notify the Agent as soon as it becomes aware of the requirement;
- (b) the Borrower shall pay the tax deducted to the appropriate taxation authority promptly, and in any event before any fine or penalty arises;
- (c) the amount due in respect of the payment shall be increased by the amount necessary to ensure that each Creditor Party receives and retains (free from any liability relating to the tax deduction) a net amount which, after the tax deduction, is equal to the full amount which it would otherwise have received.

22.3 Evidence of payment of taxes. Within 1 month after making any tax deduction, the Borrower concerned shall deliver to the Agent documentary evidence satisfactory to the Agent that the tax had been paid to the appropriate taxation authority.

22.4 Exclusion of tax on overall net income. In this Clause 22 “**tax deduction**” means any deduction or withholding for or on account of any present or future tax except tax on a Creditor Party’s overall net income.

23 ILLEGALITY, ETC

23.1 Illegality. This Clause 23 applies if a Lender (the “**Notifying Lender**”) notifies the Agent that it has become, or will with effect from a specified date, become:

- (a) unlawful or prohibited as a result of the introduction of a new law, an amendment to an existing law or a change in the manner in which an existing law is or will be interpreted or applied; or
- (b) contrary to, or inconsistent with, any regulation,

for the Notifying Lender to maintain or give effect to any of its obligations under this Agreement in the manner contemplated by this Agreement.

23.2 Notification of illegality. The Agent shall promptly notify the Borrower, the Security Parties, and each of the Creditor Parties of the notice under Clause 23.1 (*Illegality*) which the Agent receives from the Notifying Lender.

23.3 Prepayment; termination of Commitment. On the Agent notifying the Borrower under Clause 23.2 (*Notification of illegality*), the Notifying Lender’s Commitment shall terminate; and thereupon or, if later, on the date specified in the Notifying Lender’s notice under Clause 23.1 (*Illegality*) as the date on which the notified event would become effective the Borrower shall prepay the Notifying Lender’s Contribution in accordance with Clause 8 (*Repayment and Prepayment*).

23.4 Mitigation. If circumstances arise which would result in a notification under Clause 23.1 (*Illegality*) then, without in any way limiting the rights of the Notifying Lender under Clause 23.3 (*Prepayment, termination of Commitment*), the Notifying Lender shall use reasonable endeavours to transfer its obligations, liabilities and rights under this Agreement and the Finance Documents to another office or financial institution not affected by the circumstances but the Notifying Lender shall not be under any obligation to take any such action if, in its opinion, to do would or might:

- (a) have an adverse effect on its business, operations or financial condition; or
- (b) involve it in any activity which is unlawful or prohibited or any activity that is contrary to, or inconsistent with, any regulation; or
- (c) involve it in any expense (unless indemnified to its satisfaction) or tax disadvantage.

24 INCREASED COSTS

24.1 Increased costs. This Clause 24 applies if a Lender (the “**Notifying Lender**”) notifies the Agent that the Notifying Lender considers that as a result of:

- (a) the introduction or alteration after the date of this Agreement of a law or an alteration after the date of this Agreement in the manner in which a law is interpreted or applied (disregarding any effect which relates to the application to payments under this Agreement of a tax on the Lender’s overall net income); or
- (b) complying with any regulation (including any which relates to capital adequacy or liquidity controls or which affects the manner in which the Notifying Lender allocates capital resources to its obligations under this Agreement) which is introduced, or altered, or the interpretation or application of which is altered, after the date of this Agreement, the Notifying Lender (or a parent company of it) has incurred or will incur an “**increased cost**”.

24.2 Meaning of “increase cost”. In this Clause 24, “**increased cost**” means, in relation to a Notifying Lender:

- (a) an additional or increased cost incurred as a result of, or in connection with, the Notifying Lender having entered into, or being a party to, this Agreement or a Transfer Certificate, of funding or maintaining its Commitment or Contribution or performing its obligations under this Agreement, or of having outstanding all or any part of its Contribution or other unpaid sums;
- (b) a reduction in the amount of any payment to the Notifying Lender under this Agreement or in the effective return which such a payment represents to the Notifying Lender or on its capital;
- (c) an additional or increased cost of funding all or maintaining all or any of the advances comprised in a class of advances formed by or including the Notifying Lender’s Contribution or (as the case may require) the proportion of that cost attributable to the Contribution; or
- (d) an additional or increased cost of funding all or maintaining all or any part the Notifying Lender’s Contributions or other unpaid sums or (as the case may require) the proportion of that cost attributable to the Contributions or other unpaid sums; or
- (e) a liability to make a payment, or a return foregone, which is calculated by reference to any amounts received or receivable by the Notifying Lender under this Agreement;

but not an item attributable to a change in the rate of tax on the overall net income of the Notifying Lender (or a parent company of it) or an item covered by the indemnity for tax in Clause 21.1 (*Indemnities regarding borrowing any repayment of Loan*) or by Clause 22 (*No Set-Off or Tax Deduction*).

For the purposes of this Clause 24.2 the Notifying Lender may in good faith allocate or spread costs and/or losses among its assets and liabilities (or any class of its assets and liabilities) on such basis as it considers appropriate.

24.3 Notification to Borrower of claim for increased costs. The Agent shall promptly notify the Borrower and the Security Parties of the notice which the Agent received from the Notifying Lender under Clause 24.1 (*Increased Costs*).

24.4 Payment of increased costs. The Borrower shall pay to the Agent, on the Agent’s demand, for the account of the Notifying Lender the amounts which the Agent from time to time notifies the Borrower that the Notifying Lender has specified to be necessary to compensate the Notifying Lender for the increased cost.

24.5 Notice of prepayment; cancellation. If the Borrower is not willing to continue to compensate the Notifying Lender for the increased cost under Clause 24.4 (*Payment of increased costs*), the Borrower may give the Agent not less than 14 days’ notice of their intention to:

- (a) prepay the Notifying Lender’s Contribution at the end of an Interest Period; and/or
- (b) cancel the Notifying Lender’s Available Commitment.

24.6 Prepayment; termination of Commitment. A notice under Clause 24.5 (*Notice of prepayment; cancellation*) shall be irrevocable; the Agent shall promptly notify the Notifying Lender of the Borrower's notice of intended prepayment and/or cancellation; and:

- (a) on the date on which the Agent serves that notice, the Available Commitment of the Notifying Lender shall be cancelled;
- (b) on the date specified in its notice of intended prepayment, the Borrower shall prepay (without premium or penalty) the Notifying Lender's Contribution, together with accrued interest thereon at the applicable rate plus the Margin.

25 SET-OFF

25.1 Application of credit balances. Each Creditor Party may, following the occurrence of an Event of Default which is continuing, without prior notice:

- (a) apply any balance (whether or not then due) which at any time stands to the credit of any account in the name of the Borrower at any office in any country of that Creditor Party in or towards satisfaction of any sum then due from the Borrower to that Creditor Party under any of the Finance Documents; and
- (b) for that purpose:
 - (i) break, or alter the maturity of, all or any part of a deposit of the Borrower;
 - (ii) convert or translate all or any part of a deposit or other credit balance into Dollars; and
 - (iii) enter into any other transaction or make any entry with regard to the credit balance which the Creditor Party concerned considers appropriate.

25.2 Existing rights unaffected. No Creditor Party shall be obliged to exercise any of its rights under Clause 25.1 (*Application of credit balances*); and those rights shall be without prejudice and in addition to any right of set-off, combination of accounts, charge, lien or other right or remedy to which a Creditor Party is entitled (whether under the general law or any document).

25.3 Sums deemed due to a Creditor Party. For the purposes of this Clause 25, a sum payable by the Borrower to the Agent or the Security Trustee for distribution to, or for the account of, any Creditor Party shall be treated as a sum due to that Creditor Party; and each Creditor Party's proportion of a sum so payable for distribution to, or for the account of, the Creditor Parties shall be treated as a sum due to such Creditor Party.

25.4 No Security Interest. This Clause 25 gives the Creditor Parties a contractual right of set-off only, and does not create any equitable charge or other Security Interest over any credit balance of the Borrower.

26 TRANSFERS AND CHANGES IN LENDING AND BOOKING OFFICES

26.1 Transfer by Borrower. The Borrower may not, without the consent of the Agent, given on the instructions of all the Lenders transfer any of its rights, liabilities or obligations under any Finance Document.

26.2 Transfer by a Lender. Subject to Clause 26.4 (*Effective Date of Transfer Certificate*), a Lender (the “**Transferor Lender**”) may, (i) if such transfer is to any bank or financial institution affiliated to a Lender or if such transfer is made while an Event of Default is continuing, without the consent of the Borrower or (ii) if such transfer is to any arm’s length bank or financial institution, with the prior consent of the Borrower, (such consent not to be unreasonably withheld or delayed) at any time, cause:

- (a) its rights in respect of all or part of its Contribution; or
- (b) its obligations in respect of all or part of its Commitment; or
- (c) a combination of (a) and (b);

to be (in the case of its rights) transferred to, or (in the case of its obligations) assumed by, another bank or financial institution (a “**Transferee Lender**”) by delivering to the Agent a completed certificate in the form set out in Schedule 4 with any modifications approved or required by the Agent (a “**Transfer Certificate**”) executed by the Transferor Lender and the Transferee Lender.

However any rights and obligations of the Transferor Lender in its capacity as Agent or Security Trustee will have to be dealt with separately in accordance with the Agency and Trust Deed.

26.3 Transfer Certificate, delivery and notification. As soon as reasonably practicable after a Transfer Certificate is delivered to the Agent, it shall (unless it has reason to believe that the Transfer Certificate may be defective):

- (a) sign the Transfer Certificate on behalf of itself, the Borrower, the Security Parties and each of the Creditor Parties;
- (b) on behalf of the Transferee Lender, send to the Borrower and each Security Party letters or faxes notifying them of the Transfer Certificate and attaching a copy of it;
- (c) send to the Transferee Lender copies of the letters or faxes sent under paragraph (b) above.

26.4 Effective Date of Transfer Certificate. A Transfer Certificate becomes effective on the date, if any, specified in the Transfer Certificate as its effective date, **Provided that** it is signed by the Agent under Clause 26.3 (*Transfer Certificate, delivery and notification*) on or before that date.

26.5 No transfer without Transfer Certificate. No assignment or transfer of any right or obligation of a Lender under any Finance Document is binding on, or effective in relation to, the Borrower, any Security Party, the Agent or the Security Trustee unless it is effected, evidenced or perfected by a Transfer Certificate.

26.6 Lender re-organisation; waiver of Transfer Certificate. However, if a Lender enters into any merger, de-merger or other reorganisation as a result of which all its rights or obligations vest in another person (the “**successor**”), the Agent may, if it sees fit, by notice to the successor and the Borrower and the Security Trustee waive the need for the execution and delivery of a Transfer Certificate; and, upon service of the Agent’s notice, the successor shall become a Lender with the same Commitment and Contribution as were held by the predecessor Lender.

26.7 Effect of Transfer Certificate. A Transfer Certificate takes effect in accordance with English law as follows:

- (a) to the extent specified in the Transfer Certificate, all rights and interests (present, future or contingent) which the Transferor Lender has under or by virtue of the Finance Documents are assigned to the Transferee Lender absolutely, free of any defects in the Transferor Lender's title and of any rights or equities which the Borrower or any Security Party had against the Transferor Lender;
- (b) the Transferor Lender's Commitment is discharged to the extent specified in the Transfer Certificate;
- (c) the Transferee Lender becomes a Lender with the Contribution previously held by the Transferor Lender and a Commitment of an amount specified in the Transfer Certificate;
- (d) the Transferee Lender becomes bound by all the provisions of the Finance Documents which are applicable to the Lenders generally, including those about pro-rata sharing and the exclusion of liability on the part of, and the indemnification of, the Agent and the Security Trustee and, to the extent that the Transferee Lender becomes bound by those provisions (other than those relating to exclusion of liability), the Transferor Lender ceases to be bound by them;
- (e) any part of the Loan which the Transferee Lender advances after the Transfer Certificate's effective date ranks in point of priority and security in the same way as it would have ranked had it been advanced by the Transferor Lender, assuming that any defects in the transferor's title and any rights or equities of the Borrower or any Security Party against the Transferor Lender had not existed;
- (f) the Transferee Lender becomes entitled to all the rights under the Finance Documents which are applicable to the Lenders generally, including but not limited to those relating to the Majority Lenders and those under Clause 5.7 (*Market disruption*) and Clause 20 (*Expenses*), and to the extent that the Transferee Lender becomes entitled to such rights, the Transferor Lender ceases to be entitled to them; and
- (g) in respect of any breach of a warranty, undertaking, condition or other provision of a Finance Document or any misrepresentation made in or in connection with a Finance Document, the Transferee Lender shall be entitled to recover damages by reference to the loss incurred by it as a result of the breach or misrepresentation, irrespective of whether the original Lender would have incurred a loss of that kind or amount.

The rights and equities of the Borrower or any Security Party referred to above include, but are not limited to, any right of set off and any other kind of cross-claim.

26.8 Maintenance of register of Lenders. During the Security Period the Agent shall maintain a register in which it shall record the name, Commitment, Contribution and administrative details (including the lending office) from time to time of each Lender holding a Transfer Certificate and the effective date (in accordance with Clause 26.4 (*Effective Date of Transfer Certificate*)) of the Transfer Certificate; and the Agent shall make the register available for inspection by any Creditor Party and the Borrower during normal banking hours, subject to receiving at least 3 Business Days prior notice.

26.9 Reliance on register of Lenders. The entries on that register shall, in the absence of manifest error, be conclusive in determining the identities of the Lenders and the amounts of their Commitments and Contributions and the effective dates of Transfer Certificates and may be relied upon by the Agent and the other parties to the Finance Documents for all purposes relating to the Finance Documents.

26.10 Authorisation of Agent to sign Transfer Certificates. The Borrower and each Creditor Party irrevocably authorise the Agent to sign Transfer Certificates on its behalf.

- 26.11 Registration fee.** In respect of any Transfer Certificate, the Agent shall be entitled to recover a registration fee of \$1,000 from the Transferor Lender or (at the Agent's option) the Transferee Lender.
- 26.12 Sub-participation; subrogation assignment.** A Lender may sub-participate all or any part of its rights and/or obligations under or in connection with the Finance Documents without the consent of, or any notice to, the Borrower, any Security Party, or the other Creditor Parties; and the Lenders may assign, in any manner and terms agreed by the Majority Lenders, the Agent and the Security Trustee, all or any part of those rights to an insurer or surety who has become subrogated to them.
- 26.13 Disclosure of information.** A Lender may disclose to a potential Transferee Lender or sub-participant any information which the Lender has received in relation to the Borrower, any Security Party or their affairs under or in connection with any Finance Document, unless the information is clearly of a confidential nature.
- Without prejudice to the above, the Borrower irrevocably authorises each Creditor Party to give, divulge and reveal from time to time information and details relating to its accounts, the Finance Documents and the facilities granted pursuant thereto to any authorities, each Creditor Party's head office, branches and affiliates, any other parties to the Finance Documents and any person regarding any funding, operational arrangement or other transaction in relation thereto, including without limitation, for purposes in connection with any enforcement or assignment or transfer of any of the Creditor Parties' rights and obligations. This authorisation shall survive and continue in full force and effect for the benefit of each Creditor Party notwithstanding the repayment, cancellation or termination of the Loan or any part thereof and/or the termination of one or more types of banker-customer relationships between any Security Party and the relevant Creditor Party.
- 26.14 Change of lending or booking office.** A Lender may, at its own cost, change its lending or booking office, as the case may be, by giving notice to the Agent and the change shall become effective on the later of:
- (a) the date on which the Agent receives the notice; and
 - (b) the date, if any, specified in the notice as the date on which the change will come into effect,
- provided that the Borrower shall bear no additional obligations as a result of such change in lending office.
- On receiving such a notice, the Agent shall notify the Borrower and the Security Trustee; and, until the Agent receives such a notice, it shall be entitled to assume that a Lender is acting through the lending or booking office, as the case may be, of which the Agent last had notice.
- 26.15 Replacement of Reference Bank.** If any Reference Bank ceases to be a Lender or is unable on a continuing basis to supply quotations for the purposes of Clause 5 (*Interest*) then, unless the Borrower, the Agent and the Majority Lenders otherwise agree, the Agent, acting on the instructions of the Majority Lenders, and after consulting the Borrower, shall appoint another bank (whether or not a Lender) to be a replacement Reference Bank; and, when that appointment comes into effect, the first-mentioned Reference Bank's appointment shall cease to be effective.
- 26.16 Confidential Information** Each Creditor Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 26.17 (*Disclosure of Confidential Information*) and Clause 26.18 (*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.

26.17 Disclosure of Confidential Information In this Clause, “**Representative**” means any delegate, agent, manager, administrator, nominee, attorney, trustee or custodian.

Any Creditor Party may disclose:

- (a) to any of its Affiliates and any of its or their officers, directors, employees, professional advisers, insurers, reinsurers and insurance brokers, auditors, partners and Representatives such Confidential Information as that Creditor Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph 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 and to any of that person’s Affiliates, Representatives and professional advisers;
 - (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or one or more Security Parties and to any of that person’s Affiliates, Representatives and professional advisers;
 - (iii) appointed by any Creditor Party or by a person to whom sub-paragraph (a) or (b) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf;
 - (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 (a) or (b) above;
 - (v) to whom information is required or requested to be disclosed by (i) any governmental, banking, taxation or other regulatory authority or similar body, or the rules of any relevant stock exchange; or (ii) pursuant to any applicable law or regulation; or (iii) by any court of competent jurisdiction; and (iv) in connection with and for the purposes of any litigation, arbitration or other proceedings or dispute.
 - (vi) to whom or for whose benefit that Creditor Party charges, assigns or otherwise creates a Security Interest (or may do so);
 - (vii) who is a Party; or
 - (viii) with the consent of the Borrower;

in each case, such Confidential Information as that Creditor Party shall consider appropriate if:

- (1) in relation to sub-paragraphs (i), (ii) and (iii) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;
 - (2) in relation to sub-paragraph (iv) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;
- (c) to any person appointed by that Creditor Party or by a person to whom sub-paragraph (a) or (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 sub Clause if the service provider to whom the Confidential Information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Borrower and the relevant Creditor Party;
- (d) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or the Security Parties.

26.18 Disclosure to numbering service providers

- (a) Notwithstanding any other term of any Finance Document or any other agreement between the Parties to the contrary (whether express or implied) any Creditor Party may disclose to any national or international numbering service provider appointed by that Creditor Party to provide identification numbering services in respect of this Agreement, the Facility and/or one or more Security Parties the following information:
- (i) names of Security Parties;
 - (ii) country of domicile of Security Parties;
 - (iii) place of incorporation or formation (as the case may be) of Security Parties;
 - (iv) date and governing law of this Agreement;
 - (v) the name of the Agent;
 - (vi) date of each amendment and restatement of this Agreement;
 - (vii) amount of the Loan and the Total Commitments;
 - (viii) currency of the Loan;
 - (ix) type of Loan;
 - (x) ranking of Loan;

- (xi) final Repayment Date;
- (xii) changes to any of the information previously supplied pursuant to paragraphs (i) to (xi) above; and
- (xiii) such other information agreed between such Creditor 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 Loan and/or one or more Security Parties 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 Security Party represents that none of the information set out in paragraphs (a) to (m) of Clause 26.18(a) above is, nor will at any time be, unpublished price-sensitive information.
- (d) The Agent shall notify the Borrower and the other Creditor Parties of:
 - (i) the name of any numbering service provider appointed by the Agent in respect of this Agreement, the Facility and/or one or more Security Parties; and
 - (ii) the number or, as the case may be, numbers assigned to this Agreement, the Facility and/or one or more Security Parties by such numbering service provider.

26.19 Disclosure to administration/settlement services providers. Notwithstanding any other term of any Finance Document or any other agreement between the Parties to the contrary (whether express or implied), any Creditor Party may disclose to any person appointed by:

- (a) that Creditor Party;
- (b) a person to (or through) whom that Creditor Party assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents or which succeeds (or which may potentially succeed) it as Agent or Security Trustee under this Agreement; and/or
- (c) a person with (or through) whom that Creditor Party enters into (or may potentially enter into) any sub-participation in relation to, or any other transaction under which payments are to be made, or may be made, by reference to, one or more Finance Documents and/or one or more Security Parties,

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 Clause if the service provider to whom the Confidential Information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for use with Administration/ Settlement Services Providers or such other form of confidentiality undertaking agreed between the Borrower and the relevant Creditor Party.

- 26.20 Entire agreement** Clauses 26.16 to 26.23 (inclusive) (*Confidentiality*) constitute the entire agreement between the Parties in relation to the obligations of the Creditor Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.
- 26.21 Inside information** Each of the Creditor 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 Creditor Parties undertakes not to use any Confidential Information for any unlawful purpose.
- 26.22 Notification of disclosure** Each of the Creditor 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 (e) of Clause 26.17 (*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 Clauses 26.16 to 26.23 (inclusive) (*Confidentiality*).
- 26.23 Continuing obligations** The obligations in Clause 26.16 to 26.23 (inclusive) (*Confidentiality*) are continuing and, in particular, shall survive and remain binding on each Creditor Party for a period of twelve (12) months from the earlier of:
- (a) the date on which all amounts payable by the Security Parties 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 Creditor Party otherwise ceases to be a Creditor Party.

27 VARIATIONS AND WAIVERS

- 27.1 Variations, waivers etc. by Majority Lenders.** Subject to Clause 27.2 (*Variations, waivers etc. requiring agreement of all Lenders*), a document shall be effective to vary, waive, suspend or limit any provision of a Finance Document, or any Creditor Party's rights or remedies under such a provision or the general law, only if the document is signed, or specifically agreed to by letter or fax, by the Borrower, by the Agent on behalf of the Majority Lenders, by the Agent and the Security Trustee in their own rights, and, if the document relates to a Finance Document to which a Security Party is party, by that Security Party.
- 27.2 Variations, waivers etc. requiring agreement of all Lenders.** However, as regards the following, Clause 27.1 (*Variations, waivers etc. by Majority Lenders*) applies as if the words "by the Agent on behalf of the Majority Lenders" were replaced by the words "by or on behalf of every Lender":
- (a) a change in the Margin or in the definition of LIBOR;

- (b) a change to the date for, the amount of, any payment of principal, interest, fees, or other sum payable under this Agreement;
- (c) a change to any Lender's Commitment;
- (d) an extension of Availability Period;
- (e) a change to the definition of "**Majority Lenders**" or "**Finance Documents**";
- (f) a change to the preamble or to Clause 2 (*Facility*), 3 (*Position of the Lenders*), 4 (*Drawdown*), 5.1 (*Payment of normal interest*), 10.23 (*Sanctions*), 11.23 (*Sanctions*), 17 (*Application of Receipts*), 18 (*Application of Earnings, Location of Accounts*) or 31 (*Law and Jurisdiction*);
- (g) a change to this Clause 27;
- (h) any release of, or material variation to, a Security Interest, guarantee, indemnity or subordination arrangement set out in a Finance Document; and
- (i) any other change or matter as regards which this Agreement or another Finance Document expressly provides that each Lender's consent is required.

27.3 Exclusion of other or implied variations. Except for a document which satisfies the requirements of Clauses 27.1 (*Variations, waivers etc. by Majority Lenders*) and 27.2 (*Variations, waivers etc. requiring agreement of all Lenders*), no document, and no act, course of conduct, failure or neglect to act, delay or acquiescence on the part of the Creditor Parties or any of them (or any person acting on behalf of any of them) shall result in the Creditor Parties or any of them (or any person acting on behalf of any of them) being taken to have varied, waived, suspended or limited, or being precluded (permanently or temporarily) from enforcing, relying on or exercising:

- (a) a provision of this Agreement or another Finance Document; or
- (b) an Event of Default; or
- (c) a breach by the Borrower or a Security Party of an obligation under a Finance Document or the general law; or
- (d) any right or remedy conferred by any Finance Document or by the general law;

and there shall not be implied into any Finance Document any term or condition requiring any such provision to be enforced, or such right or remedy to be exercised, within a certain or reasonable time.

27.4 Co-operation on potential restructuring of facilities. Provided the Lenders have provided their consent to the relevant tax enhancement structure (upon such terms as are acceptable to the Lenders), the Lenders will provide reasonable co-operation for such changes as are necessary (at the Borrower's costs) relating to such tax enhancement transaction.

28 NOTICES

28.1 General. Unless otherwise specifically provided, any notice under or in connection with any Finance Document shall be given by letter or fax or electronic message; and references in the Finance Documents to written notices, notices in writing and notices signed by particular persons shall be construed accordingly.

28.2 Addresses for communications. A notice shall be sent:

- (a) to the Borrower: 7 Avenue de Grande BretagneOffice 11B2
Monte Carlo, MC 98000 Monaco
Fax no: +377 97 98 21 41
- (b) to a Lender: At the address below its name in Schedule 1 or (as the case may require) in the relevant Transfer Certificate.
- (c) to the Agent and the Security Trustee Gustav Mahlerlaan 10,
1082 PP Amsterdam
The Netherlands
Attn: Global Transportation & Logistics
Fax no: +31 (0) 10 401 53 23

or to such other address as the relevant party may notify to the Agent or, if the relevant party is the Agent or the Security Trustee, the Borrower, the Lenders and the Security Parties.

28.3 Effective date of notices. Subject to Clauses 28.4 (*Service outside business hours*) and 28.5 (*Illegible notices*):

- (a) a notice which is delivered personally or posted shall be deemed to be served, and shall take effect, at the time when it is delivered;
- (b)
- (c) a notice which is sent by fax or electronic message shall be deemed to be served, and shall take effect, 2 hours after its transmission is completed.

28.4 Service outside business hours. However, if under Clause 28.3 (*Effective date of notices*) a notice would be deemed to be served:

- (a) on a day which is not a business day in the place of receipt; or
- (b) on such a business day, but after 5 p.m. local time;

the notice shall (subject to Clause 28.5 (*Illegible notices*)) be deemed to be served, and shall take effect, at 9 a.m. on the next day which is such a business day.

28.5 Illegible notices. Clauses 28.3 (*Effective date of notices*) and 28.4 (*Service outside business hours*) do not apply if the recipient of a notice notifies the sender within 1 hour after the time at which the notice would otherwise be deemed to be served that the notice has been received in a form which is illegible in a material respect.

28.6 Valid notices. A notice under or in connection with a Finance Document shall not be invalid by reason that its contents or the manner of serving it do not comply with the requirements of this Agreement or, where appropriate, any other Finance Document under which it is served if:

- (a) the failure to serve it in accordance with the requirements of this Agreement or other Finance Document, as the case may be, has not caused any party to suffer any significant loss or prejudice; or

(b) in the case of incorrect and/or incomplete contents, it should have been reasonably clear to the party on which the notice was served what the correct or missing particulars should have been.

28.7 English language. Any notice under or in connection with a Finance Document shall be in English.

28.8 Meaning of “notice”. In this Clause 28, “**notice**” includes any demand, consent, authorisation, approval, instruction, waiver or other communication.

29 PARALELL DEBT

29.1 Parallel Debt

Notwithstanding any other provision of the Finance Documents, the Borrower hereby irrevocably and unconditionally undertakes to pay to the Security Trustee, as creditor in its own right and not as representative of the other Creditor Parties, sums equal to and in the currency of each amount payable by the Borrower and any Security Party to any Creditor Party under any Finance Document as and when that amount falls due for payment under the relevant Finance Document or would have fallen due but for any discharge resulting from failure of another Creditor Party to take appropriate steps, in insolvency proceedings affecting that Borrower, to preserve its entitlement to be paid that amount (the “**Parallel Debt**”).

The Security Trustee shall have its own independent right to demand payment of the amounts payable by the Borrower under this Clause 29.1, irrespective of any discharge of the Borrower and/or any Security Party’s obligation to pay those amounts to the other Creditor Parties resulting from failure by them to take appropriate steps, in insolvency proceedings affecting that Borrower and/or any Security Party, to preserve their entitlement to be paid those amounts.

Any amount due and payable by the Borrower to the Security Trustee under this Clause 29.1 shall be decreased to the extent that the other Creditor Parties have received (and are able to retain) payment in full of the corresponding amount under the other provisions of the Finance Documents and any amount due and payable by the Borrower and/or a Security Party to the other Creditor Parties under those provisions shall be decreased to the extent the Security Trustee has received (and is able to retain) payment in full of the corresponding amount under this Clause 29.1.

The Borrower and the Creditor Parties acknowledge that, in respect of the Parallel Debt, the Security Trustee acts in its own name and not as representative of the Creditor Parties or any of them.

30 SUPPLEMENTAL

- 30.1 Rights cumulative, non-exclusive.** The rights and remedies which the Finance Documents give to each Creditor Party are:
- (a) cumulative;
 - (b) may be exercised as often as appears expedient; and
 - (c) shall not, unless a Finance Document explicitly and specifically states so, be taken to exclude or limit any right or remedy conferred by any law.
- 30.2 Severability of provisions.** If any provision of a Finance Document is or subsequently becomes void, unenforceable or illegal, that shall not affect the validity, enforceability or legality of the other provisions of that Finance Document or of the provisions of any other Finance Document.
- 30.3 Counterparts.** A Finance Document may be executed in any number of counterparts.
- 30.4 Third party rights.** A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement.
- ## 31 LAW AND JURISDICTION
- 31.1 English law.** This Agreement shall be governed by, and construed in accordance with, English law.
- 31.2 Exclusive English jurisdiction.** Subject to Clause 31.3 (*Choice of forum for the exclusive benefit of the Creditor Parties*), the courts of England shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement.
- 31.3 Choice of forum for the exclusive benefit of the Creditor Parties.** Clause 31.2 (*Exclusive English jurisdiction*) is for the exclusive benefit of the Creditor Parties, each of which reserves the right:
- (a) to commence proceedings in relation to any matter which arises out of or in connection with this Agreement in the courts of any country other than England and which have or claim jurisdiction to that matter; and
 - (b) to commence such proceedings in the courts of any such country or countries concurrently with or in addition to proceedings in England or without commencing proceedings in England.
- The Borrower shall not commence any proceedings in any country other than England in relation to a matter which arises out of or in connection with this Agreement.
- 31.4 Process agent.** The Borrower irrevocably appoints Hill Dickinson LLP at present of Broadgate Tower, 20 Primrose Street, London EC2A 2EW, England to act as its agent to receive and accept on its behalf any process or other document relating to any proceedings in the English courts which are connected with this Agreement.
- 31.5 Creditor Party rights unaffected.** Nothing in this Clause 31 (*Law and Jurisdiction*) shall exclude or limit any right which any Creditor Party may have (whether under the law of any country, an international convention or otherwise) with regard to the bringing of proceedings, the service of process, the recognition or enforcement of a judgment or any similar or related matter in any jurisdiction.

31.6 Meaning of “proceedings”. In this Clause 31, “**proceedings**” means proceedings of any kind, including an application for a provisional or protective measure.

THIS AGREEMENT has been entered into on the date stated at the beginning of this Agreement.

EXECUTION PAGE

SIGNED by /s/ **GEORGIOS PANAGAKIS**)
for and on behalf of)
NAVIOS MARITIME PARTNERS L.P.)
in the presence of:) /s/ Francisco Tazelaar

SIGNED by /s/ **ROBIN LLOYD PARRY**)
And by /s/ **STAVROULA MYLONA**)
for and on behalf of)
ABN AMRO BANK N.V. as Agent and)
Security Trustee)
in the presence of:)

/s/ R. PARRY **S.MYLONA**

SIGNED by /s/ **ROBIN LLOYD PARRY**)
And by /s/ **STAVROULA MYLONA**)
for and on behalf of)
ABN AMRO BANK N.V.)
as a Lender)
in the presence of:)

/s/ R. PARRY **S.MYLONA**

Private and Confidential

DATED 24 SEPTEMBER 2019 (AS AMENDED AND RESTATED ON 16 DECEMBER 2019)

- (1) **EACH OF THE ENTITIES LISTED IN SCHEDULE 1 PART I**
(as joint and several Borrowers)
- (2) **NAVIOS MARITIME OPERATING L.L.C.**
(as HoldCo)
- (3) **NAVIOS MARITIME PARTNERS L.P.**
(as NMP)
- (4) **THE FINANCIAL INSTITUTIONS LISTED IN SCHEDULE 1 PART II**
(as Lenders)
- (5) **DORY FUNDING DAC**
(as Agent)
- (6) **DORY FUNDING DAC**
(as Security Agent)

FACILITY AGREEMENT
SECURED TERM LOAN FACILITY OF UP TO US\$37,000,000

EXECUTION VERSION

ReedSmith

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SCHEDULE 13 EXAMPLE BUDGET	

BETWEEN:

- (1) **EACH OF THE ENTITIES** listed in Part I of Schedule 1 (*The Original Parties*) as joint and several borrowers (together the “**Borrowers**” and each a “**Borrower**”);
- (2) **NAVIOS MARITIME OPERATING L.L.C.**, a limited liability company formed under the laws of the Republic of the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands, MH 96960 (“**HoldCo**”);
- (3) **NAVIOS MARITIME PARTNERS L.P.**, a limited partnership formed under the laws of the Republic of the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands, MH 96960 (“**NMP**”);
- (4) **THE FINANCIAL INSTITUTIONS** listed in Part II of Schedule 1 (*The Original Parties*) as lenders (“**Original Lenders**”);
- (5) **DORY FUNDING DAC** as agent of the Finance Parties (“**Agent**”); and
- (6) **DORY FUNDING DAC** as security agent for the Finance Parties (“**Security Agent**”).

BACKGROUND

The Lenders have agreed to make available to the Borrowers a loan facility in an amount equal to the Maximum Loan Amount for the purposes of financing the acquisition of the Vessels.

IT IS AGREED as follows:

1. **Definitions and Interpretation**

1.1 **Definitions**

In this Agreement:

“**Account**” means each of the Earnings Accounts and any other account opened, made or established in accordance with Clause 25 (*Accounts*).

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

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

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

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

“**Applicable VTL Percentage**” means, as from the second anniversary of the Utilisation Date, 110%.

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

“Approved Commercial Manager” means, in relation to a Vessel, Navios Shipmanagement Inc., or any other management company as the Agent may, with the authorisation of the Majority Lenders, approve in writing from time to time in respect of that Vessel.

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

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

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

“Approved Technical Manager” means, in relation to a Vessel, Navios Shipmanagement Inc., or any other management company as the Agent may, with the authorisation of the Majority Lenders, approve in writing from time to time in respect of that Vessel.

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

“Auditor” means a certified public auditor or audit firm seated in an EEA Member Country, the United Kingdom (if not an EEA Member Country) or the United States of America and licensed by the relevant national authorities.

“Availability Period” means the period from and including the date of this Agreement to and including 30 September 2019 (or such later date as the Agent may agree acting on instructions of the Majority Lenders).

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

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

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

“Bail-In Action” means the exercise of any Write-down and Conversion Powers.

“Bail-In Legislation” means:

- (a) in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 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 other than such an EEA Member Country or (to the extent that the United Kingdom is not such an EEA Member Country) the United Kingdom, any analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation.

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

“**Beneficial Owner**” has the meaning given to that term in Rule 13d-3 and Rule 13d-5 under the United States Exchange Act. The terms “**Beneficially Owns**” and “**Beneficially Owned**” shall have correlative meanings.

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

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

exceeds:

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

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

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

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

“**Change of Control**” means:

- (a) in respect of NMP:

- (i) the Permitted Holders cease to be the Beneficial Owners, directly or indirectly, of Voting Stock representing 15% or more of the voting power of the total outstanding Voting Stock of NMP; or
 - (ii) NMP ceases to be listed on the New York Stock Exchange or another stock exchange which is of equivalent repute to the New York Stock Exchange (as determined by the Agent (acting on the instructions of the Lenders));
- (b) in respect of HoldCo:
- (i) a sale, lease or transfer of all or substantially all of HoldCo's assets to any person or group whether in a single transaction or a series of transactions; or
 - (ii) any time during which and for any reason NMP ceases to beneficially own and control, directly, 100% of the capital stock or other equity interests of HoldCo; or
- (c) in respect of a Borrower:
- (i) a sale, lease or transfer of all or substantially all of that Borrower's assets to any person or group whether in a single transaction or a series of transactions; or
 - (ii) any time during which and for any reason, HoldCo fails to legally and beneficially own, directly, one hundred per cent. (100%) of the capital stock or other equity interests of that Borrower.

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

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

“Charter Assignment” means the first priority assignment of any Charter in the agreed form.

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

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

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

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

“Commitment” means:

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

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

- (a) any Obligor or any of its advisers; or
- (b) another Finance Party, if the information was obtained by that Finance Party directly or indirectly from any Obligor or any of its advisers, in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that:
 - (i) is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of Clause 42 (*Confidentiality*); or
 - (ii) is identified in writing at the time of delivery as non-confidential by any Obligor or any of its advisers; or
 - (iii) is known by that Finance Party before the date the information is disclosed to it in accordance with (a) or (b) or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with any Obligor and which, in either case, as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

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

“**Consent and Implementation Agreement**” means the agreement dated of even date herewith between, *inter alia*, (i) each of the Sellers, (ii) each of the Borrowers, (iii) the existing financiers of the Sellers, (iv) the Agent, (v) the Security Trustee and (vi) the Lenders in relation to the implementation of the transfer of the Vessels under the MOAs and application of the proceeds of Utilisation hereunder.

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

“**Default**” means an Event of Default or any event or circumstance specified in Clause 27 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

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

“Disruption Event” means either or both of:

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

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

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

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

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

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

“Earnings Accounts” means:

- (a) an account in the name of Borrower A held with the Account Bank;
- (b) an account in the name of Borrower B held with the Account Bank;
- (c) an account in the name of Borrower C held with the Account Bank;

(d) an account in the name of Borrower D held with the Account Bank,

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

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

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

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

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

“**Environmental Claim**” means any claim, proceeding, formal notice or investigation by any governmental, judicial or regulatory authority or any other person which arises out of an Environmental Incident or an alleged Environmental Incident or which relates to any Environmental Law and, for this purpose, “claim” includes a claim for damages, compensation, contribution, injury, fines, losses and penalties or any other payment of any kind, including in relation to clean-up and removal, whether or not similar to the foregoing; an order or direction to take, or not to take, certain action or to desist from or suspend certain action; and any form of enforcement or regulatory action, including the arrest or attachment of any asset.

“**Environmental Incident**” means:

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

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

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

“EU Bail-In Legislation Schedule” means the document described as such and published by the Loan Market Association (or any successor person) from time to time.

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

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

“Facility Office” means:

- (a) in respect of a Lender, the office or offices notified by a Lender to the Agent in writing on or before the date it becomes a Lender (or, following that date, by not less than five (5) Business Days’ written notice) as the office or offices through which it will perform its obligations under this Agreement; and
- (b) in respect of any other Finance Party, the office in the jurisdiction in which it is resident for tax purposes.

“Facility Period” means the period from and including the date of this Agreement to and including the date on which the Total Commitments have been reduced to zero and all Secured Liabilities have been fully paid and discharged.

“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 any regulation referred to in paragraph (a) above; or
- (c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraphs (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.

“FATCA Application Date” means:

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

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

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

“Fee Letter” means any letter or letters dated on or about the date of this Agreement between (i) the Agent or the Security Agent and (ii) the Borrowers setting out any of the fees referred to in Clause 11 (*Fees*).

“Finance Document” means:

- (a) this Agreement;
- (b) any Security Document;
- (c) the Consent and Implementation Agreement;
- (d) any Fee Letter;
- (e) any Transfer Certificate;
- (f) any Assignment Agreement; or
- (g) any other document designated as a Finance Document by the Agent and any Obligor party to it.

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

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

- (a) moneys borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) any redeemable preference share issues which mature prior to the date which is 6-months after the Termination Date or are otherwise classified as borrowings under GAAP;
- (e) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with GAAP, be treated as a finance or capital lease;
- (f) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (g) any amount raised under any other transaction (including any forward sale or purchase agreement) of a type not referred to in any other paragraph of this definition having the commercial effect of a borrowing;
- (h) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close out of that derivative transaction, that amount) shall be taken into account);

- (i) any counter-indemnity obligation in respect of a guarantee, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution in respect of an underlying liability of an entity which is not a member of the Group but which liability would fall within one of the other paragraphs of this definition; and
- (j) the amount of any liability in respect of any guarantee in respect of any of the items referred to in paragraphs (a) to (i) above.

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

“**GAAP**” means US GAAP or generally accepted accounting principles in the jurisdiction of incorporation of the relevant Obligor, including IFRS.

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

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

“**Guarantees**” means

the guarantees and indemnities in Clause 18 (*Guarantee and indemnity*)

(and “**Guarantee**” means any of them).

“**Guarantors**” means, together, HoldCo and NMP.

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

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

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

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

- (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- (b) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
- (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- (d) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official;

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

"Insurances" means, in relation to a Vessel:

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

"Interest Period" means, in relation to the Loan, each period determined in accordance with Clause 9 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 8.3 (*Default interest*).

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

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

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

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

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

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

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

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

“**Legal Reservations**” means:

- (a) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;
- (b) the time barring of claims under the Limitation Acts, the possibility that an undertaking to assume liability for or to indemnify a person against non-payment of UK stamp duty may be void and defences of set-off or counterclaim;
- (c) the limitation of the enforcement of the terms of leases of real property by laws of general application to those leases;
- (d) similar principles, rights and remedies under the laws of any Relevant Jurisdiction; and
- (e) any other matters which are set out as qualifications or reservations as to matters of law of general application in any legal opinions supplied to the Agent by its appointed legal counsel under this Agreement.

“**Lender**” means:

- (a) any Original Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Party in accordance with Clause 28 (*Changes to the Lenders*), which in each case has not ceased to be a Party in accordance with the terms of this Agreement.

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

- (a) the applicable Screen Rate; or
- (b) (if no Screen Rate is available for the Interest Period of the Loan or any part of it) the Interpolated Screen Rate for the Loan;
- (c) if:
 - (i) no Screen Rate is available for Dollars; or
 - (ii) no Screen Rate is available for the Interest Period of the Loan or any part of it and it is not possible to calculate the Interpolated Screen Rate for the Loan or part of it,the Reference Bank Rate,

as in the case of paragraphs (a) and (c) above the Specified Time on the Quotation Day for Dollars and for a period equal in length to the Interest Period of the Loan, or part of it and, if any such rate is below 0.25% per annum, LIBOR shall be deemed to be 0.25% per annum.

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

“Loan” means each of the four loan advances to be made to the Borrowers pursuant to Clause 5.1 (*Delivery of Utilisation Request*) or, as the context requires, the aggregate principal amount outstanding under the Facility for the time being.

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

“Major Casualty Amount” means, in relation to a Vessel, US\$500,000 or the equivalent in any other currency.

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

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

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

“Margin” means:

- (a) for the period commencing on the Utilisation Date and ending on (and including) the date falling 12 months after the Utilisation Date, 4.75% per annum;
- (b) for the period commencing from (but not including) the date falling 12 months after the Utilisation Date and ending on (and including) the date falling 24 months after the Utilisation Date, 6.0% per annum;

- (c) for the period commencing from (but not including) the date falling 24 months after the Utilisation Date until (and including) the Termination Date, 7.0% per annum.

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

“**Material Adverse Effect**” means a material adverse effect on:

- (a) the business, operations, property or financial condition of the Obligors taken as a whole; or
- (b) the ability of the Obligors (taken as a whole) to perform their payment obligations under any Finance Document; or
- (c) subject to the Legal Reservations and Perfection Requirements, the validity or enforceability of, or the effectiveness or ranking of any Security granted or purported to be granted pursuant to any of, the Finance Documents in a manner which would be materially adverse to the interests of the Finance Parties under the Finance Documents taken as a whole and, if capable of remedy, is not remedied within 20 Business Days of the earlier of (i) the relevant Obligor becoming aware of the issue or (ii) the giving of notice of the issue by the Agent; or
- (d) the rights or remedies of any Finance Party under any of the Finance Documents.

“**Maximum Loan Amount**” means US\$37,000,000.

“**MOA**” means, in relation to each Vessel, the memorandum of agreement specified in Schedule 8 (*Details of Vessels*) between the relevant Seller and the relevant Borrower relating to the sale and purchase of such Vessel.

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

“**Mortgaged Vessel**” means, at any relevant time, any Vessel which is or purports to be subject to a Mortgage and/or whose Earnings, Insurances and Requisition Compensation are or purport to be subject to Security under the Finance Documents.

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

“**NMP Group**” means NMP and its Subsidiaries for the time being.

“**Notional Vessel Tranche**” means, in respect of any Vessel, the proportion of the Loan allocated to that Vessel based on its allocated contribution to the Maximum Loan Amount relative to the aggregate Maximum Loan Amount in relation to all Vessels (which shall be as set out in Schedule 7 (*Notional Vessel Tranche Amounts*)), as reduced by any repayments (whether Repayment Instalments or otherwise) or prepayments from time to time in accordance with the terms of this Agreement.

“**Obligors**” means each Borrower and each Guarantor and “**Obligor**” means any one of them.

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

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

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

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

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

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

“**Perfection Requirements**” means the making or the procuring of the appropriate registration, filings, endorsements, notarisations, stampings or notifications of the Security Documents as specifically contemplated by the relevant Security Document or by any legal opinion delivered to the Agent.

“**Permitted Holders**” means (i) Navios Maritime Holdings Inc., a Marshall Islands corporation (“**Holdings**”) and any of its Subsidiaries (but only for so long as it continues to be a Subsidiary of Holdings); (ii) Angeliki Frangou; (iii) for the individual named in (ii) above, each of her spouse, siblings, ancestors, descendants (whether by blood, marriage or adoption, and including stepchildren) and the spouses, siblings, ancestors and descendants thereof (whether by blood, marriage or adoption, and including stepchildren) of such natural persons, the beneficiaries, estates and legal representatives of any of the foregoing, the trustee of any bona fide trust of which any of the foregoing, individually or in the aggregate, are the majority in interest beneficiaries or grantors, and any corporation, partnership, limited liability company or other person in which any of the foregoing, individually or in the aggregate, own or control a majority in interest; and (iv) all Affiliates controlled by the persons named in clauses (ii) and (iii) above.

“**Permitted Intercompany Loans**” means any loans from HoldCo to any Borrower, provided that, in each case, such loan (i) does not require cash pay interest to be paid prior to the Termination Date, and (ii) is subordinated and subject to Transaction Security in form and substance acceptable to the Agent (acting on the instructions of the Majority Lenders).

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

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

“**Permitted Security**” means, in relation to a Vessel, any Security over that Vessel which is:

- (a) granted by the Finance Documents;
- (b) a Permitted Maritime Lien; or
- (c) approved in writing by the Agent (on behalf of the Majority Lenders).

“Permitted Transaction” means:

- (a) any disposal required, Financial Indebtedness incurred, guarantee, indemnity or Security or Quasi-Security given, or other transaction arising, under the Relevant Documents;
- (b) transactions (other than (i) any sale, lease, license, transfer or other disposal and (ii) the granting or creation of any Security or the incurring or permitting to subsist of Financial Indebtedness) conducted in the ordinary course of trading on arm’s length terms; or
- (c) any charter of a Vessel expressly permitted under the terms of the Finance Documents.

“Quarter Date” means 31 March, 30 June, 30 September and 31 December of each calendar year.

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

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

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

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

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

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

“Related Party” means any member of the Group or any of their respective Affiliates (or any direct or indirect shareholder (or equivalent), officer, employee or director of any member of the Group or any of their respective Affiliates or direct or indirect shareholders (or equivalent), provided that, for the purposes of this definition and with respect to NMP only, ‘shareholder’ shall include only those shareholders owning 5% or more of shares in NMP.

“Relevant Document” means:

- (a) any Finance Document;
- (b) any Management Agreement;

- (c) each MOA;
- (d) each Charter; and
- (e) any other document designated as such by the Agent and any Obligor.

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

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

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

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

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

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

“**Replacement Benchmark**” means a benchmark rate which is:

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

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

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

- (a) any and all compensation or other monies payable by reason of any act or event such as is referred to in paragraph (b) or (c) of the definition of “Total Loss” relating to that Vessel; and
- (b) all claims, rights and remedies of the relevant Borrower against the government or official authority or person or persons claiming to be or to represent a government or official authority or other entity in relation to (a) above.

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

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

- (a) listed on, or owned or controlled by a person listed on any Sanctions List;
- (b) located in, incorporated under the laws of, or owned or controlled by, or acting on behalf of, a person located in or organised under the laws of a Sanctioned Country; or
- (c) otherwise a target of Sanctions (being a person with whom a US person or other national under the jurisdiction of a Sanctions Authority would be prohibited or restricted by law from engaging in trade, business or other activities or against whom Sanctions are otherwise directed).

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

“**Sanctions**” means any economic or trade sanctions, laws, embargoes, regulations, freezing provisions, prohibitions or other restrictions relating to trading, doing business, investment, exporting, financing or making assets available (or other activities similar to or connected with any of the foregoing):

- (a) imposed by law or regulation of the United Kingdom, the Council of the European Union or any of its Member States, the United Nations or its Security Council or the government of the United States of America, whether or not any Obligor or any Affiliate is legally bound to comply with the foregoing;
- (b) the respective governmental institutions and agencies of any of the foregoing, including without limitation, OFAC, the United States Department of State, Her Majesty’s Treasury and the Office of Financial Sanctions Implementation (OFSI) (together, the “**Sanctions Authorities**”); or
- (c) otherwise imposed by any law or regulation by which any Obligor or any Affiliate of any of them is bound or, as regards a regulation, compliance with which is reasonable in the ordinary course of business of any Obligor or any Affiliate of any of them.

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

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

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

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

provided that, in each case, at that time, there is no successor administrator to continue to provide that Screen Rate;
 - (ii) the administrator of that Screen Rate publicly announces that it has ceased or will cease, to provide that Screen Rate permanently or indefinitely and, at that time, there is no successor administrator to continue to provide that Screen Rate;
 - (iii) the supervisor of the administrator of that Screen Rate publicly announces that such Screen Rate has been or will be permanently or indefinitely discontinued; or
 - (iv) the administrator of that Screen Rate or its supervisor announces that that Screen Rate may no longer be used; or
- (c) the administrator of that Screen Rate determines that that Screen Rate should be calculated in accordance with its reduced submissions or other contingency or fallback policies or arrangements and either:
 - (i) the circumstance(s) or event(s) leading to such determination are not (in the opinion of the Majority Lenders and the Borrowers) temporary; or
 - (ii) that Screen Rate is calculated in accordance with any such policy or arrangement for a period no less than the period opposite that Screen Rate in Schedule 9 (*Screen rate contingency periods*); or

- (d) in the opinion of the Majority Lenders and the Borrowers, that Screen Rate is otherwise no longer appropriate for the purposes of calculating interest under this Agreement.

“**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 Obligor to any Finance Party under or in connection with any Finance Document.

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

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

“**Security Documents**” means:

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

“**Security Property**” means:

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

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

“**Share Charges**” means:

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

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

“**Specified Time**” means a time determined in accordance with Schedule 6 (*Timetables*).

“**Subordination and Assignment Agreement**” means the deed of subordination and assignment made or to be made (as the context so requires) between the Borrowers, HoldCo and the Security Agent in the agreed form.

“**Subsidiary**” means any company or entity directly or indirectly controlled by such person and for this purpose ‘control’ means the ownership of more than fifty per cent. (50%) of the voting share capital (or equivalent rights of ownership) of such company or entity.

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

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

“**Termination Date**” means the date falling on the third anniversary of the Utilisation Date.

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

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

- (a) any actual, constructive, compromised, agreed or arranged total loss of that Vessel;
- (b) any expropriation, confiscation, requisition or acquisition of that Vessel, whether or not for consideration (full, partial or nominal), which is effected by any government or official authority or by any person or persons claiming to be or to represent a government or official authority (a “**Compulsory Acquisition**”);
- (c) any hijacking, theft, condemnation, capture, seizure, arrest (of a nature covered by insurances), detention or confiscation of that Vessel not falling within the definition of “**Compulsory Acquisition**”, or by persons allegedly acting or purporting to act on behalf of any government entity, unless (i) the Vessel is released and restored to the Borrower owning that Vessel within ninety (90) days after such incident, or (ii) if relevant underwriters confirm in writing (in customary terms) prior to the end of such ninety (90) day period that such capture, seizure, detention or confiscation will be fully covered by the relevant Borrower’s war risks insurance, the shorter of twelve (12) months and such period for which cover is confirmed to attach.

“**Total Loss Date**” means any date in respect of which a Total Loss shall be deemed to have occurred, being: (i) in the event of the destruction or other actual total loss of a Vessel, the date of such loss, or if such date is unknown, on the date such Vessel was last reported; (ii) in the event of a constructive, agreed or compromised total loss of a Vessel, the date of determination of such total loss; (iii) in the case of any event referred to in paragraph (c) of the definition of “**Total Loss**”, on the date that is six (6) months (or in the case of any of the foregoing events resulting from an act of piracy covered by insurance, twelve (12) months) after the occurrence of such event.

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

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

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

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

“**Unpaid Sum**” means any sum due and payable but unpaid by an Obligor under any Finance Document.

“**US Tax Obligor**” means:

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

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

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

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

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

- (a) as at a date not more than 15 days previously;
- (b) by an Approved Broker selected or appointed by the Agent;
- (c) with or without physical inspection of the Vessel (as the Agent may require);
- (d) on the basis of an “as is, where is” sale for prompt delivery for cash on normal arm’s length commercial terms as between a willing seller and a willing buyer, free of any existing charter or other contract of employment,

and, if required by the Agent, after deducting the estimated amount of the usual and reasonable expenses which would be incurred in connection with the sale.

“**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.

“**Vessels**” means each vessel described in Schedule 8 (*Details of Vessels*) (and each a “**Vessel**”) except to the extent it has been sold or has become a Total Loss.

“**Voting Stock**” means, in respect of any person as of any date, the capital stock or other equity interests of such person that is at the time entitled to vote in the election of the board of directors (or equivalent) of such person.

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

“**Write-down and Conversion Powers**” means:

- (a) in relation to any Bail-In Legislation described in the EU Bail-In Legislation Schedule from time to time, the powers described as such in relation to that Bail-In Legislation in the EU Bail-In Legislation Schedule; and
- (b) in relation to any other applicable Bail-In Legislation:
- (i) any powers under that Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers; and
- (ii) any similar or analogous powers under that Bail-In Legislation.

1.2 **Construction**

- (a) Unless a contrary indication appears, a reference in this Agreement to:
- (i) the “**Account Bank**”, the “**Agent**”, any “**Finance Party**”, any “**Lender**”, any “**Obligor**”, any “**Party**”, any “**Secured Party**”, the “**Security Agent**” or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents and, in the case of the Security Agent, any person for the time being appointed as Security Agent or Security Agents in accordance with the Finance Documents;
- (ii) an “**agency**” of a state includes any local or other authority, self-regulating or other recognised body or agency, central or federal bank, department, government, legislature, minster, ministry, self-regulating organisation, official or public or statutory person (whether autonomous or not) or, or of the government of, that state or political sub-division in or of that state;
- (iii) a document in “**agreed form**” is a document which is previously agreed in writing by or on behalf of any Obligor party to it and the Agent or, if not so agreed, is in the form and substance specified by the Agent (acting on the instructions of all Lenders);

- (iv) **“approved”** means approved in writing by the Agent, acting on the instructions of the Majority Lenders;
- (v) **“assets”** includes present and future properties, revenues and rights of every description;
- (vi) **“authorisation”** means an authorisation, consent, approval, resolution, licence or exemption by a person by whom the same is required by law;
- (vii) **“disposal”** includes a sale, transfer, assignment, grant, lease, licence, declaration of trust or other disposal, whether voluntary or involuntary, and **“dispose”** will be construed accordingly;
- (viii) the **“equivalent”** of an amount specified in a particular currency (**“specific currency amount”**) shall be construed as a reference to the amount of the other relevant currency which can be purchased with the specific currency amount in the London foreign exchange market at 11 a.m. on the date the calculation falls to be made for spot delivery, as conclusively determined by the Agent (with the relevant exchange rate of such purchase being the **“Agent’s spot rate of exchange”**);
- (ix) **“excess risks”** means, in relation to a Vessel, the proportion (if any) of claims for general average, salvage and salvage charges not recoverable under the hull and machinery insurances in respect of that Vessel in consequence of the value at which a Vessel is assessed for the purpose of such claims exceeding its insured value;
- (x) a **“Finance Document”** or **“Relevant Document”** or any other agreement or instrument is a reference to that Finance Document or Relevant Document or other agreement or instrument as amended, novated, supplemented, extended or restated from time to time;
- (xi) **“guarantee”** means any guarantee (other than in Clause 18 (*Guarantee and indemnity*)), letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
- (xii) **“indebtedness”** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (xiii) **“month”** means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:
 - (1) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day;
 - (2) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month; and

- (3) the above rules will only apply to the last month of any period;
- (xiv) “**obligatory insurances**” means all insurances effected, or which any Borrower is required to effect, under Clause 24.2 (*Maintenance of obligatory insurances*) or any other provision of any Finance Document;
- (xv) a “**person**” includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
- (xvi) a “**policy**” in relation to any insurance, includes a slip, cover note, certificate of entry or other document evidencing the contract of insurance or its terms;
- (xvii) “**protection and indemnity risks**” means the usual risks covered by a protection and indemnity association that is a member of the International Group of P&I Clubs, including pollution risks and the proportion (if any) of any sums payable to any other person or persons in case of collision which are not recoverable under the hull and machinery policies by reason of the incorporation in them of clause 6 of the International Time Clauses (Hulls)(1/11/02 or 1/11/03) or clause 8 of the Institute Time Clauses (Hulls) (1/10/83) or the Institute Amended Running Down Clause (1/10/71) or any equivalent provision;
- (xviii) a “**regulation**” includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but if not having the force of law one with which the relevant party at whom it is directed would customarily comply) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
- (xix) “**war risks**” includes the risk of mines and all risks excluded by clause 29 of the Institute Hull Clauses (1/11/02 or 1/11/03) or clause 24 of the Institute Time clauses (Hulls) (1/11/1995) or clause 23 of the Institute Time Clauses (Hulls) (1/10/83);
- (xx) words importing the plural shall include the singular and vice versa and words importing a gender shall include every gender;
- (xxi) a provision of law is a reference to that provision as amended or re-enacted; and
- (xxii) a time of day is a reference to London time.
- (b) Section, Clause and Schedule headings are for ease of reference only.
- (c) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
- (d) A Default (other than an Event of Default) is “**continuing**” if it has not been remedied or waived and an Event of Default is “**continuing**” if it has not been remedied or waived.

- (e) Where the Agent or the Security Agent is referred to as acting “**reasonably**” or “**in a “reasonable manner**” or as coming to an opinion or determination that is “**reasonable**” (or any similar or analogous wording is used), this shall mean that the Agent and the Security Agent shall be acting or coming to an opinion or determination on the instructions of the Lenders or the Majority Lenders (as the case may be) acting reasonably or in a reasonable manner and the Agent and the Security Agent shall be under no obligation to determine the reasonableness of such instructions or whether in giving such instructions the Lenders or the Majority Lenders (as the case may be) are acting reasonably or in a reasonable manner
- (f) Where acceptability to or satisfaction of the Agent or the Security Agent is referred to in relation to a matter not affecting the personal interests of the Agent or Security Agent (including, for the avoidance of doubt, any satisfaction or determination in relation to conditions precedent) this shall mean the acceptability to or satisfaction of the Lenders or the Majority Lenders (as the case may be) as notified by it to the Agent or Security Agent.
- (g) In respect of paragraphs (e) and (f) above, the Agent and the Security Agent shall not be responsible for any liability occasioned or by any delay or failure on the part of the Lenders or the Majority Lenders (as the case may be) to give any such instructions or direction or to form any such opinion.

1.3 **Third Party Rights**

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

1.4 **Conflict**

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

2. **The Facility**

2.1 **The Facility**

Subject to the terms of this Agreement, the Lenders shall make available to the Borrowers a term loan facility in an aggregate amount not exceeding the Maximum Loan Amount (as adjusted in accordance with the terms of this Agreement).

2.2 **Finance Parties’ rights and obligations**

- (a) The obligations of each Finance Party under the Finance Documents are several. Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.
- (b) The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from an Obligor shall be a separate and independent debt.

(c) A Finance Party may, except as otherwise stated in the Finance Documents, separately enforce its rights under the Finance Documents.

3. **Purpose**

3.1 **Purpose**

Each Borrower shall apply all amounts borrowed by it under the Facility only for the purpose of financing the acquisition cost of the Vessels.

3.2 **Monitoring**

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

4. **Conditions of Utilisation**

4.1 **Conditions precedent**

The Borrowers may not deliver an Utilisation Request and the Lenders will not be obliged to comply with Clause 5.4 (*Lenders' participation*):

- (a) unless the Agent, or its duly authorised representative, has received all of the documents and other evidence listed in Part I of Schedule 2 (*Conditions Precedent to Utilisation*) in form and substance satisfactory to the Agent. The Agent shall notify the Obligors and the Lenders promptly upon being so satisfied; and
- (b) on the date of the Utilisation Request and on the proposed Utilisation Date:
 - (i) no Default is continuing or would result from the proposed Utilisation;
 - (ii) all representations and warranties under any of the Finance Documents made or to be made by an Obligor are true and accurate as at that date with reference to the facts and circumstances then existing;
 - (iii) the provisions of Clause 10.3 (*Alternative basis of interest or funding*) do not apply; and
 - (iv) no Vessel has been the subject of a Total Loss;
- (c) the Utilisation requested is for an amount equal to the Maximum Loan Amount; and
- (d) the Agent is satisfied that the Utilisation requested shall not exceed the Total Commitments.

4.2 **Waiver of Conditions Precedent**

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

4.3 **Conditions subsequent**

The Borrowers undertake to deliver or to cause to be delivered to the Agent the relevant additional documents and other evidence listed in Part II of Schedule 2 (*Conditions Subsequent*), such documents and evidence to be delivered within thirty days after the Utilisation Date except for the documents and evidence in paragraphs (1) to (4) of Part II of Schedule 2 (*Conditions Subsequent*) which are to be delivered within ten (10) Business Days of the Utilisation Date.

5. **Utilisation**

5.1 **Delivery of Utilisation Request**

The Borrowers may utilise the Facility by delivery to the Agent of a duly completed Utilisation Request not later than the Specified Time (or such shorter period as the Agent may agree, acting on the instructions of the Lenders) in respect of four advances, with each advance to be made to the Borrowers in an amount equal to the amount of the respective Notional Vessel Tranche.

5.2 **Completion of Utilisation Request**

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

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

5.3 **Currency and amount**

- (a) The currency specified in an Utilisation Request must be Dollars.
- (b) The amount of the proposed Utilisation must be an amount which is equal to the Maximum Loan Amount.
- (c) There shall be no more than one Utilisation.

5.4 **Lenders' participation**

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

5.5 **Disbursement**

The Agent shall, on the Utilisation Date, apply the proceeds of Utilisation in accordance with the terms of the Consent and Implementation Agreement.

6. **Repayment**

6.1 **Repayment Instalments**

- (a) Subject to the provisions of this Agreement, the Borrowers shall repay the Notional Vessel Tranches by 8 equal consecutive quarterly instalments in an aggregate amount of US\$925,000 (such aggregate amount to be applied pro rata to the outstanding principal amount of the Notional Vessel Tranches) commencing on 30 September 2020 and thereafter on each subsequent Quarter Date (each instalment a “**Repayment Instalment**”).
- (b) The balance of each Notional Vessel Tranche shall be repaid by the Borrowers in full as a balloon repayment on the Termination Date, together with all other amounts then due and outstanding under the Finance Documents (the “**Balloon Instalment**”).

6.2 **No Reborrowing**

Amounts of the Loan which are repaid or prepaid shall not be available for reborrowing.

7. **Prepayment and cancellation**

7.1 **Illegality**

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

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

7.2 **Change of Control**

If a Change of Control occurs, then:

- (a) the Borrowers shall promptly notify the Agent upon becoming aware of that event;
- (b) no Lender shall be obliged to fund an Utilisation; and
- (c) the Loan, together with accrued interest, and all other amounts accrued under the Finance Documents shall become immediately due and payable, whereupon the Total Commitments will be cancelled and all such outstanding amounts will become immediately due and payable.

7.3 **Mandatory prepayment – sale/Total Loss**

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

7.4 **Automatic cancellation**

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

7.5 Voluntary prepayment

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

7.6 Restrictions

- (a) Any notice of cancellation or prepayment given by any Party under this Clause 7 (*Prepayment and cancellation*) shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment. The Agent must notify the Lenders promptly upon receipt of any such notice.
- (b) Any repayment or prepayment under this Agreement shall be made together with accrued interest on the amount repaid or prepaid and any applicable Break Costs.
- (c) The Borrowers shall not repay or prepay all or any part of the Loan or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this Agreement.
- (d) No amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.
- (e) If the Agent receives a notice under this Clause 7 it shall promptly forward a copy of that notice to either the Borrowers or the Lenders, as appropriate.
- (f) If all or part of the Loan is repaid or prepaid, an amount of the Commitments (equal to the amount of the Loan which is repaid or prepaid) will be deemed to be cancelled on the date of repayment or prepayment. Any cancellation under this paragraph shall reduce the Commitments of the Lenders rateably.

8. Interest

8.1 Calculation of interest

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

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

8.2 Payment of interest

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

8.3 **Default interest**

If an Obligor fails to pay any amount payable by it under a Finance Document on its due date (after the expiration of any applicable grace period under Clause 27.1 (*Non-payment*)), interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which is 2 per cent. per annum higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted an Utilisation in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the Agent (acting reasonably). Any interest accruing under this Clause 8.3 shall be immediately payable by the Obligor on demand by the Agent. Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

8.4 **Notification of rates of interest**

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

9. **Interest Periods**

9.1 **Length of Interest Periods**

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

9.2 **Non-Business Days**

If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period will instead end on the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

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

10.1 **Absence of quotations**

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

10.2 **Market disruption**

- (a) If a Market Disruption Event occurs in relation to the Loan for any Interest Period, then the rate of interest on each Lender's share of the Loan for the Interest Period shall be the percentage rate per annum which is the sum of:
 - (i) the Margin; and
 - (ii) the rate notified to the Agent by that Lender as soon as practicable and in any event before interest is due to be paid in respect of that Interest Period, to be that which expresses as a percentage rate per annum the cost to that Lender of funding its participation in the Loan from whatever source it may reasonably select.

- (b) In this Agreement “**Market Disruption Event**” means:
- (i) at or about noon on the Quotation Day for the relevant Interest Period, the Screen Rate is not available and none or only one of the Reference Banks supplies a rate to the Agent to determine LIBOR for Dollars for the relevant Interest Period; or
 - (ii) before close of business in London on the Quotation Day for the relevant Interest Period, the Agent receives notifications from a Lender or Lenders (whose participations in the Loan exceed fifty per cent. (50%) of the Loan) that the cost to it or them of obtaining matching deposits in the Relevant Interbank Market would be in excess of LIBOR.

10.3 Alternative basis of interest or funding

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

10.4 Break Costs

- (a) The Borrowers shall, within three (3) Business Days of demand by a Finance Party (or at the time of prepayment of the relevant amount under Clause 7 (*Prepayment and cancellation*)), pay to that Finance Party its Break Costs attributable to all or any part of the Loan or Unpaid Sum being paid by any Borrower on a day other than the last day of an Interest Period for the Loan or Unpaid Sum.
- (b) Each Lender shall, as soon as reasonably practicable after a demand by the Agent, provide a certificate confirming the amount of its Break Costs for any Interest Period in which they accrue.

11. Fees

11.1 Agency fee and security agent fee

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

11.2 Upfront fee

The Borrowers shall pay to the Agent (for the account of the Lenders) on the Utilisation Date an upfront fee in an amount of US\$50,000.

12. Tax gross up and indemnities

12.1 Definitions

In this Agreement:

- (a) **“Protected Party”** means a Finance Party which is or will be subject to any liability or required to make any payment for or on account of Tax in relation to a sum received or receivable (or any sum deemed for the purposes of Tax to be received or receivable) under a Finance Document.
- (b) **“Tax Credit”** means a credit against, relief or remission for, or repayment of any Tax.
- (c) **“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.
- (d) **“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*).
- (e) Unless a contrary indication appears, in this Clause 12 a reference to “determines” or “determined” means a determination made in the absolute discretion of the person making the determination.

12.2 **Tax gross-up**

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

- (a) an Obligor shall promptly upon becoming aware that it or any other Obligor must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Agent accordingly. Similarly, a Lender shall notify the Agent on becoming so aware in respect of a payment payable to that Lender. If the Agent receives such notification from a Lender it shall notify the Borrowers and any such other Obligor;
- (b) if a Tax Deduction is required by law to be made by a Borrower or any other Obligor, the amount of the payment due from that Borrower or that other Obligor shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required;
- (c) if any Obligor is required to make a Tax Deduction, that Obligor shall (and shall procure that such other 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;
- (d) within thirty (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 (and shall procure that such other Obligor shall) deliver to the Agent for the Finance Party entitled to the payment evidence reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

12.3 **Tax indemnity**

- (a) Each Borrower shall (within three (3) Business Days of demand by the Agent) pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document.

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

12.4 **Tax Credit**

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

- (a) a Tax Credit is attributable to an increased payment of which that Tax Payment forms part, to that Tax Payment or to a Tax Deduction in consequence of which that Tax Payment was required; and
- (b) that Finance Party has obtained and utilised that Tax Credit, that Finance Party shall pay an amount to that Borrower or to that other Obligor which that Finance Party determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been made by that Borrower or that other Obligor.

12.5 **Stamp taxes**

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

12.6 VAT

- (a) All amounts expressed to be payable under a Finance Document by any Party or any Obligor to a Finance Party which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and accordingly, subject to Clause 12.6(b) below, if VAT is or becomes chargeable on any supply made by any Finance Party to any Party or any Obligor under a Finance Document and such Finance Party is required to account to the relevant tax authority for the VAT, that Party or Obligor must pay to such Finance Party (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of the VAT (and such Finance Party must promptly provide an appropriate VAT invoice to the Borrowers).
- (b) If VAT is or becomes chargeable on any supply made by any Finance Party (the “**Supplier**”) to any other Finance Party (the “**Recipient**”) under a Finance Document, and any Party other than the Recipient (the “**Relevant Party**”) is required by the terms of any Finance Document to pay an amount equal to the consideration for that supply to the Supplier (rather than being required to reimburse or indemnify the Recipient in respect of that consideration):
 - (i) (where the Supplier is the person required to account to the relevant tax authority for the VAT) the Relevant Party must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the VAT. The Recipient must (where this Clause 12.6(b)(i) applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Recipient receives from the relevant tax authority which the Recipient reasonably determines relates to the VAT chargeable on that supply; and
 - (ii) (where the Recipient is the person required to account to the relevant tax authority for the VAT) the Relevant Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply but only to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.
- (c) Where a Finance Document requires any Party to reimburse or indemnify a Finance Party for any cost or expense, that Party shall reimburse or indemnify (as the case may be) such Finance Party for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that such Finance Party reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.
- (d) Any reference in this Clause 12.6 to any Party shall, at any time when such Party is treated as a member of a group for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the representative member of such group at such time (the term “representative member” to have the same meaning as in the Value Added Tax Act 1994).
- (e) In relation to any supply made by a Finance Party to any Party under a Finance Document, if reasonably requested by such Finance Party, that Party must promptly provide such Finance Party with details of that Party’s VAT registration and such other information as is reasonably requested in connection with such Finance Party’s VAT reporting requirements in relation to such supply.

12.7 FATCA information

- (a) Subject to Clause 12.7(c) below, each Party shall, within ten (10) Business Days of a reasonable request by another Party:

- (i) confirm to that other Party whether it is:
 - (1) a FATCA Exempt Party; or
 - (2) not a FATCA Exempt Party;
 - (ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA; and
 - (iii) supply to that other Party such forms, documentation and other information relating to its status as that other Party reasonably requests for the purposes of that other Party's compliance with any other law, regulation, or exchange of information regime.
- (b) If a Party confirms to another Party pursuant to Clause 12.7(a)(i)(1) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.
- (c) Clause 12.7(a) above shall not oblige any Finance Party to do anything, and Clause 12.7(a)(iii) shall not oblige any other Party to do anything, which would or might in its reasonable opinion constitute a breach of:
- (i) any law or regulation;
 - (ii) any fiduciary duty; or
 - (iii) any duty of confidentiality.
- (d) If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with Clause 12.7(a)(i) or 12.7(a)(ii) above (including, for the avoidance of doubt, where Clause 12.7(c) applies), then such Party shall be treated for the purposes of the Finance Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.
- (e) If an Obligor is a US Tax Obligor or the Agent reasonably believes that its obligations under FATCA or any other applicable law or regulation require it, each Lender shall, within ten (10) Business Days of:
- (i) where an Obligor is a US Tax Obligor and the relevant Lender is an Original Lender, the date of this Agreement;
 - (ii) where an Obligor is a US Tax Obligor on a Transfer Date and the relevant Lender is a New Lender or an Increase Lender, the relevant Transfer Date; or
 - (iii) where an Obligor is not a US Tax Obligor, the date of a request from the Agent,
- supply to the Agent:
- (1) a withholding certificate on Form W-8 or Form W-9 or any other relevant form; or

- (2) any withholding statement or other document, authorisation or waiver as the Agent may require to certify or establish the status of such Lender under FATCA or that other law or regulation.
- (f) The Agent shall provide any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to Clause 12.7(e) above to the Borrowers.
- (g) If any withholding certificate, withholding statement, document, authorisation or waiver provided to the Agent by a Lender pursuant to Clause 12.7(e) is or becomes materially inaccurate or incomplete, that Lender shall promptly update it and provide such updated withholding certificate, withholding statement, document, authorisation or waiver to the Agent unless it is unlawful for the Lender to do so (in which case the Lender shall promptly notify the Agent). The Agent shall provide any such updated withholding certificate, withholding statement, document, authorisation or waiver to the Borrowers.

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

12.8 **FATCA Deduction**

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

13. **Increased costs**

13.1 **Increased costs**

- (a) Subject to Clause 13.3 (*Exceptions*) the Borrowers shall, within three (3) Business Days of a demand by the Agent, pay to the Agent for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of:
 - (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation; or
 - (ii) compliance with any law or regulation or any request from or requirement of any central bank or other fiscal, monetary or other authority made after the date of this Agreement (including Basel III, CRD IV and any other law or regulation which implements Basel III or CRD IV).

- (b) In this Agreement “**Increased Costs**” means:
- (i) a reduction in the rate of return from the Loan or on a Finance Party’s (or its Affiliate’s) overall capital;
 - (ii) an additional or increased cost; or
 - (iii) a reduction of any amount due and payable under any Finance Document,
- which is incurred or suffered by a Finance Party or any of its Affiliates to the extent that it is attributable to that Finance Party having entered into its Commitment or funding or performing its obligations under any Finance Document.
- (c) In this Agreement “**Basel III**” means:
- (i) the agreements on capital requirements, a leverage ratio and liquidity standards contained in “Basel III: A global regulatory framework for more resilient banks and banking systems”, “Basel III: International framework for liquidity risk measurement, standards and monitoring” and “Guidance for national authorities operating the countercyclical capital buffer” published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated;
 - (ii) the rules for global systemically important banks contained in “Global systemically important banks: assessment methodology and the additional loss absorbency requirement — Rules text” published by the Basel Committee on Banking Supervision in November 2011, as amended, supplemented or restated; and
 - (iii) any further guidance or standards published by the Basel Committee on Banking Supervision relating to “Basel III”.
- (d) In this Agreement, “**CRD IV**” means:
- (i) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending regulation (EU) No. 648/2012;
 - (ii) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC; and
 - (iii) any other law or regulation which implements Basel III.

13.2 **Increased cost claims**

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

13.3 Exceptions

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

14. Other indemnities

14.1 Currency indemnity

- (a) If any sum due from 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 (and the other Obligors shall procure that that Obligor shall) as an independent obligation, within three (3) Business Days of demand, indemnify each Finance Party to whom that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.
- (b) Each Obligor waives (and shall procure that each other Obligor waives) any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.

14.2 Other indemnities

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

14.3 Indemnity to the Agent

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

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

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

14.4 Indemnity to the Security Agent

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

14.5 Indemnity survival

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

15. Mitigation by the Lenders

15.1 Mitigation

- (a) Each Finance Party shall, in consultation with the Borrowers, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 7.1 (*Illegality*), Clause 12 (*Tax gross up and indemnities*) or Clause 13 (*Increased costs*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.

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

15.2 Limitation of liability

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

16. Costs and expenses

16.1 Transaction expenses

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

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

16.2 Amendment costs

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

16.3 Enforcement and preservation costs

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

16.4 **Other costs**

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

17. **JOINT AND SEVERAL LIABILITY**

17.1 **Joint and several liability**

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

17.2 **Waiver of defences**

- (a) The joint and several liabilities and obligations of each Borrower will not be affected by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice any of its obligations under this Agreement and/or any other Finance Document (without limitation and whether or not known to it or any Finance Party) including:
 - (i) any time, waiver or consent granted to, or composition with, any Borrower or other person;

- (ii) the release of any other Borrower or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
- (iii) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any other Borrower or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (iv) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any other Borrower or any other person;
- (v) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance Document or any other document or security including without limitation any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- (vi) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
- (vii) any insolvency or similar proceedings.

17.3 Appropriations

- (a) Until all amounts which may be or become payable by the Borrowers under or in connection with the Finance Documents have been irrevocably paid in full, each Finance Party (or any trustee or agent on its behalf) may:
 - (i) refrain from applying or enforcing any other moneys, security or rights held or received by that Finance Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and the Borrowers (or any of them) shall be entitled to the benefit of the same; and
 - (ii) hold in an interest-bearing suspense account any moneys received from the Borrower or on account of the relevant Borrower's liability under this Clause 17.

17.4 Deferral of each Borrower's rights

- (a) Until all amounts which may be or become payable by the Borrowers under or in connection with the Finance Documents have been irrevocably paid in full and unless the Agent otherwise directs, no Borrower will exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under this Clause 17:
 - (i) to be indemnified by an Borrower;
 - (ii) to claim any contribution from any other guarantor of any Borrower's obligations under the Finance Documents;
 - (iii) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Finance Parties under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Finance Party;

- (iv) to bring legal or other proceedings for an order requiring any Borrower to make any payment, or perform any obligation, in respect of which any Borrower has given a guarantee, undertaking or indemnity under Clause 18.1 (*Guarantee and indemnity*);
 - (v) to exercise any right of set-off against any Borrower; and/or
 - (vi) to claim or prove as a creditor of any Borrower in competition with any Finance Party.
- (b) If any Borrower receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Finance Parties by the Borrowers under or in connection with the Finance Documents to be repaid in full on trust for the Finance Parties and shall promptly pay or transfer the same to the Agent or as the Agent may direct for application in accordance with Clause 34 (*Payment mechanics*).

18. Guarantee and indemnity

18.1 Guarantee and indemnity

Each of the Guarantors irrevocably and unconditionally:

- (a) guarantees to each Finance Party punctual performance by each other Obligor of all that Obligor's obligations under the Finance Documents;
- (b) undertakes with each Finance Party that whenever another Obligor does not pay any amount when due under or in connection with any Finance Document, the Guarantors shall immediately on demand pay that amount as if they were the principal obligor; and
- (c) agrees with each Finance Party that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify that Finance Party immediately on demand against any cost, loss or liability it incurs as a result of an Obligor (other than the Guarantors) not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Finance Document on the date when it would have been due. The amount payable by the Guarantors under this indemnity will not exceed the amount it would have had to pay under this Clause 18 if the amount claimed had been recoverable on the basis of a guarantee.

18.2 Continuing guarantee

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

18.3 Reinstatement

If any discharge, release or arrangement (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) is made by a Finance Party in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of the Guarantors under this Clause 18 will continue or be reinstated as if the discharge, release or arrangement had not occurred.

18.4 **Waiver of defences**

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

- (a) any time, waiver or consent granted to, or composition with, any Obligor or other person;
- (b) the release of any other 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, take up or enforce, any rights against, or security over assets of, any Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or any other person;
- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance Document or any other document or security including without limitation any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
- (g) any insolvency or similar proceedings.

18.5 **Guarantors' intent**

Without prejudice to the generality of Clause 18.4 (*Waiver of defences*), each of the Guarantors expressly confirms that it intends that this guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection with any of the following: business acquisitions of any nature; increasing working capital, enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities, refinancing any other indebtedness; making facilities available to new borrowers, any other variation or extension of the purposes for which any such facility or amount might be made available from time to time, and any fees, costs and/or expenses associated with any of the foregoing.

18.6 **Immediate recourse**

Each of the Guarantors waives any right it may have of first requiring any Finance Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from it or commencing proceedings under this Clause 18. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

18.7 Appropriations

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

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by that Finance Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and the Guarantors shall be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from the Guarantors or on account of the Guarantors' liability under this Clause 18.

18.8 Deferral of Guarantors' rights

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

- (a) to be indemnified by an Obligor;
- (b) to claim any contribution from any other guarantor of any 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 Finance Parties under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Finance Party;
- (d) to bring legal or other proceedings for an order requiring any Obligor to make any payment, or perform any obligation, in respect of which any Obligor has given a guarantee, undertaking or indemnity under Clause 18.1 (*Guarantee and indemnity*);
- (e) to exercise any right of set-off against any Obligor; and/or
- (f) to claim or prove as a creditor of any Obligor in competition with any Finance Party.

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

18.9 Additional security

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

19. Representations and warranties

19.1 Representations

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

19.2 Status

Each of the Obligors:

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

19.3 Binding obligations

Subject to the Legal Reservations and Perfection Requirements:

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

19.4 Non-conflict with other obligations

The entry into and performance by each of the Obligors of, and the transactions contemplated by, the Relevant Documents do not conflict with:

- (a) any law or regulation applicable to such Obligor;
- (b) the constitutional documents of such Obligor; or
- (c) any agreement or instrument binding upon such Obligor or any of such Obligor's assets or constitute a default or termination event (however described) under any such agreement or instrument, provided that this paragraph (c) shall only apply to the extent that the circumstances of any such conflict would have a Material Adverse Effect.

19.5 Power and authority

- (a) Each of the Obligors has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Relevant Documents to which it is or will be a party and the transactions contemplated by those Relevant Documents.

- (b) No limit on the powers of any Obligor will be exceeded as a result of the borrowing, granting of security or giving of guarantees or indemnities contemplated by the Relevant Documents to which it is a party.

19.6 Validity and admissibility in evidence

Subject to the Legal Reservations and Perfection Requirements, all authorisations required:

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

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

19.7 Governing law and enforcement

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

19.8 Insolvency

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

19.9 No filing or stamp taxes

Under the laws of the Relevant Jurisdictions of each relevant Obligor it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in any of those jurisdictions or that any stamp, registration, notarial or similar tax or fees be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents except:

- (a) any filing, recording or any tax or fee payable in relation to any Finance Document which is referred to in any legal opinion referred to in Clause 4 (*Conditions of Utilisation*); and
- (b) registration of each Mortgage at the registry of the Approved Flag where title to the relevant Vessel is registered in the ownership of the relevant Borrower.

19.10 No default

- (a) No Event of Default and, on the date of this Agreement and the Utilisation Date, no Default is continuing or is reasonably likely to result from the advance of an Utilisation or the entry into, the performance of, or any transaction contemplated by, any of the Relevant Documents.

- (b) No other event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the foregoing, would constitute) a default or termination event (howsoever described) under any other agreement or instrument which is binding on any of the Obligors or to which its assets are subject and which has or is reasonably likely to have a Material Adverse Effect.

19.11 No misleading information

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

19.12 Financial statements

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

19.13 No proceedings pending or threatened

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

19.14 Taxes and VAT

- (a) It is not a member of a value added tax group.
- (b) It is resident for Tax purposes only in the jurisdiction of its Original Jurisdiction.
- (c) It is not overdue in the filing of any Tax returns or overdue in the payment of any amount of Tax.

- (d) No claims or investigations have been, or are likely to be, initiated or conducted against it with respect to the non-payment of Tax which are likely to be adversely determined and, if adversely determined, might reasonably be expected to have a Material Adverse Effect.

19.15 No breach of laws

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

19.16 Environmental laws

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

19.17 Anti-corruption law

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

19.18 No Security or Financial Indebtedness

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

19.19 Pari passu ranking

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

19.20 Ranking of Security

Subject to the Legal Reservations and Perfection Requirements, the security conferred by each Security Document constitutes a first priority security interest of the type described, over the assets referred to, in that Security Document and those assets are not subject to any prior or *pari passu* Security except Permitted Security.

19.21 Centre of main interests and establishments

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

19.22 **Completeness of Relevant Documents**

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

19.23 **No Immunity**

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

19.24 **Money laundering**

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

19.25 **Sanctions**

As regards Sanctions:

- (a) None of the Obligors, any Approved Manager, nor any of their respective direct or indirect shareholders (or equivalent) or any director, officer, agent, employee or person acting on behalf of any of them is a Restricted Person or is owned or controlled by, or acting directly or indirectly on behalf of or for the benefit of, a Restricted Person and none of such persons owns or controls a Restricted Person; provided that, for the purposes of this paragraph (a) and with respect to NMP only, ‘shareholders’ shall include only those shareholders owning 5% or more of shares in NMP.
- (b) No proceeds of the Loan shall knowingly be made available, directly or indirectly, to or for the benefit of a Restricted Person in violation of applicable Sanctions laws, or otherwise shall knowingly be, directly or indirectly, applied in a manner or for a purpose prohibited by Sanctions.
- (c) The Obligors shall not (and shall procure that no Approved Manager shall) knowingly use any revenue or benefit derived from any activity or dealing with a Restricted Person in breach of Sanctions in discharging any obligation due or owing to the Finance Parties.
- (d) Each of the Obligors, each Approved Manager and each Affiliate of any of them is in compliance with Sanctions.
- (e) Each Obligor shall (and shall procure that each Approved Manager shall), to the extent permitted by law, promptly upon becoming aware of them supply to the Agent details of any claim, action, suit, proceedings or formal investigation against it brought by any Sanctions Authority, with respect to the activities of an Obligor and each Approved Manager.

19.26 Valuation

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

19.27 No other business

- (a) None of the Borrowers has traded or carried on any business since the date of its incorporation except for:
 - (i) the ownership and operation of the Vessel owned by it.
- (b) As at the date of this Agreement, none of the Borrowers is party to any material agreement other than the Relevant Documents.
- (c) As at the date of this Agreement,
 - no Borrower has any Subsidiaries.
- (d) None of the Borrowers:
 - (i) has, or has had, any employees; and
 - (ii) has any obligation in respect of any retirement benefit or occupational pension scheme.

19.28 Ownership

- (a) All of HoldCo's issued limited liability company interests are directly, legally and beneficially owned and controlled by NMP.
- (b) All of the Borrowers' issued shares are directly, legally and beneficially owned and controlled by HoldCo.
- (c) The shares in each Borrower are fully paid and are not subject to any option to purchase or similar rights.
- (d) Each Borrower is the sole legal and beneficial owner of the Vessel registered in its name, its Earnings and its Insurances.
- (e) As and with effect from the date of its creation or intended creation, each Borrower will be the sole legal and beneficial owner of any other asset that is the subject of any Transaction Security created or intended to be created by it.

19.29 ISM Code and ISPS Code

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

19.30 Vessel

- (a) Each Vessel is:
- (i) permanently registered in the name of the relevant Borrower under the relevant Approved Flag;
 - (ii) free from Security (other than Permitted Security);
 - (iii) operationally seaworthy and in every way fit for service;
 - (iv) classed in accordance with the relevant Classification free of all overdue conditions and recommendations of the relevant Classification Society (except as disclosed to and approved by the Agent prior to the Utilisation Date); and
 - (v) insured in the manner required by the Finance Documents,
- provided that, in the case of paragraphs (iii) and (iv) above, no breach of this Clause shall result in relation to a condition or recommendation of class or required works or repairs existing at the date of delivery under the relevant MOA provided that the same is remedied and repaired on or before 1 January 2020.
- (b) To the best of its knowledge (following due and careful enquiry):
- (i) no material breach of any law or regulation is outstanding which might have a Material Adverse Effect (including in relation to the value of a Vessel); and
 - (ii) no adverse claim has been made by any person in respect of the ownership of any Vessel or any interest in it.

19.31 Repetition

Each Repeating Representation is deemed to be repeated by each Obligor by reference to the facts and circumstances then existing on the date of the Utilisation Request, on the Utilisation Date, on the first day of each Interest Period and, in the case or those contained in Clause 19.12(b) (*Financial statements*) and for so long as any amount is outstanding under the Finance Documents or any Commitment is in force, on each day on which the relevant financial statements are delivered.

20. Information undertakings

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

20.1 Financial statements

- (a) The Borrowers shall supply to the Agent:

- (i) as soon as available, but in any event within 180 days after the last day of each fiscal year of NMP ending thereafter, a copy of the audited consolidated balance sheet of the NMP and its consolidated Subsidiaries as at the end of such year and the related audited consolidated statements of income and of cash flows for such year (provided that delivery within the time periods specified above of copies of the Annual Report on Form 20-F of NMP filed with the SEC shall be deemed to satisfy the requirements of this paragraph (b)(i)); and
- (ii) as soon as available, but in any event within 90 days after the last day of the first three fiscal quarters of each fiscal year of NMP, the unaudited consolidated balance sheet of NMP and its consolidated Subsidiaries as at the end of such quarter and the related unaudited consolidated statements of income and of cash flows for such quarter and the portion of the fiscal year through the end of such quarter (provided that delivery within the time periods specified above of copies of the Quarterly Report on Form 6-K of NMP filed with the SEC shall be deemed to satisfy the requirements of this paragraph (b)(ii)).

20.2 Requirements as to financial statements

- (a) Each set of financial statements delivered pursuant to Clause 20.1 (*Financial statements*):
 - (i) shall be certified by an authorised officer of the relevant entity as giving a true and fair view (in case of annual financial statements), or fairly presenting (in other cases), its financial condition as at the date as at which those financial statements were drawn up; and
 - (ii) shall be prepared using GAAP, accounting practices and financial reference periods consistently applied unless, in relation to any set of financial statements, it notifies the Agent that there has been a change in GAAP, the accounting practices or reference periods and its auditors deliver to the Agent:
 - (1) a description of any change necessary for those financial statements to reflect GAAP, accounting practices and reference periods upon which the previous financial statements were prepared; and
 - (2) in the case of annual audited financial statements, not be the subject of any Auditor's opinion that is adversely qualified in any material way.
- (b) 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 previous financial statements were prepared.

20.3 Budgets and report on Operating Expenses

- (a) The Borrowers shall:
 - (i) supply to the Agent, no later than thirty (30) days prior to the commencement of each calendar year (starting with the calendar year commencing 1 January 2020), copies of an annual operating budget of each Borrower (and the Vessel owned by it) for that calendar year; and

- (ii) procure that the Approved Technical Manager shall supply to the Agent, no later than thirty (30) days prior to the commencement of each calendar year (starting with the calendar year commencing 1 January 2020), a copy of an annual Operating Expenses budget in respect of each Vessel for that calendar year,

all such budgets to be approved by the Agent (acting on the instructions of the Majority Lenders) and in the form and with such details as the Agent (acting on the instructions of the Majority Lenders) may reasonably require and, without prejudice to the foregoing, each annual Operating Expenses budget under paragraph (ii) above to be substantially in the form appended to Schedule 13 (*Example Budget*) or such other form as may be agreed by the Borrowers and the Agent.

- (b) The Borrowers shall procure that the Approved Technical Manager shall, on request, supply to the Agent a quarterly performance report for each Vessel for the following Financial Quarter showing the estimated daily Operating Expenses for that Vessel and, upon the request of the Agent, provide details of trade payables and other liabilities position of each Vessel.

20.4 **Information: miscellaneous**

- (a) Each Borrower and HoldCo shall supply to the Agent (in sufficient copies for all the Lenders, if the Agent so requests):
 - (i) at the same time as they are dispatched, copies of all documents dispatched by that Borrower or HoldCo to its shareholders or equivalent (but not in their capacity as directors, officers or employees of any Borrower or HoldCo) generally (or any class of them) or dispatched by that Borrower or HoldCo to its creditors generally (or any class of them);
 - (ii) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings (including proceedings related to any alleged or actual breach of the ISM Code or the ISPS Code) which are current, threatened or pending against any Obligor, and which are likely to be adversely determined and, if adversely determined, are likely to have a Material Adverse Effect;
 - (iii) promptly, such further information regarding the financial condition, business, assets and operations of any Obligor (or any other member of the Group) as any Finance Party (through the Agent) may reasonably request including, without limitation, cash flow analyses and details of the Operating Expenses of any Vessel, any dividends and/or loans made by a Borrower and/or HoldCo, and annual inspection certificates (including any annual inspection report (if required by the Agent)).
- (b) The Finance Parties (or the Agent acting on their behalf) shall be entitled to have a call with representatives of the Borrower at least once per quarter and to hold a meeting with representatives of the Group at least once per calendar year, during which calls and meetings the Finance Parties or the Agent (as applicable) shall be entitled to ask such questions regarding the financial condition, business and operations of the Group (or any member of the Group) as such Finance Party or the Agent (as applicable) may reasonably require.

20.5 **Notification of default**

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

20.6 **“Know your customer” checks**

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

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

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

20.7 **USA Patriot Act Notice**

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

21. Financial Covenants

21.1 NMP Financial Covenants

NMP shall ensure that the financial covenants set out in Schedule 12 (*NMP Financial Covenants*) are complied with at all times during the Facility Period.

21.2 Compliance certificates

- (a) NMP shall supply to the Agent, with each set of financial statements delivered pursuant to Clause 20.1(a) (*Financial statements*), a compliance certificate in such form as may reasonably be required by the Agent (acting on the instructions of the Majority Lenders and, with regard to NMP's reporting requirements, to its other financiers) confirming compliance with Clause 21.1 (*NMP Financial Covenants*). Each such compliance certificate shall be signed by an authorised officer of NMP.
- (b) If, prior to the delivery of any compliance certificate pursuant to paragraph (a) above, NMP becomes aware that the financial covenants detailed in Schedule 12 (*NMP Financial Covenants*) (or any of them) will not be complied with, then NMP shall promptly notify the Agent accordingly.

22. General undertakings

The undertakings in this Clause 21 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

22.1 Authorisations

Each Obligor shall promptly:

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

22.2 Compliance with laws

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

22.3 Environmental compliance

Each Obligor shall:

- (a) comply with all Environmental Laws;
- (b) obtain, maintain and ensure compliance with all requisite Environmental Approvals; and
- (c) implement procedures to monitor compliance with and to prevent liability under any Environmental Law, where failure to do so has or is reasonably likely to have a Material Adverse Effect.

22.4 **Environmental Claims**

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

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

22.5 **Anti-corruption laws**

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

22.6 **Taxation**

- (a) Each Obligor shall (and shall procure that each other Obligor shall) pay and discharge all Taxes imposed upon it or its assets within the time period allowed without incurring penalties unless and only to the extent that:
 - (i) such payment is being contested in good faith;
 - (ii) adequate reserves are being maintained for those Taxes and the costs required to contest them, which have been disclosed in its latest financial statements delivered to the Agent under Clause 20.1 (*Financial statements*);
 - (iii) such payment can be lawfully withheld; and
 - (iv) failure to pay those Taxes does not have or is not reasonably likely to have a Material Adverse Effect.

(b) No Borrower and no other Obligor may change its residence for Tax purposes.

22.7 Evidence of good standing

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

22.8 Pari passu ranking

Each Obligor shall (and shall procure that each other Obligor shall) 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.

22.9 Negative pledge

(a) In this Clause 22.9, “**Quasi-Security**” means an arrangement or transaction described in Clause 22.9(b).

(b) Except as permitted under Clause 22.9(c):

(i) None of the Borrowers shall create nor permit to subsist any Security over any of its assets.

(ii) None of the Borrowers shall:

- (1) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by an Obligor or any other member of the Group or any Related Party;
- (2) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
- (3) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
- (4) enter into any other preferential arrangement having a similar effect, in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.

(c) Paragraph (b) above does not apply to any Security or (as the case may be) Quasi-Security, which is a Permitted Security or a Permitted Transaction.

22.10 Disposals

None of the Borrowers 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. For the avoidance of doubt, no Borrower shall enter into a binding commitment for the sale of a Vessel without the prior consent of the Agent (acting on the instructions of the Lenders), which consent the Agent shall have full power to withhold. This Clause does not apply to any sale, lease, transfer or other disposal where the proceeds received by the Borrowers are sufficient to discharge the liabilities under the Finance Documents in full.

22.11 Arm's length basis

- (a) Except as permitted under Clause 22.11(b), none of the Borrowers shall enter into any transaction with any person except on arm's length terms.
- (b) Other than the entry by a Borrower into a Management Agreement with an Approved Manager or the entry into the Relevant Documents, none of the Borrowers shall enter into a transaction with a Related Party without the prior written consent of the Agent (which consent the Agent shall have full power to withhold).
- (c) The following transactions shall not be a breach of Clause 22.11(a):
 - (i) transactions contemplated under the Relevant Documents in the amounts set out in the Relevant Documents delivered to the Agent under Clause 4.1 (*Initial conditions precedent*) or fees, costs and expenses agreed by the Agent; and
 - (ii) any Permitted Transaction.

22.12 Merger

None of the Borrowers shall, without the prior written consent of the Lenders, enter into any amalgamation, demerger, merger, consolidation or corporate reconstruction other than a Permitted Transaction.

22.13 Change of business

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

22.14 No other business

- (a) None of the Borrowers shall engage in any business other than the ownership, operation, chartering and management of the relevant Vessel owned by it.

22.15 No acquisitions

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

22.16 No Joint Ventures

No Borrower shall:

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

22.17 No borrowings

No Borrower shall incur or allow to remain outstanding any Financial Indebtedness (except for the Loan and any Permitted Intercompany Loans) unless it is a Permitted Transaction.

22.18 No loans or credit

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

22.19 No guarantees or indemnities

None of the Borrowers shall incur or allow to remain outstanding any guarantee in respect of any obligation of any person other than pursuant to the Relevant Documents or unless it is a Permitted Transaction.

22.20 No dividends

None of the Borrowers shall, following the occurrence of an Event of Default which is continuing:

- (a) declare, make or pay any dividend, charge, fee or other distribution (or interest on any unpaid dividend, charge, fee or other distribution) (whether in cash or in kind) on or in respect of its share capital (or any class of its share capital);
- (b) repay or distribute any dividend or share premium reserve; or
- (c) redeem, repurchase, defease, retire or repay any of its share capital or resolve to do so.

22.21 Inspection of records

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

22.22 No change in Relevant Documents

- (a) No Obligor shall:
 - (i) exercise any discretion under any of the Relevant Documents which are not Finance Documents in a manner which is material and adverse to the interests of the Lenders; or
 - (ii) amend, vary, novate, supplement, supersede, waive or terminate any term of, any of the Relevant Documents which are not Finance Documents, or any other document delivered to the Agent pursuant to Clause 4.1 (*Conditions precedent*) or Clause 4.3 (*Conditions Subsequent*) in a manner which is material and adverse to the interests of the Lenders.
- (b) Each Obligor shall take all reasonable and practical steps to preserve and enforce its rights and pursue any claims and remedies arising under any Relevant Documents which are not Finance Documents where it is in the commercial interest of such Obligor to do so.

- (c) Each Obligor shall (and shall procure that each other Obligor shall) comply with its obligations under the Relevant Documents which are not Finance Documents.

22.23 Further assurance

- (a) Each Obligor shall promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Security Agent may reasonably specify (and in such form as the Security Agent may reasonably require in favour of the Security Agent or its nominee(s)):
 - (i) to perfect any Security created or intended to be created under or evidenced by the Security Documents (which may include the execution of a mortgage, charge, assignment or other Security over all or any of the assets which are, or are intended to be, the subject of the Security Documents) or for the exercise of any rights, powers and remedies of the Security Agent or the Finance Parties provided by or pursuant to the Finance Documents or by law;
 - (ii) to confer on the Security Agent or confer on the Finance Parties Security over any property and assets of that Borrower (or that other Obligor as the case may be) that are subject to Transaction Security located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to the Security Documents; and/or
 - (iii) to facilitate the realisation of the assets which are, or are intended to be, the subject of the Security Documents.
- (b) Each Borrower and HoldCo shall take all such action as is available to it (including making all filings and registrations) as may be reasonably necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Security Agent or the Finance Parties by or pursuant to the Finance Documents.

22.24 Sanctions

- (a) The Obligors shall not (and shall procure that no Approved Manager shall), directly or indirectly, use, lend, make payments of, contribute or otherwise make available, all or any part of the proceeds of the Loan or other transaction(s) contemplated by this Agreement:
 - (i) to fund either directly or indirectly any trade, business or other activities:
 - (1) involving or for the benefit of any Restricted Person; or
 - (2) in any country or territory that, at the time of such funding, is a Sanctioned Country; or
 - (3) in any other manner that would reasonably be expected to result in any person or any Finance Party being in breach of any Sanctions (if and to the extent applicable to either of them) or becoming a Restricted Person.
- (b) No Obligor shall permit or authorise (and shall procure that no Approved Manager shall permit or authorise), and each Obligor shall prevent, any Vessel being used directly or indirectly:

- (i) by or for the benefit of any Restricted Person or in any country, or territory, that is a Sanctioned Country; and/or
 - (ii) in any trade which will expose a Vessel, any person, an Approved Manager, crew or insurers to enforcement proceedings or any other consequences whatsoever arising from Sanctions.
- (c) Each Obligor shall ensure that neither its assets nor the assets subject to the Finance Documents shall be used directly or indirectly by or for the benefit of any Restricted Person or otherwise used in any manner which would not be in compliance with Sanctions.
- (d) Each Obligor shall comply, and procure compliance of the Approved Managers, with Sanctions.

23. **Vessel Undertakings**

23.1 **General**

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

23.2 **Vessel name and registration**

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

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

provided that no breach of this Clause shall result in relation to a condition or recommendation of class or required works or repairs existing at the date of delivery under the relevant MOA provided that the same is remedied and repaired on or before 1 January 2020.

23.3 **Repair and classification**

Each Borrower shall keep the Vessel owned by it:

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

provided that no breach of this Clause shall result in relation to a condition or recommendation of class or required works or repairs existing at the date of delivery under the relevant MOA provided that the same is remedied and repaired on or before 1 January 2020.

23.4 Modification

Each Borrower shall, in respect of the Vessel owned by it, not make or permit to be made, any modification or repairs to, or replacement of, the Vessel owned by it or equipment installed on that Vessel that would or might materially and adversely alter the structure, type or performance characteristics of that Vessel or materially reduce its value, provided that no breach of this Clause shall result in relation to a condition or recommendation of class or required works or repairs existing at the date of delivery under the relevant MOA provided that the same is remedied and repaired on or before 1 January 2020.

23.5 Removal of parts

Each Borrower shall, in respect of the Vessel owned by it, not remove, nor permit the removal, of any material part of the Vessel owned by it, or any item of equipment installed on that Vessel, unless the part or item so removed is forthwith replaced by a suitable part or item which is in the same condition as or better condition than the part or item removed, is free from any Security or any right in favour of any person other than the Security Agent and becomes on installation on that Vessel, the property of the relevant Borrower, and subject to the security constituted by the Mortgage relating to that Vessel, provided that the relevant Borrower may install equipment owned by a third party if the equipment can be removed without any risk of damage to that Vessel and provided further that no breach of this Clause shall result in relation to a condition or recommendation of class or required works or repairs existing at the date of delivery under the relevant MOA provided that the same is remedied and repaired on or before 1 January 2020.

23.6 Surveys

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

23.7 Inspection

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

23.8 Prevention and release from arrest

Each Borrower shall, in respect of the Vessel owned by it, promptly within 5 Business Days discharge:

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

and, forthwith upon receiving notice of the arrest of that Vessel, or of its detention in exercise or purported exercised of any lien or claim, the relevant Borrowers shall procure its release by providing bail or otherwise as the circumstances may require. For the avoidance of doubt, the Borrowers' obligations under this clause shall extend to any arrest or detention existing at the time of Utilisation, provided that, as per Clause 27.21 (*Vessel Arrest*), any arrest, detention, seizure or impounding that is existing at the date of Utilisation, shall be released within fifteen (15) days of Utilisation.

23.9 Compliance with laws

Each Borrower shall:

- (a) comply, or procure compliance with all Environmental Laws, the ISM Code, the ISPS Code, Sanctions and all other laws and regulations relating to the Vessel owned by it, its ownership, operation and management or to its business;
- (b) not employ the Vessel owned by it nor allow its employment in any manner contrary to any law or regulation in any relevant jurisdiction including but not limited to the ISM Code and the ISPS Code, any Environmental Laws and any Sanctions;
- (c) maintain an ISSC for the Vessel owned by it; and
- (d) in the event of hostilities in any part of the world (whether war is declared or not), not cause or permit the Vessel owned by it to enter or trade to any zone which is declared a war zone by any government or by the war risks insurers of the Vessel owned by it unless the prior written consent of the Agent has been given and the relevant Borrower has (at its expense) effected any special, additional or modified insurance cover which the Agent may require.

23.10 Classification Society

Following a written request by the Agent, the relevant Borrower shall instruct the relevant Classification Society to (and shall procure that such Classification Society shall undertake to the Security Agent to):

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

provided that no breach of this Clause shall result in relation to a condition or recommendation of class or required works or repairs existing at the date of delivery under the relevant MOA provided that the same is remedied and repaired on or before 1 January 2020.

23.11 Provision of information

Each Borrower shall, in respect of the Vessel owned by it, promptly provide the Agent with any information which it may reasonably request regarding:

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

23.12 Notification of certain events

Each Borrower shall, in relation to the Vessel owned by it, immediately notify the Agent by email, of:

- (a) any casualty relating to that Vessel which is or is likely to be or to become a Major Casualty;
- (b) any occurrence as a result of which that Vessel has become or is, by the passing of time or otherwise, likely to become a Total Loss;
- (c) any requirement or recommendation made by any insurer or the Classification Society or by any competent authority which is not immediately complied with;
- (d) the conduct of any required works and repairs to each of the Vessels in order to ensure compliance with the Clause 23.3 (*Repair and classification*);
- (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 intended dry docking of that Vessel;
- (g) any Environmental Claim made against any Borrower or in connection with any Vessel, or any Environmental Incident;
- (h) any claim for breach of the ISM Code or the ISPS Code being made against any Borrower, any Approved Manager or otherwise in connection with that Vessel;

- (i) any actual or threatened withdrawal, suspension, cancellation or modification of the ISSC; and
- (j) any other matter, event or incident, actual or threatened, the effect of which will or could lead to the ISM Code or the ISPS Code not being complied with,

and the Borrowers shall keep the Agent advised in writing on a regular basis and in such detail as the Agent shall require of the Borrowers', the Approved Managers' or any other person's response to any of those events or matters, provided that no notification shall be required and no breach of this Clause shall result in relation to a condition or recommendation of class or required works or repairs existing, or any arrests existing, at the date of delivery under the relevant MOA provided that the same is remedied and repaired on or before 1 January 2020.

23.13 Restrictions on chartering etc.

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

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

23.14 Notice of Mortgage

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

23.15 **Sharing of Earnings**

No Borrower shall enter into any agreement or arrangement for the sharing of any Earnings relating to any Vessel, other than with the prior written consent of the Agent (acting on the instructions of the Majority Lenders).

23.16 **Manager**

A manager of a Vessel shall not be appointed unless that manager is, in the case of the technical management of a Vessel, an Approved Technical Manager or, in the case of the commercial management of a Vessel, an Approved Commercial Manager. In advance of any appointment: (a) the terms of its appointment shall be approved in writing and (b) the relevant Approved Manager shall deliver a duly executed Manager's Undertaking to the Security Agent.

23.17 **Management Agreement**

From the Utilisation Date, no Borrower will agree to any alteration to the terms of an Approved Manager's appointment that would be prejudicial to the interests of the Lenders under the Finance Documents, nor permit or authorise an Approved Manager to transfer or delegate any of its obligations under the relevant management agreement, without the prior consent of the Agent (which consent the Agent shall have full power to withhold) and subject to any Approved Sub-Manager providing a duly executed Manager's Undertaking to the Security Agent.

24. **Insurance Undertakings**

24.1 **General**

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

24.2 **Maintenance of obligatory insurances**

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

- (a) fire and usual marine risks (including hull and machinery, excess risks and increased value) and war risks (including the London blocking and trapping addendum or equivalent coverage, including terrorism and piracy risks where excluded under the fire and usual marine risks insurance and including, without limitation, protection and indemnity war risks with a separate limit not less than hull value) for an amount on an agreed value basis at least the greater of:
 - (i) an amount equal to 120% of the Notional Vessel Tranche in respect of that Vessel (and, when aggregated with such insurances in respect of each Vessel other than that Vessel, 120% of the Loan); and
 - (ii) the Market Value of that Vessel;
- (b) protection and indemnity risks (including without limitation protection and indemnity war risks in excess of the amount for war risks (hull) and oil pollution liability risks and in respect of the full value and tonnage of that Vessel), on "full entry terms" for the highest available amount in the insurance market for vessels of a similar age and type as that Vessel (but, in relation to liability for oil pollution, for an amount not less than US\$1,000,000,000); and

- (c) any other risks against which the Agent considers, having regard to practices and other circumstances prevailing at the relevant time, it would in the opinion of the Agent be reasonable for that Borrower to insure and which are specified by the Agent by notice to the relevant Borrower.

24.3 **Terms of obligatory insurances**

The obligatory insurances shall:

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

24.4 **Renewal**

Each Borrower shall:

- (a) at least fourteen (14) days before the expiry of any obligatory insurance relating to a Vessel;
 - (i) notify the Agent of the approved brokers (or other insurers) and any protection and indemnity or war risks association through or with whom a Borrower proposes to renew that obligatory insurance and of the proposed terms of renewal; and

- (ii) obtain the Agent's approval to the matters referred to in paragraph (a)(i);
- (b) at least seven (7) days before the expiry of any obligatory insurance relating to a Vessel, renew that obligatory insurance in accordance with the Agent's approval pursuant to paragraph (a); and
- (c) not add any (other) assured to any obligatory insurance without the prior written consent of the Agent.

24.5 Copies of policies

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

24.6 Copies of certificates of entry

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

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

24.7 Letters of undertaking

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

- (a) they will have endorsed on each policy, immediately upon issue, a loss payable clause and a notice of assignment in the agreed form or in such other forms as the Security Agent may require;
- (b) they will hold such policies, and the benefit of such insurances, to the order of the Security Agent in accordance with the said loss payable clause;
- (c) they will advise the Security Agent immediately of any material change to the terms of the obligatory insurances;
- (d) they will notify the Security Agent, not less than seven (7) days before the expiry of the relevant obligatory insurances, in the event of their not having received notice of renewal instructions from the relevant Borrower or its agents and, in the event of their receiving instructions to renew, they will promptly notify the Security Agent of the terms of the instructions; and
- (e) they will not set off against any sum recoverable in respect of a claim relating to the Vessel owned by that Borrower under such obligatory insurances any premiums or other amounts due to them or any other person whether in respect of that Vessel or

otherwise, they waive any lien on the policies, or any sums received under them, which they might have in respect of such premiums or other amounts, and they will not cancel such obligatory insurances by reason of non-payment of such premiums or other amounts, and will arrange for a separate policy to be issued in respect of that Vessel forthwith upon being so requested by the Security Agent.

24.8 Deposit original policies

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

24.9 Payment of premiums

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

24.10 P&I guarantees

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

24.11 Compliance with terms of obligatory insurances

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

- (a) each Borrower shall take all necessary action and comply with all requirements which may from time to time be applicable to the obligatory insurances, and (without limiting the obligation contained in Clause 24.6 (*Copies of certificates of entry*)) ensure that the obligatory insurances are not made subject to any exclusions or qualifications to which the Agent has not given its prior written approval;
- (b) no Borrower shall make any changes relating to the Classification or Classification Society or manager or operator of the Vessel owned by it unless approved by the underwriters of the obligatory insurances, provided that no notification shall be required and no breach of this Clause shall result in relation to a condition or recommendation of class or required works or repairs existing at the date of delivery under the relevant MOA provided that the same is remedied and repaired on or before 1 January 2020; and
- (c) no Borrower shall employ the Vessel owned by it, or allow it to be employed, otherwise than in conformity with the terms and conditions of the obligatory insurances, without first obtaining the consent of the Agent and the insurers and complying with any requirements (as to extra premium or otherwise) which the Agent and the insurers specify.

24.12 Alteration to terms of obligatory insurances

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

24.13 Settlement of claims

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

24.14 Application of recoveries

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

24.15 Provision of copies of communications

Each Borrower shall provide the Agent, promptly following the time of each such communication, copies of all material written communications between such Borrower and each of the following:

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

which relate directly or indirectly to:

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

24.16 Provision of information

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

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

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

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

The Security Agent shall be entitled, at the cost and expense of the Borrowers, from time to time to effect, maintain and renew:

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

and the Borrowers shall supply, or procure that there is supplied, to the Security Agent such information as the Security Agent may require in connection with the matters referred to in this Clause 24.17.

25. **Accounts**

25.1 **Maintenance**

- (a) Other than with the consent of the Agent (acting on the instructions of all Lenders), no Borrower shall open or maintain any bank accounts other than the Accounts required in connection with this Agreement or the other Finance Documents.
- (b) Each Account Holder shall establish within ten (10) Business Days of Utilisation and maintain the relevant Accounts with the Account Bank, free of Security and rights of set-off (other than as created under the Accounts Security), until no amount remains outstanding from them under this Agreement or any other Finance Documents.

25.2 **Location of Accounts**

Each Account Holder shall promptly:

- (a) comply with any requirement of the Agent as to the location or relocation of the Accounts; and
- (b) execute any documents which the Agent specifies and are necessary to create or maintain in favour of the Security Agent Security over (and/or rights of set-off, consolidation or other rights in relation to) each Account.

25.3 **Application of Account**

- (a) Each Account Holder shall procure that transfers are made from each Account in order to facilitate the payment of amounts required and/or contemplated by this Agreement and the other Finance Documents.
- (b) Each Account Holder shall only be permitted to withdraw sums from the Accounts in accordance with the provisions of the Finance Documents or as otherwise permitted by the Agent (acting on the instructions of the Majority Lenders).

- (c) Without prejudice to its other rights under the Transaction Security and without obligation to do so, each Account Holder irrevocably authorises the Agent after the occurrence of an Event of Default (and whilst it is continuing) to instruct an Account Bank to make any transfer from any Account in order to facilitate the payment of amounts required and/or contemplated by this Agreement and the other Finance Documents.

25.4 Earnings and Requisition Compensation

- (a) Each Obligor shall procure that all Earnings and Requisition Compensation in relation to a Vessel are credited to the relevant Earnings Account, unless and until the Agent shall otherwise direct.
- (b) The relevant Account Holder(s) shall not withdraw amounts standing to the credit of an Earnings Account except as permitted by paragraphs (c) and (d) below.
- (c) Provided always that no Event of Default shall have occurred and be continuing, each Account Holder may at any time withdraw from the relevant Earnings Account payments in respect of Operating Expenses relating to the Mortgaged Ship owned by it, provided that in, any calendar year, the aggregate amount of Operating Expenses withdrawn from any Earnings Account must not exceed the amount set out in the relevant Operating Expenses budget for that calendar year as approved in accordance with Clause 20.3.
- (d) On each Quarter Date, the Borrowers shall procure that (and, following the occurrence of an Event of Default that is continuing, the Agent shall be authorised to apply) amounts standing to the credit of the Earnings Accounts are as applied as follows:
 - (i) FIRST, in payment pro rata of any unpaid fees, costs and expenses of, and any other amounts owing to, the Agent, the Security Agent, any Receiver and any Delegate under the Finance Documents;
 - (ii) SECOND, in payment of any interest due under the Finance Documents on that date; and
 - (iii) THIRD, in repayment of any repayment instalments due under the Finance Documents on that date.
- (e) If the Borrowers have failed to make the relevant payments within 5 Business Days of a Quarter Date, the Agent shall be entitled to debit the Earnings Accounts from time to time (without notice to the Borrowers) in order to discharge any amount due and owing from the Obligors (or any of them) under a Finance Document (including but not limited to any fees payable under Clause 11 (*Fees*)).

26. Security shortfall

26.1 Additional security

- (a) On and from the second anniversary of the Utilisation Date, if the Agent (acting on the instructions of the Majority Lenders) notifies the Borrowers that the ratio (expressed as a percentage) of: (x) the aggregate of the Market Value of the Mortgaged Vessels plus the aggregate value of any additional security provided pursuant to this Clause 26; to (y) the aggregate principal amount of the Loan then outstanding (the “**VTL Coverage**”), is as that time equal to or more than the then Applicable VTL Percentage, then the Borrowers shall, within thirty (30) days of the Agent’s request, at the Borrowers’ option:

- (i) give to the Security Agent other additional security in form and substance satisfactory to the Security Agent in favour of the Finance Parties for the payment of the Secured Liabilities which is either Cash held in a blocked account subject to a pledge or charge in form and substance required by the Security Agent or, if such additional security is not Cash, then (in the opinion of the Security Agent acting in its sole discretion):
 - (1) has a net realisable value (on an aggregate basis) equal to or greater than the applicable shortfall; and
 - (2) is of a type which is in form and substance satisfactory to it; or
- (ii) prepay the Loan to the extent required to eliminate the shortfall,
and provided always that any breach of this Clause 26.1 may not be remedied by the Borrowers other than in accordance with sub-clauses (a)(i) and (ii).
- (b) Clause 7 (*Prepayment and cancellation*) shall apply to prepayments under paragraph (a) above.
- (c) The value of any additional security provided shall in the case of Cash be the face amount of the deposit, in the case of a vessel be determined in the same manner as the Market Value of the Vessels and in the case of other security shall be determined by the Agent in its absolute discretion.
- (d) For the avoidance of doubt, the VTL Coverage covenant in this Clause 26.1 shall only apply as from the second anniversary of the Utilisation Date.

26.2 Valuation of Vessels

The Market Value of a Vessel at any time is that shown by the latest Valuation in respect of that Vessel.

26.3 Delivery of Valuations

- (a) On and from the second anniversary of the Utilisation Date, the Borrowers will, at their own cost, on or around 31 December each year procure and promptly deliver to the Agent for distribution to each Lender at least one Valuation relating to each Vessel, such Valuation to be provided by an Approved Broker nominated by the Agent.
- (b) The Agent is at liberty (at the cost of the Lenders) to assess the Market Value of the Vessels at any time and at such frequency as the Agent considers necessary or desirable in its absolute discretion.
- (c) If an Event of Default is continuing or the Agent suspects that an Event of Default has occurred and is continuing, the Agent is at liberty to assess the Market Value of the Vessels at any time, and any such Valuations will be at the Borrowers' cost.

26.4 Valuations binding

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

26.5 Provision of information

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

26.6 Payment of Valuation expenses

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

27. Events of Default

Each of the events or circumstances set out in this Clause 27 is an Event of Default (save for Clause 26.25 (*Acceleration*) and Clause 27.26 (*Approved Managers*)).

27.1 Non-payment

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

27.2 Other specific obligations

- (a) Any requirement of Clauses 20.1 (*Financial statements*), 20.2 (*Requirements as to financial statements*) or 21 (*Financial covenants*) is not satisfied.
- (b) An Obligor does not comply with Clause 26.1 (*Additional security*).
- (c) The obligatory insurances of a Vessel are not placed and kept in full force and effect in accordance with Clause 24 (*Insurance Undertakings*).

27.3 Other obligations

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

27.4 Misrepresentation

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

- (b) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within fourteen (14) days of the earlier of (i) the Agent giving notice to the Borrowers and (ii) any Obligor becoming aware of the failure to comply.

27.5 Cross default

- (a) Any Financial Indebtedness of any Obligor:
 - (i) is not paid when due nor within any originally applicable grace period; or
 - (ii) is declared to be, or otherwise becomes, due and payable prior to its specified maturity as a result of an event of default (however described);
 - (iii) is capable of being declared by a creditor to be due and payable prior to its specified maturity as a result of such an event.
- (b) In respect of, NMP, no Event of Default shall occur under paragraph (a) above unless the aggregate amount of Financial Indebtedness of NMP is more than US\$10,000,000 or its equivalent in any other currency.

27.6 Insolvency

- (a) Any Obligor is unable or admits inability to pay its (or her) debts as they fall due, is declared to be unable to pay its debts under applicable law, ceases or suspends or threatens to cease or suspend making payments on any of its debts, or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness.
- (b) As from the second anniversary of the Utilisation Date, the value of the assets of any Obligor is less than its liabilities (taking into account contingent and prospective liabilities).
- (c) A moratorium is declared in respect of any indebtedness of any Obligor. If a moratorium occurs, the ending of the moratorium will not remedy any Event of Default covered by that moratorium.

27.7 Insolvency proceedings

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

(iv) enforcement of any Security over any assets of any Obligor, or any analogous procedure or step is taken in any jurisdiction.

(b) Paragraph (a) above shall not apply to any winding-up or bankruptcy petition which is frivolous or vexatious and is discharged, stayed or dismissed within fourteen (14) days of commencement.

27.8 Creditors' process

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

(b) In respect of NMP, no Event of Default shall occur under paragraph (a) above unless the aggregate amount of the expropriation, attachment, sequestration, distress or execution is more than US\$10,000,000 or its equivalent in any other currency.

27.9 Unlawfulness and invalidity

(a) It is or becomes unlawful for any Obligor or any Approved Manager to perform any of its or her obligations under the Finance Documents or any Transaction Security created or expressed to be created or evidenced by the Security Documents ceases to be effective (subject to the Legal Reservations and Perfection Requirements) or any subordination created under a Finance Document is or becomes unlawful.

(b) Any obligation or obligations of any Obligor or any Approved Manager under any Finance Documents are not or cease to be (subject to the Legal Reservations) legal, valid, binding, or enforceable and the cessation individually or cumulatively materially and adversely affects the interests of the Finance Parties under the Finance Documents.

(c) Any Finance Document ceases to be in full force and effect or any Transaction Security created or expressed to be created by the Security Documents or any subordination created expressed to be created under the Finance Documents ceases to be (subject to the Legal Reservations) legal, valid, binding, enforceable, or effective or is alleged by a party to it (other than a Finance Party) to be ineffective.

(d) Any Transaction Security proves to have ranked after or lost its priority to any other Security (other than Permitted Security).

27.10 Cessation of business

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

27.11 Expropriation

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

27.12 Repudiation and rescission of agreements

Any Obligor or any Approved Manager rescinds or purports to rescind or repudiates or purports to repudiate a Finance Document, a Relevant Document, or any of the Transaction Security or evidences an intention to rescind or repudiate a Finance Document, a Relevant Document, or any Transaction Security.

27.13 Conditions subsequent

Any of the conditions referred to in Clause 4.3 (*Conditions Subsequent*) is not satisfied within the time reasonably required by the Agent.

27.14 Revocation or modification of authorisation

Any authorisation of any governmental, judicial or other public body or authority which is now, or which at any time during the Facility Period becomes, necessary to enable any of the Obligor to comply with any of their obligations under any Relevant Document is not obtained, is revoked, suspended, withdrawn, or withheld, or is modified in a manner that would result in a Material Adverse Effect.

27.15 Reduction of capital

Any Borrower reduces its authorised or issued or subscribed capital.

27.16 Loss of Vessel

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

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

27.17 Challenge to registration

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

27.18 Classification and regulatory approvals

The classification certificate of a Vessel is withdrawn by a Classification Society or a Vessel ceases to be classified with a Classification Society for any reason, provided that no Event of Default under this Clause shall occur in relation to a condition or recommendation of class or required works or repairs existing at the date of delivery under the relevant MOA provided that the same is remedied and repaired on or before 1 January 2020.

27.19 **War**

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

27.20 **Notice of determination**

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

27.21 **Vessel Defaults**

- (a) A Vessel is arrested, detained, seized, impounded in exercise or purported exercise of any possessory lien or other claim or interest (including any arrest, detention or seizure existing at the date of Utilisation) and a Vessel is not released:
 - (i) in respect of an arrest, detention, seizure or impounding that is existing at the date of Utilisation, within fifteen (15) days of Utilisation;
 - (ii) in respect of any arrest, detention, seizure or impounding after the date of Utilisation, within fourteen (14) days of the occurrence of the same.
- (b) There is a default by any charterer under any Charter, where such default shall have a Material Adverse Effect.
- (c) Any term of a Management Agreement is breached or any Management Agreement is terminated (whether or not in accordance with its terms) which breach or termination shall have a Material Adverse Effect.

27.22 **Litigation**

Any litigation, arbitration or administrative or investigative proceedings of or before any court, arbitral body, agency or authority have been commenced against any Obligor which are:

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

27.23 **Material adverse change**

Any event or circumstance occurs which has a Material Adverse Effect.

27.24 **Sanctions**

- (a) Any breach occurs of Clause 22.24 (*Sanctions*).

27.25 **Acceleration**

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

- (a) by notice to the Borrowers, cancel the Total Commitments, at which time they shall immediately be cancelled, provided that in the case of an Event of Default under either of Clauses 27.6 (*Insolvency*) and 27.7 (*Insolvency proceedings*) the Total Commitments shall be deemed immediately cancelled without notice or demand therefor; and/or

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

27.26 Approved Managers

Without prejudice to Clause 26.25, the Borrowers will, at the request of the Agent, at any time when an Insolvency Event has occurred in respect of an Approved Manager, promptly (and in any event within ten (10) Business Days) replace (or procure the replacement of) such Approved Manager appointed by the Borrowers in relation to any Vessel with another Approved Manager on terms approved by the Agent (acting on the instructions of the Majority Lenders) as appropriate.

28. Changes to the Lenders

28.1 Assignments and transfers by the Lenders

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

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

under the Finance Documents, to another bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets (the “**New Lender**”).

28.2 Conditions of assignment or transfer

- (a) No consent from any Obligor shall be required for any assignment or transfer by an Existing Lender.
- (b) An assignment will only be effective on:
 - (i) receipt by the Agent (whether in the Assignment Agreement or otherwise) of written confirmation from the New Lender (in form and substance satisfactory to the Agent) that the New Lender will assume the same obligations to the other Finance Parties as it would have been under if it was an Original Lender; and

- (ii) performance by the Agent of all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to such assignment to a New Lender, the completion of which the Agent shall promptly notify to the Existing Lender and the New Lender.
- (c) A transfer will only be effective if the procedure set out in Clause 28.5 (*Procedure for transfer*) is complied with.
- (d) If:
 - (i) a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; and
 - (ii) as a result of circumstances existing at the date the assignment, transfer or change occurs, an Obligor would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause 12 (*Tax gross up and indemnities*) or Clause 13 (*Increased costs*),then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under those Clauses to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred.
- (e) Each New Lender, by executing the relevant Transfer Certificate or Assignment Agreement, confirms, for the avoidance of doubt, that the Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the transfer or assignment becomes effective in accordance with this Agreement and that it is bound by that decision to the same extent as the Existing Lender would have been had it remained a Lender.

28.3 **Assignment or transfer fee**

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

28.4 **Limitation of responsibility of Existing Lenders**

- (a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:
 - (i) the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents or any other documents;
 - (ii) the financial condition of any Obligor;
 - (iii) the performance and observance by any Obligor of its obligations under the Finance Documents or any other documents; or
 - (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Finance Document or any other document,and any representations or warranties implied by law are excluded.

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

28.5 Procedure for transfer

- (a) Subject to the conditions set out in Clause 28.2 (*Conditions of assignment or transfer*) a transfer is effected in accordance with paragraph (c) below when the Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Transfer Certificate.
- (b) The Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to the transfer to such New Lender.
- (c) Subject to Clause 28.9 (*Pro rata interest settlement*), on the Transfer Date:
 - (i) to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights and obligations under the Finance Documents, each of the Obligors and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and their respective rights against one another under the Finance Documents shall be cancelled (being the “**Discharged Rights and Obligations**”);
 - (ii) each of the 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 Obligor and the New Lender have assumed and/or acquired the same in place of that Obligor and the Existing Lender;
 - (iii) the Agent, the New Lender and other Lenders shall acquire the same rights and assume the same obligations between themselves as they would have acquired and assumed had the New Lender been an Original Lender with the rights and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Agent and the Existing Lender shall each be released from further obligations to each other under the Finance Documents; and

- (iv) the New Lender shall become a Party as a “Lender”.

28.6 Procedure for assignment

- (a) Subject to the conditions set out in Clause 28.2 (*Conditions of assignment or transfer*) an assignment may be effected in accordance with paragraph (c) below when the Agent executes an otherwise duly completed Assignment Agreement delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Assignment Agreement appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Assignment Agreement.
- (b) The Agent shall only be obliged to execute an Assignment Agreement delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to the assignment to such New Lender.
- (c) Subject to Clause 28.9 (*Pro rata interest settlement*), on the Transfer Date:
- (i) the Existing Lender will assign absolutely to the New Lender the rights under the Finance Documents expressed to be the subject of the assignment in the Assignment Agreement;
- (ii) the Existing Lender will be released by each Obligor and the other Finance Parties from the obligations owed by it (the “**Relevant Obligations**”) and expressed to be the subject of the release in the Assignment Agreement; and
- (iii) the New Lender shall become a Party as a “Lender” and will be bound by obligations equivalent to the Relevant Obligations.
- (d) The Lenders may utilise procedures other than those set out in this Clause (d) to assign their rights under the Finance Documents (but not, without the consent of the relevant Obligor or unless in accordance with Clause 28.5 (*Procedure for transfer*), to obtain a release by that Obligor from the obligations owed to that Obligor by the Lenders nor the assumption of equivalent obligations by a New Lender) provided that they comply with the conditions set out in Clause 28.2 (*Conditions of assignment or transfer*).

28.7 Copy of Transfer Certificate or Assignment Agreement to Borrowers

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

28.8 Security over Lenders’ rights

In addition to the other rights provided to Lenders under this Clause 28, each Lender may without consulting with or obtaining consent from any Obligor, at any time charge, assign or otherwise create Security in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Lender including, without limitation:

- (a) any charge, assignment or other Security to secure obligations to a federal reserve or central bank; and
- (b) in the case of any Lender which is a fund, any charge, assignment or other Security granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by that Lender as security for those obligations or securities, except that no such charge, assignment or Security shall:
 - (i) release a Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or Security for the Lender as a party to any of the Finance Documents; or
 - (ii) require any payments to be made by an Obligor other than or in excess of, or grant to any person any more extensive rights than, those required to be made or granted to the relevant Lender under the Finance Documents.

28.9 Pro rata interest settlement

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

- (a) any interest or fees in respect of the relevant participation which are expressed to accrue by reference to the lapse of time shall continue to accrue in favour of the Existing Lender up to but excluding the Transfer Date (“**Accrued Amounts**”) and shall become due and payable to the Existing Lender (without further interest accruing on them) on the last day of the current Interest Period (or, if the Interest Period is longer than 6 months, on the next of the dates which falls at 6 monthly intervals after the first day of that Interest Period); and
- (b) the rights assigned or transferred by the Existing Lender will not include the right to the Accrued Amounts, so that, for the avoidance of doubt:
 - (i) when the Accrued Amounts become payable, those Accrued Amounts will be payable to the Existing Lender; and
 - (ii) the amount payable to the New Lender on that date will be the amount which would, but for the application of this Clause 28.9, have been payable to it on that date, but after deduction of the Accrued Amounts.

29. Changes to the Obligors

29.1 Assignment and transfer by Obligors

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

30. Role of the Agent and the Security Agent

30.1 The Agent and the Security Agent

- (a) Each of the Finance Parties appoints the Agent to act as its agent under and in connection with the Finance Documents.

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

30.2 Enforcement through Security Agent only

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

30.3 Instructions

- (a) Each of the Agent and the Security Agent shall:
 - (i) unless a contrary indication appears in a Finance Document, exercise or refrain from exercising any right, power, authority or discretion vested in it as Agent or Security Agent (as applicable) in accordance with any instructions given to it by:
 - (1) all Lenders if the relevant Finance Document stipulates the matter is an all Lender decision; and
 - (2) in all other cases, the Majority Lenders; and
 - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph (1) above (or, if this Agreement stipulates the matter is a decision for any other Finance Party or group of Finance Parties, from that Finance Party or group of Finance Parties).

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

- (g) The Agent or the Security Agent (as applicable) may refrain from acting in accordance with any instructions of any Finance Party or group of Finance Parties until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Finance Documents and which may include payment in advance) for any cost, loss or liability (together with any applicable VAT) which it may incur in complying with those instructions.
- (h) Without prejudice to the remainder of this Clause 30.3 (*Instructions*), in the absence of instructions, each of the Agent and the Security Agent may act (or refrain from acting) as it considers to be in the best interest of (in the case of the Agent) the Finance Parties and (in the case of the Security Agent) the Secured Parties.
- (i) Neither the Agent nor the Security Agent is authorised to act on behalf of a Finance Party (without first obtaining that Finance Party's consent) in any legal or arbitration proceedings relating to any Finance Document. This paragraph (i) shall not apply to any legal or arbitration proceeding relating to the perfection, preservation or protection of rights under the Security Documents or enforcement of the Security or Security Documents.

30.4 **Duties of the Agent and Security Agent**

- (a) The duties of the Agent and the Security Agent under the Finance Documents are solely mechanical and administrative in nature.
- (b) Subject to paragraph (c) below, each of the Agent and the Security Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Agent or Security Agent (as applicable) for that Party by any other Party.
- (c) Without prejudice to Clause 28.7 (*Copy of Transfer Certificate or Assignment Agreement to Borrowers*), paragraph (b) above shall not apply to any Transfer Certificate or any Assignment Agreement.
- (d) Except where a Finance Document specifically provides otherwise, neither the Agent nor the Security Agent is obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (e) If the Agent or the Security Agent receives notice from a Party referring to any Finance Document, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.
- (f) If the Agent is aware of the non-payment of any principal, interest or fee payable to a Finance Party (other than the Agent, or the Security Agent) under this Agreement, it shall promptly notify the other Finance Parties.
- (g) Each of the Agent and the Security Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied).

30.5 **No fiduciary duties**

- (a) Nothing in any Finance Document constitutes:
 - (i) the Agent as a trustee or fiduciary of any other person; or
 - (ii) the Security Agent as an agent, trustee or fiduciary of any Obligor.

- (iii) Neither the Agent nor the Security Agent shall be bound to account to any other Finance Party or (in the case of the Security Agent) any Secured Party or the profit element of any sum received by it for its own account.
- (iv) The provisions of this Clause 30.5 shall apply even if, notwithstanding and contrary to this Clause 30.5, any provision of any Finance Document by operation of law has the effect of constituting the Agent as a true or fiduciary of any person, or the Security Agent as an agent, trustee or fiduciary of any Obligor or otherwise requiring the Agent, the Security Agent or the Arrange to account to any other Finance Party or Secured Party (as the case may be).

30.6 Business with the Group

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

30.7 Rights and discretions

- (a) Each of the Agent and the Security Agent may:
 - (i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
 - (ii) assume that:
 - (1) any instructions received by it from the Majority Lenders, any Finance Parties or any group of Finance Parties are duly given in accordance with the terms of the Finance Documents; and
 - (2) unless it has received notice of revocation, that those instructions have not been revoked; and
 - (3) rely on a certificate from any person:
 - a. as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
 - b. to the effect that such person approves of any particular dealing, transaction, step, action or thing, as sufficient evidence that that is the case and, in the case of paragraph a above, may assume the truth and accuracy of that certificate.
- (b) Each of the Agent and the Security Agent may assume (unless it has received notice to the contrary in its capacity as agent or Security Agent for the Finance Parties or Secured Parties) that:
 - (i) no Default has occurred (unless, in the case of the Agent, it has actual knowledge of a Default arising under Clause 27.1 (*Non-payment*));
 - (ii) any right, power, authority or discretion vested in any Party or any group of Finance Parties has not been exercised; and

- (iii) any notice or request made by an Obligor (other than the Utilisation Request) is made on behalf of and with the consent and knowledge of all the Obligors.
- (c) Each of the Agent and the Security Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
- (d) Without prejudice to the generality of paragraph (c) above or paragraph (e) below, each of the Agent and the Security Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Agent or Security Agent (as applicable), (and so separate from any lawyers instructed by the Lenders) if the Agent or Security Agent (as applicable), in its reasonable opinion deems this to be desirable.
- (e) Each of the Agent and the Security Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Agent or by the Security Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- (f) Each of the Agent and the Security Agent may act in relation to the Finance Documents and the Security Property through its officers, employees and agents and shall not:
 - (i) be liable for any error of judgment made by any such person; or
 - (ii) be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part, of any such person,unless such error or such loss was directly caused by the Agent's or the Security Agent's (as applicable) gross negligence or wilful misconduct.
- (g) Unless a Finance Document expressly provides otherwise each of the Agent and the Security Agent may disclose to any other Party any information it reasonably believes it has received as agent or Security Agent under the Finance Documents.
- (h) Notwithstanding any other provision of any Finance Document to the contrary, neither the Agent nor the Security Agent is obliged to do or omit to do anything if it would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
- (i) The Agent is not obliged to disclose to any Finance Party any details of the rate notified to the Agent by any Lender or the identity of any such Lender for the purpose of paragraph (a)(ii) of Clause 10.2 (*Market disruption*).
- (j) Notwithstanding any provision of any Finance Document to the contrary, neither the Agent nor the Security Agent is obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

30.8 **Responsibility for documentation**

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

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Agent, the Security Agent, an Obligor or any other person in or in connection with any Finance Document or the transactions contemplated in the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Security Property; or
- (c) any determination as to whether any information provided or to be provided to any Finance Party or Secured Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

30.9 No duty to monitor

Neither, the Agent nor the Security Agent shall be bound to enquire:

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

30.10 Exclusion of liability

- (a) Without limiting paragraph (b) below (and without prejudice to any other provision of any Finance Document excluding or limiting the liability of the Agent, the Security Agent or any Receiver or Delegate), none of the Agent, the Security Agent nor any Receiver or Delegate will be liable (including, without limitation, for negligence or any other category of liability whatsoever) for:
 - (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Finance Document or the Security Property, unless directly caused by its gross negligence or wilful misconduct;
 - (ii) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Finance Document, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Finance Document or the Security Property;
 - (iii) any shortfall which arises on the enforcement or realisation of the Security Property; or
 - (iv) without prejudice to the generality of paragraphs (i) to (iii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of:
 - (1) any act, event or circumstance not reasonably within its control; or

(2) the general risks of investment in, or the holding of assets in, any jurisdiction,

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

- (b) No Party (other than the Agent, the Security Agent, that Receiver or that Delegate (as applicable)) may take any proceedings against any officer, employee or agent of the Agent, the Security Agent, a Receiver or a Delegate, in respect of any claim it might have against the Agent, the Security Agent, a Receiver or a Delegate or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document or any Security Property and any officer, employee or agent of the Agent, the Security Agent, a Receiver or a Delegate may rely on this Clause.
- (c) Neither the Agent nor the Security Agent will be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Agent or the Security Agent (as applicable) if the Agent or Security Agent (as applicable) has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Agent or the Security Agent (as applicable) for that purpose.
- (d) Nothing in this Agreement shall oblige the Agent or the Security Agent to carry out:
- (i) any “know your customer” or other checks in relation to any person; or
 - (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Finance Party,
- on behalf of any Finance Party and each Finance Party confirms to the Agent and the Security Agent that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Agent or the Security Agent.
- (e) Without prejudice to any provision of any Finance Document excluding or limiting the liability of the Agent, the Security Agent, any Receiver or Delegate, any liability of the Agent, the Security Agent, any Receiver or Delegate arising under or in connection with any Finance Document or the Security Property shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (as determined by reference to the date of default of the Agent, the Security Agent, Receiver or Delegate or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Agent, the Security Agent, any Receiver or Delegate at any time which increase the amount of that loss. In no event shall the Agent, the Security Agent, any Receiver or Delegate be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Agent, the Security Agent, the Receiver or Delegate has been advised of the possibility of such loss or damages.

30.11 Lenders' indemnity to the Agent and Security Agent

- (a) Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Agent, the Security Agent and every Receiver and every Delegate, within three (3) Business Days of demand, against any cost, loss or liability (including, without limitation, for negligence or any other category of liability whatsoever) incurred by any of them (otherwise than by reason of the Agent's, Security Agent's Receiver's or Delegate's gross negligence or wilful misconduct) (or, in the case of any cost, loss or liability pursuant to Clause 34.10 (*Disruption to Payment Systems etc.*), notwithstanding the Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) in acting as Agent, Security Agent, Receiver or Delegate under the Finance Documents (unless the relevant Agent, Security Agent, Receiver or Delegate has been reimbursed by an Obligor pursuant to a Finance Document).
- (b) Subject to paragraph (c) below, the Borrowers shall immediately on demand reimburse any Lender for any payment that Lender makes to the Agent or the Security Agent pursuant to paragraph (a) above.
- (c) Paragraph (b) above shall not apply to the extent that the indemnity payment in respect of which the Lender claims reimbursement relates to a liability of the Agent or the Security Agent to an Obligor.

30.12 Resignation of the Agent and the Security Agent

- (a) Each of the Agent and/or the Security Agent may resign and appoint one of its Affiliates as successor by giving notice to the other Finance Parties and the Borrowers.
- (b) Alternatively the Agent or the Security Agent may resign by giving thirty (30) days' notice to the other Finance Parties and the Borrowers, in which case the Majority Lenders (after consultation with the other Finance Parties and the Borrowers) may appoint a successor Agent or Security Agent (as applicable).
- (c) If the Majority Lenders have not appointed a successor Agent or Security Agent in accordance with paragraph (b) above within twenty (20) days after notice of resignation was given, the retiring Agent or Security Agent (as applicable) (after consultation with the other Finance Parties and the Borrowers) may appoint a successor Agent or Security Agent (as applicable).
- (d) The retiring Agent or Security Agent (as applicable) shall make available to the successor Agent or Security Agent (as applicable) such documents and records and provide such assistance as the successor Agent or Security Agent may reasonably request for the purposes of performing its functions as Agent or Security Agent (as applicable) under the Finance Documents.
- (e) The resignation notice of the Agent or Security Agent (as applicable) shall only take effect upon:
 - (i) the appointment of a successor; and
 - (ii) (in the case of the Security Agent) the transfer of the Security Property to that successor.

- (f) Upon the appointment of a successor, the retiring Agent or Security Agent (as applicable) shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (ii) of Clause 30.25 (*Winding up of trust*) and (e) above) but shall remain entitled to the benefit of Clause 14.3 (*Indemnity to the Agent*), Clause 14.4 (*Indemnity to the Security Agent*) and this Clause 30.12 (and any fees for the account of the retiring Agent or Security Agent (as applicable) shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- (g) After consultation with the Borrowers, the Majority Lenders may, by giving thirty (30) days' notice to the Agent or Security Agent (as applicable), require it to resign in accordance with paragraph (b) above. In this event, the Agent or Security Agent (as applicable) shall resign in accordance with paragraph (b) above but the cost referred to in paragraph (e) above shall be for the account of the Borrowers.
- (h) The Agent shall resign in accordance with paragraph (b) above (and, to the extent applicable, shall use reasonable endeavours to appoint a successor Agent pursuant to paragraph (c) above) if on or after the date which is three (3) months before the earliest FATCA Application Date relating to any payment to the Agent under the Finance Documents, either:
 - (i) the Agent fails to respond to a request under Clause 12.7 (*FATCA information*) and the Borrowers or a Lender reasonably believes that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;
 - (ii) the information supplied by the Agent pursuant to Clause 12.7 (*FATCA information*) indicates that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or
 - (iii) the Agent notifies the Borrowers and the Lenders that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;and (in each case) the Borrowers or a Lender reasonably believes that a Party will be required to make a FATCA Deduction that would not be required if the Agent were a FATCA Exempt Party, and the Borrowers or that Lender, by notice to the Agent, requires it to resign.

30.13 Confidentiality

- (a) In acting as agent or trustee for the Finance Parties, the Agent or the Security Agent (as applicable) shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments.
- (b) If information is received by another division or department of the Agent or Security Agent, it may be treated as confidential to that division or department and the Agent or Security Agent (as applicable) shall not be deemed to have notice of it.
- (c) Notwithstanding any other provision of any Finance Document to the contrary, neither the Agent nor the Security Agent is obliged to disclose to any other person (i) any confidential information or (ii) any other information if the disclosure would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty.

30.14 Relationship with the other Finance Parties

- (a) Subject to Clause 28.9 (*Pro rata interest settlement*), the Agent may treat the person shown in its records as Lender at the opening of business (in the place of the Agent's principal office as notified to the Finance Parties from time to time) as the Lender acting through its Facility Office:
 - (i) entitled to or liable for any payment due under any Finance Document on that day; and
 - (ii) entitled to receive and act upon any notice, request, document or communication or make any decision or determination under any Finance Document made or delivered on that day,

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

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

30.15 Credit appraisal by the Lenders

Without affecting the responsibility of any Obligor for information supplied by it or on its behalf in connection with any Finance Document, each Lender confirms to the Agent and the Security Agent that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including but not limited to:

- (a) the financial condition, status and nature of each member of the Group;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document, the Security Property and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Security Property;
- (c) whether that Finance Party has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the Security Property, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Security Property;

- (d) the adequacy, accuracy or completeness of any information provided by the Agent, the Security Agent, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and
- (e) the right or title of any person in or to, or the value or sufficiency of any part of, the Security Property, the priority of any of the Transaction Security or the existence of any Security affecting the Security Property.

30.16 Reference Banks

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

30.17 Agent's and Security Agent's management time

- (a) In the event of:
 - (i) an Event of Default;
 - (ii) the Security Agent being requested by an Obligor or the Majority Lenders to undertake duties which the Security Agent and the Borrowers agree to be of an exceptional nature or outside the scope of the normal duties of the Security Agent under the Finance Documents; or
 - (iii) the Security Agent and the Borrowers agreeing that it is otherwise appropriate in the circumstances,the Borrowers shall pay to the Security Agent any additional remuneration that may be agreed between them or determined pursuant to paragraph (c) below.
- (b) If the Security Agent and the Borrowers fail to agree upon the nature of the duties, or upon the additional remuneration referred to in paragraph (a) above or whether additional remuneration is appropriate in the circumstances, any dispute shall be determined by an investment bank (acting as an expert and not as an arbitrator) selected by the Security Agent and approved by the Borrowers or, failing approval, nominated (on the application of the Security Agent) by the President for the time being of the Law Society of England and Wales (the costs of the nomination and of the investment bank being payable by the Borrowers) and the determination of any investment bank shall be final and binding upon the Parties.

30.18 Deduction from amounts payable by the Agent

If any Party owes an amount to the Agent under the Finance Documents the Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Agent would otherwise be obliged to make under the Finance Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents that Party shall be regarded as having received any amount so deducted.

30.19 No responsibility to perfect Transaction Security

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

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

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

30.20 Insurance by Security Agent

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

30.21 Custodians and nominees

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

30.22 Delegation by the Security Agent

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

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

30.23 Additional Security Agents

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

30.24 Acceptance of title

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

30.25 Winding up of trust

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

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

then:

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

30.26 **Perpetuity period**

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

30.27 **Powers supplemental to Trustee Acts**

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

30.28 **Disapplication of Trustee Acts**

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

30.29 **Parallel Debt**

- (a) Each Obligor irrevocably and unconditionally undertakes to pay (and shall procure that each other Obligor shall pay) to the Security Agent all amounts equal to, and in the currency or currencies of, its Corresponding Debt (such amounts of each relevant Obligor being its "**Parallel 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 purposes of this Clause 30.29, the Security Agent:
 - (i) is the independent and separate creditor of each Parallel Debt;
 - (ii) acts in its own name and not as agent, representative or trustee of the Finance Parties and its claims in respect of each Parallel Debt shall not be held on trust; and
 - (iii) shall have the independent and separate right to demand payment of each Parallel Debt in its own name (including, without limitation, through any suit, execution, enforcement of security, recovery of guarantees and applications for and voting in any kind of insolvency proceeding).
- (d) The Parallel Debt of 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:

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

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

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

31. Application of Proceeds

31.1 Application of receipts – Security Agent

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

31.2 Deductions from receipts

- (a) Before transferring any moneys to the Agent under Clause 31.1 (*Application of receipts – Security Agent*), the Security Agent may, in its discretion:
 - (i) deduct any sum then due and payable under this Agreement or any other Finance Documents to the Security Agent or any Receiver or Delegate and retain that sum for itself or, as the case may require, pay it to another person to whom it is then due and payable;

- (ii) set aside by way of reserve amounts required to meet, and to make and pay, any deductions and withholdings (on account of Taxes or otherwise) which it is or may be required by any applicable law to make from any distribution or payment made by it under this Agreement; and
 - (iii) pay all Taxes which may be assessed against it in respect of any of the Security Property, or as a consequence of performing its duties, or by virtue of its capacity as Security Agent under any of the Finance Documents or otherwise (other than in connection with its remuneration for performing its duties under this Agreement).
- (b) For the purposes of paragraph (a)(i) above, if the Security Agent has become entitled to require a sum to be paid to it on demand, that sum shall be treated as due and payable, even if no demand has yet been served.

31.3 **Prospective liabilities**

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

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

31.4 **Investment of proceeds**

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

31.5 **Currency Conversion**

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

31.6 **Good Discharge**

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

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

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

No provision of this Agreement will:

- (a) interfere with the right of any Finance Party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;
- (b) oblige any Finance Party to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or
- (c) oblige any Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

33. **Sharing among the Finance Parties**

33.1 **Payments to Finance Parties**

If a Finance Party (a “**Recovering Finance Party**”) receives or recovers any amount from an Obligor other than in accordance with Clause 34 (*Payment mechanics*) (a “**Recovered Amount**”) and applies that amount to a payment due under the Finance Documents then:

- (a) the Recovering Finance Party shall, within three (3) Business Days, notify details of the receipt or recovery to the Agent;
- (b) the Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Agent and distributed in accordance with Clause 34 (*Payment mechanics*), without taking account of any Tax which would be imposed on the Agent in relation to the receipt, recovery or distribution; and
- (c) the Recovering Finance Party shall, within three (3) Business Days of demand by the Agent, pay to the Agent an amount (the “**Sharing Payment**”) equal to such receipt or recovery less any amount which the Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with Clause 34.5 (*Application of Receipts – Partial Payments*).

33.2 **Redistribution of payments**

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

33.3 **Recovering Finance Party’s rights**

On a distribution by the Agent under Clause 33.2 (*Redistribution of payments*) of a payment received by a Recovering Finance Party from an Obligor, as between the relevant Obligor and the Recovering Finance Party, an amount of the Recovered Amount equal to the Sharing Payment will be treated as not having been paid by that Obligor.

33.4 Reversal of redistribution

If any part of the Sharing Payment received or recovered by a Recovering Finance Party becomes repayable and is repaid by that Recovering Finance Party, then:

- (a) each Sharing Finance Party shall, upon request of the Agent, pay to the Agent for the account of that Recovering Finance Party an amount equal to the appropriate part of its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Finance Party for its proportion of any interest on the Sharing Payment which that Recovering Finance Party is required to pay) (the “**Redistributed Amount**”); and
- (b) as between the relevant Obligor and each relevant Sharing Finance Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by that Obligor.

33.5 Exceptions

- (a) This Clause 33 (*Sharing among the Finance Parties*) shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the relevant Obligor.
- (b) A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:
 - (i) it notified that other Finance Party of the legal or arbitration proceedings; and
 - (ii) that other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

34. Payment mechanics

34.1 Payments to the Agent

- (a) On each date on which an Obligor or a Lender is required to make a payment under a Finance Document, that Obligor or Lender shall make the same available to the Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
- (b) Payment shall be made to such account in the principal financial centre of the country of that currency (or, in relation to euro, in a principal financial centre in such Participating Member State or London, as specified by the Agent) and with such bank as the Agent, in each case, specifies.

34.2 Distributions by the Agent

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause 34.3 (*Distributions to an Obligor*) and Clause 34.4 (*Clawback and pre-funding*) be made available by the Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Agent by not less than five (5) Business Days’ notice with a bank specified by that Party in the principal financial centre of the country of that currency (or, in relation to euro, in the principal financial centre of a Participating Member State or London, as specified by that Party).

34.3 Distributions to an Obligor

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

34.4 Clawback and pre-funding

- (a) Where a sum is to be paid to the Agent under the Finance Documents for another Party, the Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.
- (b) Unless paragraph (c) below applies, if the Agent pays an amount to another Party and it proves to be the case that the Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Agent shall on demand refund the same to the Agent together with interest on that amount from the date of payment to the date of receipt by the Agent, calculated by the Agent to reflect its cost of funds.
- (c) If the Agent is willing to make available amounts for the account of a Borrower before receiving funds from the Lenders then if and to the extent that the Agent does so but it proves to be the case that it does not then receive funds from a Lender in respect of a sum which it paid to a Borrower:
 - (i) the Agent shall notify the Borrowers of that Lender's identity and the Borrower to whom that sum was made available shall on demand refund it to the Agent; and
 - (ii) the Lender by whom those funds should have been made available or, if that Lender fails to do so, the Borrower to whom that sum was made available, shall on demand pay to the Agent the amount (as certified by the Agent) which will indemnify the Agent against any funding cost incurred by it as a result of paying out that sum before receiving those funds from that Lender.

34.5 Application of Receipts – Partial Payments

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

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

(d) FOURTH, in or towards payment pro rata of any other sum due to any Finance Party but unpaid under the Finance Documents;

34.6 No set-off by Obligors

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

34.7 Business Days

- (a) Any payment (including, for the avoidance of doubt, any payment under Clause 25.4(b)) which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (b) During any extension of the due date for payment of any principal or Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

34.8 Currency of account

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

34.9 Change of currency

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
 - (i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Agent (after consultation with the Borrowers); and
 - (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Agent (acting reasonably).
- (b) If a change in any currency of a country occurs, this Agreement will, to the extent the Agent (acting reasonably and after consultation with the Borrowers) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant Interbank Market and otherwise to reflect the change in currency.

34.10 Disruption to Payment Systems etc.

If either the Agent determines (in its discretion) that a Disruption Event has occurred or the Agent is notified by the Borrowers that a Disruption Event has occurred:

- (a) the Agent may, and shall if requested to do so by the Borrowers, consult with the Borrowers with a view to agreeing such changes to the operation or administration of the Facility as the Agent may deem necessary in the circumstances;
- (b) the Agent shall not be obliged to consult with the Borrowers in relation to any changes mentioned in paragraph (a) if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;
- (c) the Agent may consult with the Finance Parties in relation to any changes mentioned in paragraph (a) but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;
- (d) any such changes agreed upon by the Agent and the Borrowers shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of Clause 41 (*Amendments and waivers*);
- (e) the Agent shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including, without limitation for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 34.10; and
- (f) the Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (d) above.

35. **Set-off**

A Finance Party may set off any matured obligation due from an 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 Obligor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

36. **Contractual recognition of bail-in**

Notwithstanding any other term of any Finance Document or any other agreement, arrangement or understanding between the Parties, each Party acknowledges and accepts that any liability of any Party to any other Party under or in connection with the Finance Documents may be subject to Bail-In Action by the relevant Resolution Authority and acknowledges and accepts to be bound by the effect of:

- (a) any Bail-In Action in relation to any such liability, including (without limitation):
 - (i) a reduction, in full or in part, in the principal amount, or outstanding amount due (including any accrued but unpaid interest) in respect of any such liability;
 - (ii) a conversion of all, or part of, any such liability into shares or other instruments of ownership that may be issued to, or conferred on, it; and
 - (iii) a cancellation of any such liability; and
- (b) a variation of any term of any Finance Document to the extent necessary to give effect to any Bail-In Action in relation to any such liability.

37. **Notices**

37.1 **Communications in writing**

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by email or letter.

37.2 **Addresses**

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

- (a) in the case of the Borrowers, that specified in Schedule 1 (*The Original Parties*);
- (b) in the case of each Lender, that specified in Schedule 1 (*The Original Parties*) or, if it becomes a Party after the date of this Agreement, that notified in writing to the Agent on or before the date it becomes a Party;
- (c) in the case of the Agent and the Security Agent, that specified in Schedule 1 (*The Original Parties*),

or, in each case, any substitute address or email address or department or officer as the Party may notify to the Agent (or the Agent may notify to the other Parties, if a change is made by the Agent) by not less than five (5) Business Days' notice.

37.3 **Delivery**

- (a) Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:
 - (i) if by way of letter, when it has been left at the relevant address or five (5) Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address;
 - (ii) if by way of email, when received in readable form.and, if a particular department or officer is specified as part of its address details provided under Clause 37.2 (*Addresses*), if addressed to that department or officer.
- (b) Any communication or document to be made or delivered to the Agent or the Security Agent will be effective only when actually received by the Agent or the Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Agent's or the Security Agent's signature below (or any substitute department or officer as the Agent or Security Agent shall specify for this purpose).
- (c) All notices from or to an Obligor shall be sent through the Agent.
- (d) Any communication or document made or delivered to the Borrowers in accordance with this Clause will be deemed to have been made or delivered to each of the Obligors.
- (e) Any communication or document which becomes effective, in accordance with paragraphs (a) to (d) above, after 5 p.m. in the place of receipt shall be deemed only to become effective on the following day.

37.4 Notification of address and email address

Promptly upon receipt of notification of an address or email address or change of address or email address pursuant to Clause 37.2 (*Addresses*) or changing its own address or email address, the Agent shall notify the other Parties.

37.5 Electronic communication

- (a) Any communication to be made between any two parties under or in connection with the Finance Documents may be made by electronic mail or other electronic means (including, without limitation, by way of posting to a secure website) if those two parties:
 - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
 - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five (5) Business Days' notice.
- (b) Any such electronic communication as specified in paragraph (a) above to be made between 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 electronic communication as specified in paragraph (a) above made between any two parties will be effective only when actually received (or made available) in readable form and in the case of any electronic communication made by a party to the Agent or Security Agent only if it is addressed in such a manner as the Agent or Security Agent shall specify for this purpose.
- (d) Any electronic communication which becomes effective, in accordance with paragraph (c) above, after 5.00 p.m. in the place in which the party to whom the relevant communication is sent or made available has its address for the purpose of this Agreement shall be deemed only to become effective on the following day.
- (e) Any reference in a Finance Document to a communication being sent or received shall be construed to include that communication being made available in accordance with this Clause 37.5.

37.6 English language

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

38. Calculations and certificates

38.1 Accounts

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

38.2 Certificates and determinations

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

38.3 Day count convention

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of three hundred and sixty (360) days or, in any case where the practice in the Relevant Interbank Market differs, in accordance with that market practice.

39. Partial invalidity

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

40. Remedies and waivers

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

41. Amendments and waivers

41.1 Required consents

- (a) (Subject to Clause 41.3 (*All Lender matters*) and Clause 41.4 (*Other exceptions*), any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and the Obligors and any such amendment or waiver will be binding on all Parties.
- (b) The Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 41.
- (c) Without prejudice to the generality of paragraphs (c), (d) and (e) of Clause 30.7 (*Rights and discretions*), the Agent may engage, pay for and rely on the services of lawyers in determining the consent level required for and effecting any amendment, waiver or consent under this Agreement.

- (d) Each Obligor agrees to any such amendment or waiver permitted by this Clause 41.1 which is agreed to by the Borrowers. This includes any amendment or waiver which would, but for this paragraph (d), require the consent of all of the Obligors.

41.2 Excluded Commitments

If any Lender fails to respond to a request for a consent, waiver, amendment of or in relation to any of the terms of the Finance Document or other vote of Lenders under the terms of this Agreement within fifteen (15) Business Days or (in the case of a matter that requires the consent or approval of all Lenders) twenty (20) Business Days of that request being made:

- (a) its Commitment and/or participation in the Loan then outstanding shall not be included for the purpose of calculating the Total Commitments or participations under the Facility when ascertaining whether any relevant percentage (including, for the avoidance of doubt, unanimity) of Total Commitments has been obtained to approve that request; and
- (b) its status as a Lender shall be disregarded for the purpose of ascertaining whether the agreement of any specified group of Lenders has been obtained to approve that request.

41.3 All Lender matters

An amendment, waiver or (in the case of a Transaction Security Document) a consent of, or in relation to, any term of any Finance Document that has the effect of changing or which relates to:

- (a) the definition of “Majority Lenders” in Clause 1.1 (*Definitions*);
- (b) a postponement or extension to the date of payment of any amount under the Finance Documents;
- (c) a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable;
- (d) a change in currency of payment of any amount under the Finance Documents;
- (e) an increase in any Commitment or the Total Commitments, an extension of any Availability Period or any requirement that a cancellation of Commitments reduces the Commitments rateably under the Facility;
- (f) a change to any Obligor;
- (g) any provision which expressly requires the consent of all the Lenders;
- (h) any change to the preamble (*Background*), Clause 2.1 (*The Facility*), Clause 3 (*Purpose*), Clause 5 (*Utilisation*), Clause 8 (*Interest*), Clause 28 (*Changes to the Lenders*), this Clause 41, Clause 44 (*Governing law*) or Clause 45.1 (*Jurisdiction*).
- (i) (other than as expressly permitted by the provisions of any Finance Document) the nature or scope of:
 - (i) the guarantee and indemnity granted under Clause 18 (*Guarantee and indemnity*);
 - (ii) the Security Property; or

(iii) the manner in which the proceeds of enforcement of the Transaction Security are distributed

(except in the case of paragraphs (ii) and (iii) above, insofar as it relates to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is expressly permitted under this Agreement or any other Finance Document); or

- (j) the release of, or material variation to, any guarantee and indemnity granted under Clause 18 (*Guarantee and indemnity*) or of any Transaction Security unless permitted under or contemplated by this Agreement or any other Finance Document or relating to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is expressly permitted under this Agreement or any other Finance Document,

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

41.4 **Other exceptions**

An amendment or waiver which relates to the rights or obligations of the Agent or the Security Agent (each in their capacity as such) may not be effected without the consent of the Agent or, as the case may be, the Security Agent.

41.5 **Replacement of Screen Rate**

Subject to Clause 41.4 (*Other exceptions*), if a Screen Rate Replacement Event has occurred in relation to any Screen Rate, any amendment or waiver which relates to:

- (a) providing for the use of a Replacement Benchmark in place of that Screen Rate; and
- (b)
- (i) aligning any provision of any Finance Document to the use of that Replacement Benchmark;
 - (ii) enabling that Replacement Benchmark to be used for the calculation of interest under this Agreement (including, without limitation, any consequential changes required to enable that Replacement Benchmark to be used for the purposes of this Agreement);
 - (iii) implementing market conventions applicable to that Replacement Benchmark;
 - (iv) providing for appropriate fallback (and market disruption) provisions for that Replacement Benchmark; or
 - (v) adjusting the pricing to reduce or eliminate, to the extent reasonably practicable, any transfer of economic value from one Party to another as a result of the application of that Replacement Benchmark (and if any adjustment or method for calculating any adjustment has been formally designated, nominated or recommended by the Relevant Nominating Body, the adjustment shall be determined on the basis of that designation, nomination or recommendation),

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

42. **Confidentiality**

42.1 **Confidential Information**

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 42.2 (*Disclosure of Confidential Information*) and Clause 42.3 (*Disclosure to numbering service providers*), and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

42.2 **Disclosure of Confidential Information**

Any Finance Party may disclose:

- (a) to any of its Affiliates and Related Funds and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as that Finance Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
- (b) to any person:
 - (i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents or which succeeds (or which may potentially succeed) it as Agent or Security Agent and, in each case, to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
 - (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or one or more Obligors and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
 - (iii) appointed by any Finance Party or by a person to whom paragraph (b)(i) or (b)(ii) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf (including, without limitation, any person appointed under paragraph (c) of Clause 30.14 (*Relationship with the other Finance Parties*));
 - (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraph (b)(i) or (b)(ii) above;
 - (v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;

- (vi) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
- (vii) to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 28.8 (*Security over Lenders' rights*);
- (viii) who is a Party, a member of the Group or any Affiliate of an Obligor; or
- (ix) with the consent of the Borrowers;

in each case, such Confidential Information as that Finance Party shall consider appropriate if:

- (1) in relation to paragraphs (b)(i), (b)(ii) and (b)(iii) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;
 - (2) in relation to paragraph (b)(iv) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;
 - (3) in relation to paragraphs (b)(v), and (b)(vi) and (b)(vii) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances;
- (c) to any person appointed by that Finance Party or by a person to whom paragraph (b)(i) or (b)(ii) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) if the service provider to whom the Confidential Information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Borrowers and the relevant Finance Party;
 - (d) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or the Obligors if the rating agency to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information.

42.3 Disclosure to numbering service providers

- (a) Any Finance Party may disclose to any national or international numbering service provider appointed by that Finance Party to provide identification numbering services in respect of this Agreement, the Facility and/or one or more Obligors the following information:
- (i) names of Obligors;
 - (ii) country of domicile of Obligors;
 - (iii) place of incorporation of Obligors;
 - (iv) date of this Agreement;
 - (v) the name of the Agent;
 - (vi) date of each amendment of this Agreement;
 - (vii) amount of Total Commitments;
 - (viii) currency of the Facility;
 - (ix) type of Facility;
 - (x) ranking of Facility;
 - (xi) Termination Date for Facility;
 - (xii) changes to any of the information previously supplied pursuant to paragraphs (i) to (xi) above; and
 - (xiii) such other information agreed between such Finance Party and the Obligors,
- to enable such numbering service provider to provide its usual syndicated loan numbering identification services.
- (b) The Parties acknowledge and agree that each identification number assigned to this Agreement, the Facility and/or one or more 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 that none of the information set out in paragraphs (a)(i) to (a)(xiii) of paragraph (a) above is, nor will at any time be, unpublished price-sensitive information.
- (d) The Agent shall notify the Borrowers and the other Finance Parties of:
- (i) the name of any numbering service provider appointed by the Agent in respect of this Agreement, the Facility and/or one or more Obligors; and
 - (ii) the number or, as the case may be, numbers assigned to this Agreement, the Facility and/or one or more Obligors by such numbering service provider.

42.4 Entire agreement

This Clause 42 (*Confidentiality*) constitutes the entire agreement between the Parties in relation to the obligations of the Finance Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

42.5 Inside information

Each of the Finance Parties acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and each of the Finance Parties undertakes not to use any Confidential Information for any unlawful purpose.

42.6 Notification of disclosure

Each of the Finance Parties agrees (to the extent permitted by law and regulation) to inform the Borrowers:

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to paragraph 42.2(b)(iv) of Clause 42.2 (*Disclosure of Confidential Information*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
- (b) upon becoming aware that Confidential Information has been disclosed in breach of this Clause 42 (*Confidentiality*).

42.7 Continuing obligations

The obligations in this Clause 42 (*Confidentiality*) are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of 12 months from the earlier of:

- (a) the date on which all amounts payable by the Obligors under or in connection with the Finance Documents have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and
- (b) the date on which such Finance Party otherwise ceases to be a Finance Party.

43. Counterparts

Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

44. Governing law

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

45. **Enforcement**

45.1 **Jurisdiction**

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a “**Dispute**”).
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) This Clause 45.1 is for the benefit of the Finance Parties only. As a result, no Finance Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Finance Parties may take concurrent proceedings in any number of jurisdictions.

45.2 **Service of process**

- (a) Without prejudice to any other mode of service allowed under any relevant law, each Obligor:
 - (i) irrevocably appoints Hill Dickinson Services (London) Ltd., currently of The Broadgate Tower, 20 Primrose Street, London, EC2A 2EW, 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 Borrowers (on behalf of all the Obligors) must immediately (and in any event within five (5) days of such event taking place) appoint another agent on terms acceptable to the Agent. Failing this, the Agent may appoint another agent for this purpose.

THIS AGREEMENT has been entered into on the date stated at the beginning of this Agreement.

EXECUTION PAGE

BORROWERS

Signed by _____)
for and on behalf of **CAMELIA SHIPPING**) _____
INC.)
)

In the presence of:

Name:
Address:

Signed by _____)
for and on behalf of **ANTHOS SHIPPING**) _____
INC.)
)

In the presence of:

Name:
Address:

Signed by _____)
for and on behalf of **AZALEA SHIPPING**) _____
INC.)
)

In the presence of:

Name:
Address:

Signed by _____)
for and on behalf of **AMARYLLIS SHIPPING**) _____
INC.)
)

In the presence of:

Name:
Address:

HOLDCO

Signed by _____)
for and on behalf of **NAVIOS MARITIME**) _____
OPERATING L.L.C.)

In the presence of:

Name:
Address:

NMP

Signed by _____)
for and on behalf of **NAVIOS MARITIME**) _____
PARTNERS L.P.)

In the presence of:

Name:
Address:

ORIGINAL LENDER

Signed by _____)
for and on behalf of **DORY FUNDING DAC**) _____)
)

In the presence of:

Name:
Address:

AGENT

Signed by _____)
for and on behalf of) _____)
DORY FUNDING DAC)

In the presence of:

Name:
Address:

SECURITY AGENT

Signed by _____)
for and on behalf of) _____)
DORY FUNDING DAC)

In the presence of:

Name:
Address: